

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Disciplinary Proceeding
to Dismiss:

OAH No. 2015090802

REED LEIFERMAN,

Respondent.

DECISION

Administrative Law Judge Kirk E. Miller, State of California, Office of Administrative Hearings heard this matter on January 25-28, 2016, in Clearlake, California.¹

Patrick C. Wilson, School and College Legal Services, represented complainant, Konocti Unified School District.

James D. Allen, Attorney at Law, represented respondent Reed Leiferman.

The record was left open until March 14, 2016, to permit the parties to file written briefs. The briefs were timely received. Complainant's brief was marked for identification as Exhibit 32, and Respondent's brief was marked for identification as Exhibit AA.

The matter was submitted on March 14, 2016.

ISSUES

1. Did respondent commit acts of dishonesty?
2. Is respondent evidently unfit for service as a teacher?
3. If so, should respondent be dismissed from his position as a high school teacher in the Konocti Unified School District?

¹ The parties stipulated that the matter would be heard by an administrative law judge, as provided in Education Code section 44944, subdivision (c)(1).

SUMMARY OF THE CASE

Respondent is a high school teacher in the Konocti Unified School District in Lake County. Respondent has a long history of medical problems with his left eardrum. On October 10, 2014, the school fire alarm unexpectedly sounded, and respondent claims this loud noise further damaged his eardrum and caused it to bleed. The school district asserts respondent was not injured, but took advantage of the alarm incident as a pretext to feign an ear injury. Respondent denies any misconduct. Based on its investigation, the district determined that respondent was not truthful about the incident and terminated respondent for dishonesty and evident unfitness for service.

FACTUAL FINDINGS

Procedural Background

1. Respondent Reed Leiferman is a certificated employee of the Konocti Unified School District (KUSD or district). He was hired in 1986 and continued his employment until 1990, when he resigned his position for personal reasons. Respondent was rehired in 1996 to teach high school social sciences, history and economics, and he coached football and baseball. All of his employment was at Lower Lake High School in Clear Lake. He continued to teach until 2014.

2. On October 21, 2015, KUSD's Superintendent of Schools, Donna Becnel, served respondent with a First Amended Statement of Charges, seeking his dismissal as a KUSD teacher. Respondent filed a timely Notice of Defense and Request for Hearing, and this hearing followed.

3. The Accusation seeks respondent's dismissal based upon dishonesty and evident unfitness for service. The Accusation arises out of the events that occurred in connection with a fire alarm that unexpectedly sounded on the afternoon of October 10, 2014, while respondent was teaching a class at Lower Lake High School. Respondent claims the alarm damaged his eardrum. Following an investigation, KUSD concluded that respondent secretly placed "fake blood" on a towel and held it against his ear, to give the appearance of an injury, when in fact he was not injured. Respondent told the KUSD investigator that he intended by his conduct for the district to falsely accuse him of feigning an injury, when the injury was in fact real, and based on the anticipated false accusation, he intended to sue the district. Notwithstanding respondent's intended ruse, he told the investigator that the blood on the towel was his own blood. The termination is based upon this conduct.

4. Since the time he was a teenager, Respondent has suffered from various ear injuries, and he has twice had surgery on his left ear. Respondent asserts that the October 10, 2014 incident caused one more in this series of ear injuries, and that the real reason for his termination was because he had previously made factually correct, but critical statements

about the district. Respondent asserts this criticism resulted in unwarranted animus toward him, but that he was truthful with the district regarding this ear injury.

KUSD's Evidence

THE OCTOBER 10, 2014 FIRE ALARM

5. On October 10, 2015, the fire alarm unexpectedly sounded at Lower Lake High School during the sixth period of the day. Respondent was teaching a class during this time. When the alarm sounded, in accordance with the school's procedures, he and his students left the classroom to assemble in their designated place on the school football field. All of the school's student's evacuated to that area.

6. After respondent and all of respondent's students had vacated the classroom, he stepped back inside by himself for at least one minute, and possibly up to several minutes. While respondent was alone in the classroom, he still retained the responsibility for supervising his students. During this time, his students were not specifically supervised by any other teacher.

7. Respondent was in possession of a bottle labeled "fake blood" that he apparently kept in his teacher's desk. After re-entering his classroom, respondent took some of the fake blood and placed it on the outside of his ear. Prior to leaving the classroom, he left the desk drawer containing the fake blood open. Respondent then proceeded to the football field and joined his sixth period class until the "all clear" sign was given, indicating that it was safe to return to the classrooms. While respondent was on the field others observed that his ear appeared to be bleeding.

8. Kris Tyner is a teacher whose classroom is located next to respondent's, in the same two-classroom building. Tyner testified that it was five to ten minutes between the time the alarm sounded and the time he next saw respondent on the field. Tyner observed that respondent's ear appeared to be bleeding and he walked over to him to look more closely. At this point, Tyner touched the substance appearing to come from respondent's ear. Upon doing so, he concluded the substance was not blood. He described the substance as "gelatiny, [sic] and not fluid like blood. It was an orangey [color] versus reddish in color."

9. Jessica Taliaferro is the principal at Lower Lake High School, and during the time respondent was on the field with his students, she observed that he appeared to be bleeding. Once the alarm was cleared, she went to respondent's classroom to check on him, and asked him to meet her in the staff room so that she could check his ear more closely.

10. Connie Spriet is the school's secretary and is also responsible for providing first-aid to the students, because she had previously received emergency medical technician training. One of her children is also a hemophiliac, and as a result of the totality of her experience, she is "very familiar with what blood looks like."

11. Taliaferro requested Spriet to look after respondent when he came into the staff room following the October 10, 2014 fire alarm incident. Spriet noted that respondent was holding a blue towel against his ear at that time. Spriet also observed that respondent's fingers were discolored from holding the towel, but she did not believe that they were discolored by blood. She was not able to determine what the substance causing the discoloration was, but she testified: "It wasn't blood... It was orange-ish."²

12. Taliaferro had trained as a nurse in United States Navy and had worked for four years in a Navy hospital's emergency and obstetrics departments. As a result of her training and experience she was very familiar with the appearance of blood and its characteristics; based on this experience, she was qualified at hearing as an expert in recognizing blood. Based on her medical training, Taliaferro also had experience examining human ears, and once she and respondent were together in the staff room, she looked inside of his ear with a flashlight. She was unable to determine the source for the apparent blood. She found the liquid was pooled on the outside of the earlobe, but the ear canal was clean. She did not think the substance that she observed on respondent's ear and fingers looked like blood because it had a shiny color and it had no odor.

13. Taliaferro asked respondent if he wanted her to call an ambulance for him, and he declined. Respondent advised that he was not in pain and told her that his ear did not "pop like last time" and he was not dizzy.³ Nonetheless, Taliaferro requested another teacher, Joe Parker, to drive respondent home.

14. Melissa Lampert is the school's vice principal, and she covered respondent's last period class, because of respondent's apparent injury. While in respondent's classroom, she noticed that the bottom desk drawer of his desk was open by about six inches, permitting her to see its contents. She recalled the drawer was open this far because it presented an "obstacle" she had to walk around. She looked inside of the drawer and noticed it contained a bottle labeled "fake blood." She did not initially think anything of this.

15. After the school day ended, Lampert "debriefed" with Taliaferro regarding the sixth period fire alarm and the school evacuation. Taliaferro mentioned that the substance she observed on respondent's ear did not appear to her to be blood. Lampert was startled because of the bottle of fake blood she had just seen in respondent's desk drawer and she told Taliaferro about her observation. The two returned to respondent's classroom together and took a picture of the bottle marked "fake blood." Taliaferro contacted Donna Becnel, and Becnel instructed her to take possession of the bottle. It did not appear to Taliaferro that the bottle had been recently opened.

² Spriet provides employees with the forms required to file workers' compensation claims. She credibly testified that she did nothing to discourage respondent from filing a claim for the October 2014 incident.

³ Respondent's ear had previously been injured in 2010 and in April 2014.

16. Respondent returned to Lower Lake High School the following day to pick up his motor scooter and he drove it back home. Respondent did not seek medical attention for his ear. He later told the district's investigator he did not go to the local hospital following the incident, because he did not trust the quality of care he would receive, stating: "I'd rather bleed to death than go over there at the ER." However, respondent was aware his grandchild had been seen there for a serious emergency and had received excellent care.

KUSD'S INVESTIGATION OF THE OCTOBER 14, 2014 INCIDENT

17. The district hired an investigator, Chris Reynolds, to interview respondent regarding the events of October 10, 2014. The interview took place and was recorded on October 23, 2014, at Lower Lake High School.

18. Respondent told the investigator about prior fire alarm incidents and the problems they posed for his ear during the years he worked at Lower Lake High School. He also described the events of the October 10, 2014 fire alarm in detail, and provided the investigator with what he said was the towel that he held against his ear once he realized that it was "bleeding." He told the investigator that if the towel were tested it would show the blood on the towel was his blood type and that the DNA on the towel would match his own DNA.

19. Respondent told the investigator, and testified at hearing, that he had been upset for some time because of events that occurred while he had been on medical leave at the end of the prior school year; someone had taken from his classroom his district-issued laptop computer and a leather notebook he maintained containing confidential union information in anticipation of collective bargaining. He believed someone from administration or the district office had taken the items. In order to find out who had done so, he conceived a plan to identify the person responsible.

20. Respondent's plan was to "plant" the fake blood in his desk, anticipating that it would be found. In turn, the presence of the bottle would cause the district to conclude that he was "faking" his ear injury. Respondent told the investigator that he wanted the district to think he was faking his injury, because he "wanted to take [his] employer to court." Respondent anticipated the district would improperly take adverse action against him, and this would in turn create a basis for respondent to sue the district.

21. Respondent explained to the investigator that the other part of his plan was to discover who had taken his laptop computer, or as respondent stated, to "set a trap for a rat." He did this by leaving the desk drawer open so that the fake blood would be discovered. The investigator asked respondent if he left the blood in his desk so someone would think that he was faking an injury, and respondent stated: "absolutely, like I said, the bait..."

22. Respondent later testified at a deposition in connection with these proceedings, in which he reconfirmed the statements he made to the investigator. In his deposition respondent testified that even though his left ear was actually bleeding as a result of the fire

alarm sounding, he wanted Becnel to think he was faking his injuries; he wanted her to believe that the blood was fake. When asked if he wanted someone to make a false accusation against him, he responded “Yes.” And when asked why, he stated “To prove the harassment.”

23. On July 1, 2015, respondent filed a complaint for damages against KUSD in the Superior Court of California, County of Lake, in which he alleged KUSD failed to provide him reasonable accommodation in light of his ear problems.

Respondent’s Evidence

BACKGROUND

24. Respondent is a 1981 graduate of Morehead State College in Minnesota, where he earned a degree in political science. In 1996, he received a Master’s degree from St. Mary’s College in health, physical education and recreation, with a concentration in sports administration.

25. Respondent was first hired to teach at Lower Lake High School in 1986, and he worked there until 1990, when he went back to Minnesota to help care for his father. He returned to Lower Lake High School in 1996 or 1997, first as the athletic director and later as a full-time teacher.

26. Respondent began having problems with his left ear as a teenager, when he experienced ear infections, drainage, vertigo, dizziness, and loss of balance. Ultimately a hole in his eardrum was discovered and he had surgery to repair it, but he still suffers from these conditions. In the years preceding the October incident, respondent had received treatment for his ear at the University of California, San Francisco Medical Center, and from different local physicians.

27. Respondent’s first workplace ear injury occurred on April 10, 2010, when a fire alarm sounded while respondent was in his classroom at Lower Lake High School. He filed a workers’ compensation claim in connection with this injury. Respondent was awarded a 12 percent permanent disability and the right to ongoing medical treatment.

28. Respondent was treated for ear issues following an unannounced fire alarm that occurred on April 15, 2014. His treating physician provided a letter to the district stating that respondent should not return to work until he received further medical treatment. Upon receipt of the physician’s letter, respondent was placed on leave by the school principal. Respondent described this as an “involuntary leave of absence.” Respondent did not return to work until the start of the next school year, in the fall of 2014.

29. Following the April 2014 incident, respondent requested an interactive meeting with the district to discuss workplace accommodations to prevent future ear injuries. The first meeting was held on August 1, 2014, at which time respondent requested to be

advised in advance of future fire drills; for the alarm volume to be turned down to the lowest permissible level; and for respondent to be assigned to an area to teach where the alarm does not sound. The district agreed to provide respondent prior notification of scheduled alarms and the alarm volume was lowered; there is no part of any school that is free from alarm noise.

30. During the summer break, in July 2014, respondent returned to his classroom to begin preparing for the next semester, and discovered that a confidential leather notebook he maintained, and his district issued laptop computer, were both missing. He kept the notebook in connection with his work on behalf of the teachers union, and it contained information he had collected about the incoming superintendent, Becnel. School personnel ultimately located and returned the computer, but the notebook was not found. He was never given an explanation about why someone had the computer or where it was found. Respondent felt the fact that the items were taken was evidence that he was being targeted by the district.

31. It was during the summer of 2014, that respondent found the bottle of fake blood, which had been kept in a shared storage closet near his classroom. Respondent believed it was used in connection with the driver training course.

THE OCTOBER 10, 2014 FIRE ALARM

32. Respondent did not receive advance notice of the October 10, 2014 fire alarm.⁴ When the alarm sounded, respondent followed the appropriate procedure. He put in the earplugs he kept ready for an alarm, and picked up other items required by the alarm procedure, including the “red bag,” a flashlight, a clipboard with procedures, a sign saying “I’m OK,” and the advisory role sheet.⁵ When the alarm sounded, he also thought to himself, “now is the time to set the trap.” Respondent left the room with his students, but after taking three strides toward the field, he returned to the classroom.

33. Respondent testified he returned to get an “updated role sheet.”⁶ He also came back in the room “to set the trap” by opening his bottom desk drawer containing the fake blood. Respondent testified he opened the drawer only an inch or inch and a half, and he did so to learn if someone was “going through [his] personal belongings.” By this time he had his earplugs in, so that the sound of the alarm no longer created a problem for him. He

⁴ The evidence established that this was not a scheduled alarm. A young child visiting the school caused the alarm unexpectedly.

⁵ After the students and teachers reach the football field, they regroup with their morning advisory class. The role sheet is used to be sure everyone is there.

⁶ When respondent spoke to the investigator, he did not mention the need to pick up a current role sheet; he only made reference to setting the “trap.”

testified that he did not open the bottle of fake blood while he was in the classroom. Respondent testified he was in the room somewhere between 30 seconds and a minute.

34. While respondent was alone in the classroom, all of the elements of the scenario were running through his head. He hoped by “setting the trap” to accomplish two things: (1) to learn who had taken his notebook and computer, and (2) to cause the district to falsely accuse him of faking an injury, when in fact his injury was real. Respondent testified he did not know, at this point, if his ear was bleeding. Nor did he explain why anyone would choose this moment to search his desk, and if this occurred, how that would reveal the “rat” he was seeking.

35. After all of the students and teachers had gathered on the field, and the all-clear notice was given, respondent returned to his classroom. There he pulled the left earplug out and covered his ear with a small towel he kept to clean the whiteboard. Shortly thereafter, Taliaferro came in to check on him. She asked him to go to the office because his ear appeared to be bleeding. Respondent went to the faculty room, where he recalled that Taliaferro used a flashlight to examine his ear, but he denies that she ever touched it or that she was any closer than four feet away from him.

36. One of respondent’s colleagues took him home. Respondent’s wife was not yet home and he felt nauseous, so he lay down on the sofa. He later threw the towel he was using for his ear “under the utility sink in [the] laundry room,” where he keeps similar items before they are washed. His wife later took a picture of the towel; he states it was never washed.

37. The next morning, Saturday, Respondent did not feel well, so he did not join the family on a scheduled outing with their grandchildren. By 11:00 a.m. he was feeling better and he drove his truck back to school in order to pick up the motor scooter and ride it home. He left the truck at school. April Leiferman, respondent’s wife, stated that the ear continued to issue a small amount of blood over the weekend. Respondent felt able to return to work on the Monday following the incident.

38. Respondent returned to work the Monday, October 13, 2014. He attributes his willingness to do so to the fact that he has become familiar with the course of similar ear injuries and his dedication to his work. Respondent did not seek medical attention over the weekend, and he did not file a workers’ compensation claim. Spriet maintains the required workers’ compensation forms. Respondent asserts she told him claims must be filed on the date of the injury, and he had not done this. He testified that based on her purported statement, he felt he was precluded from filing a claim.

39. Following the October 2014 incident, respondent was contacted by the district’s human resources director and told to meet with an investigator the district had hired to review the incident. Respondent did not wish to do so because his lawyer was out of the country, but he received a letter dated October 21, 2016, that stated if he failed to attend the meeting the “District may draw an adverse conclusion and your conduct will constitute

insubordination.” Respondent felt obliged to give the interview; he appeared on the designated date and with a union representative rather than with his lawyer.

40. Respondent answered the questions posed by the investigator, and he gave the investigator the towel he said he held over his ear during the event, along with what he said was a pillowslip from home containing a blood stain. It was during this interview that respondent described the “trap” he planned and executed.

RESPONDENT’S EVIDENCE OF DISTRICT HARASSMENT

41. Respondent felt that he was “targeted” by the district. He felt that he was improperly placed on involuntary leave in April 2014 by his former principal, Jeff Dickson. Dickson’s decision to place respondent on leave was based on a letter from respondent’s physician, stating respondent should not return to work until after his next otolaryngology appointment. Dickson instructed respondent to leave the school in front of his students, which respondent felt demonstrated a lack of respect.

42. Respondent expressed his anger and frustration regarding his missing district-issued laptop computer and his personal notebook, and his feeling that they were improperly taken by the District or school administrators while he was on leave.

43. Respondent acknowledged he was frustrated with his job and that during the school year, he was not reluctant to share his frustrations with other teachers and administrators. He had seen many changes in administration, including nine different principals during the time he taught at Lower Lake High School, and he believed these changes contributed to a deterioration of faculty morale. At one point he left a voicemail message at the district office in which he referred to the district as a “shithole,” and he wrote words such as “mole,” “narc” and “Judas” on a white board in the faculty room. A photograph of his writings was taken and retained, without his knowledge. Respondent felt the photo was taken by a district or school administrator, and that retaining the photo without his knowledge violated state law.

44. Respondent had taught government and economics to seniors for many years and understood he had done an excellent job teaching the students. However, his class schedule was changed and he was assigned to teach other classes, without any prior notification to him or input from him.

45. April Leiferman was an assistant district superintendent and felt threatened by Becnel. Papers associated with a project April Leiferman was working on were removed from her office without explanation. She believes they were taken by Becnel. April Leiferman also testified that Becnel told her that respondent was compromising April Leiferman’s position as a district employee.

46. April Leiferman was present during the interactive meetings between respondent and the district, when respondent’s request for accommodation was discussed.

She felt the district's legal counsel was unnecessarily aggressive and rude during the meetings.

LABORATORY ANALYSIS OF RESPONDENT'S TOWEL

47. Respondent arranged for the towel he maintains he held against his ear during the October incident to be sent to a laboratory for DNA testing. The testing was arranged by Dr. Mersedeh Eghdama, who is a chiropractor and certified professional collector technician. Dr. Eghdama described how she collected the evidence that was tested to determine the presence of respondent's DNA on the towel.

48. Dr. Eghdama used Q-tips and sterile water to take samples from six areas of the towel at issue. She also took saliva samples from respondent's mouth. Separately, she swabbed samples of the fake blood. The items were then separately packed and marked. All of these items were sent to the reference lab for DNA testing.

49. Dr. Eghdama is not herself an expert in DNA testing, but described the results as she understood them that were received from the laboratory. The testing confirmed that respondent's DNA was found on the towel she labeled as the one he used on October 10, 2014. Respondent asserted that the presence of his DNA on the towel was proof that his ear was bleeding during the October 10, 2014 incident. The lab did not test to determine if human blood was on the towel.

RESPONDENT'S PERFORMANCE EVALUATIONS

50. Respondent's performance evaluations for 2010 and 2011 showed that he "met or exceeded" the performance standards in all categories that were rated. In 2011 the school principal, Jeff Dickson, commented in the evaluation:

[Respondent] connects students' prior knowledge with learning goals, uses a variety of instructional techniques and gives his students "voice and choice" in the learning process. His students are fully engaged on a consistent basis and he emphasizes problem solving and the development of critical thinking skills.

[Respondent] has created a very pleasant learning environment that is conducive to both teaching and learning. He and his students display a mutual level of respect and fairness and his activities foster group responsibility. His students are well behaved due to his organization, engagement and use of routine and procedures. Instructional time is used very effectively.

51. William Macdougall preceded Becnel as the district superintendent and testified on respondent's behalf. He credibly testified that respondent is a good teacher.

Credibility

52. Respondent's testimony regarding blood coming from his ear lacked credibility as compared with the testimony of Taliaferro, Spriet and Tyner, who each independently came to the same conclusion that the substance they saw on respondent's ear was not blood. Neither was respondent as credible as Spriet with regard to the procedure for filing a workers' compensation claim; the evidence did not support respondent's assertion that Spriet advised him the claim must be made on the same day the injury occurs.

Respondent's credibility was further undermined by his own admission that he intended from the start of the incident to mislead the district in order to create an opportunity for litigation, which he subsequently filed. The most positive inference that can be drawn from respondent's statements to the investigator and his testimony at hearing is that he was telling the truth about his intention to deceive and mislead.

Analysis

THE DISTRICT'S DISHONESTY ALLEGATION

53. Education Code section 44933, subdivision (a)(3), provides a permanent employee of a school district may be dismissed for dishonesty.

54. Respondent has for decades struggled with inner ear problems that have required ongoing medical attention. However, this case is not about respondent's complicated medical history, but about his conduct on October 10, 2014, and his own explanation regarding his conduct once it was called into question by KUSD.

55. Three witnesses, Tyner, Spriet and Taliaferro, closely observed the substance in and around respondent's left ear on October 10, 2014, and each separately concluded that it was not blood. One of the witnesses, Taliaferro, had by her training and experience expertise in working with and recognizing the characteristics of human blood. Her expertise also qualified her to examine respondent's ear for a blood source, which she did. Her conclusion was that the ear was not bleeding. The testimony offered by these witnesses was persuasive.

56. Respondent offered a laboratory report which demonstrated that his DNA was present on the blue towel he says he held over his ear on October 10, 2014. This is, however, all that the DNA evidence demonstrated. The report did not state blood, in addition to the DNA, was present on the towel, and even if it had, the report could not have demonstrated when the blood was placed on the towel. The laboratory report did not establish that respondent's injury was genuine.

57. Respondent maintains that the unplanned fire alarm damaged his eardrum, causing it to bleed and requiring him to cover his left ear with a small towel to collect the blood. He told the district's investigator, however, that by having the fake blood in his desk,

he intended to create the appearance that he was faking the ear injury, in order to cause the district to falsely accuse him of misconduct, setting up the opportunity for respondent to in turn bring legal action against the district. It is difficult to reconcile respondent's statements with his actions. On the one hand, he claims that when the alarm went off he immediately thought "now is the time to set the trap," but as he was first making this calculation, he acknowledged his ear was not then bleeding. Whether respondent had planted the blood over the summer of 2014 and planned for months to mislead the district, or if he thought of this ruse immediately upon hearing the fire alarm is irrelevant: under either scenario, it was respondent's intention to mislead the district. Moreover, he was then untruthful about the injury. The evidence established that respondent was dishonest, and that he attempted to use this dishonesty to his advantage.

THE DISTRICT'S EVIDENT UNFITNESS FOR SERVICE ALLEGATION

58. Based on respondent's dishonesty, the district asserts that he is evidently unfit to work as a teacher. When considering whether a teacher's conduct constitutes evident unfitness for service, a determination must be made as to whether the conduct at issue, here dishonesty, demonstrates that the teacher is unfit to teach under the eight factors established by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230. These factors are: (1) The likelihood that respondent's conduct may have adversely affected students or fellow teachers; (2) the degree of any expected adversity; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by respondent; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of recurrence of the conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect on the constitutional rights of respondent or other teachers. Not all of the *Morrison* factors must be considered, only the more pertinent ones. (*West Valley-Mission Community College District* (1993) 16 Cal.App.4th 1766, 1777.) Here, the relevant factors are: the potential adverse effect on students and teachers; the conduct's proximity in time; the praiseworthiness or blameworthiness of the motives; and the likelihood of the conduct reoccurring.

Adverse Effects

59. Respondent's "trap to catch a rat" resulted in loss of time and expense on behalf of the school district, as well as the emotional cost and loss of trust associated with disciplining a colleague for obvious dishonesty. This conduct has an ongoing disruptive effect at every level of the academic community – the district office, the school's administration, the school's staff, and other members of the faculty. Respondent has steadfastly questioned the integrity of employees at each level, while insisting on the truth of his own scenario, which he admitted was built as a deception. Respondent's conduct had serious adverse effects on the school and district personnel.

Proximity in Time

60. Respondent's conduct was recent and it arose within and as part of the school's day-to-day operations.

Blameworthiness of the Motives

61. There are no mitigating circumstances and there is no basis to justify respondent's scheme or conduct.

Likelihood of Reoccurrence

62. While this particular set of facts is hardly likely to be repeated, respondent's willingness to engage in such an ongoing, far reaching and dishonest plot, without a hint of remorse, makes the possibility of future dishonest conduct reasonably probable. This criterion was established.

63. The term "evident unfitness for service" has been discussed in numerous cases, but has generally come to mean a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429.) The next issue then, is whether respondent's dishonesty is a character trait that makes him evidently unfit to teach.

Shortly after the October 10, 2014 incident, respondent told the investigator that he intentionally wanted to mislead the district into taking an adverse action against him. He reconfirmed this intention in a deposition given on December 2, 2015, and then again at the hearing in this case. Having achieved one of the outcomes he was seeking -- the district took an adverse action when it issued a statement of charges based on respondent's dishonesty -- respondent now wishes to unwind the consequences he seems to have expected to flow from his plan. Respondent now asserts that the adverse action taken by the district was the result of unwarranted animus, not his misconduct, and apparently not his ruse. Respondent's own evidence established that he was difficult to work with, but the district did not assert respondent's sometimes difficult demeanor as a basis for termination. Respondent did not establish that the district had any improper pretext for his termination; however, respondent's own testimony described a stream of dishonest acts. These included forming a scheme with the intention to mislead the district, feigning an injury, and then repeating the misrepresentation about the "injury" to the investigator, in a deposition, and at the hearing. The dishonesty here is not a single, isolated incident of bad judgment. This compilation of repeated dishonest acts established dishonesty as a character trait that makes respondent evidently unfit for service.

LEGAL CONCLUSIONS

1. The causes for dismissal alleged in this matter are dishonesty and evident unfitness for service. The standard of proof applied in this proceeding is preponderance of the evidence. (*Gardner v. The Commission on Professional Competence* (1985) (164 Cal. App. 1035, 1039-1040.)

Dishonesty

2. Education Code section 44932, subdivision (a)(3) provides a teacher can be dismissed for dishonesty. By reason of the matters set forth in Findings 3, 6-16, 18-23, 32-34, 40, 55 and 57, cause was established to dismiss respondent for dishonesty.

Evident Unfitness

3. Education Code section 44932, subdivision (a)(3) provides a teacher can be dismissed for “[e]vident unfitness for service.” By reason of the matters set forth in Findings 3, 6-16, 18-23, 32-34, 40, 55, and 57-63, it was established that respondent is unfit for service pursuant to Education Code section 4493, subdivision (k) (3), as that term is interpreted by the Supreme Court in *Morrison v. State Board of Education*, *supra*, 1 Cal.3d 214, and the Court of Appeal in *Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App 4th 1429.

Notwithstanding respondent’s positive evaluations and long-time commitment to teaching, respondent is unfit for service for two reasons: First, he was dishonest when he created the impression he had incurred a workplace injury when he was not in fact injured. Second, this misrepresentation was then compounded by insisting the injury was real when he repeated the story during the investigation, in his subsequent deposition, and in the hearing.

Respondent’s complex scheme of misrepresentation and deception ultimately involved his teaching colleagues, his immediate supervisors at the high school, and the district superintendent. In constructing his scheme he has explicitly called into question both his colleagues and his supervisors’ integrity, without any reasonable basis to do so. To continue respondent’s employment as a teacher would be to extend on an ongoing basis a relationship where respondent’s trust has been lost, the working environment has been compromised, and students would be learning from the same individual who created a misrepresentation for the purpose of causing these events to occur. The evidence established that respondent should be dismissed.

ORDER

Respondent Reed Leiferman is dismissed from his position as a permanent certificated employee of the Konicki Unified School District.

DATED: April 15, 2016

DocuSigned by:
Kirk Miller
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KIRK E. MILLER
Administrative Law Judge
Office of Administrative Hearings