

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CHRISTOPHER ONTIVEROS,  
A Permanent Certificated Employee,

Respondent.

OAH Case No. 2011110601

**DECISION**

On December 3-7, and 10-13, 2012, and July 18, 19, and 22-25, 2013, Daniel Juárez, Administrative Law Judge (ALJ), Office of Administrative Hearings, heard this matter, together with Commission Members Joseph McEachron and James Vaughan, at Anaheim, California.

Stutz Artiano Shinoff & Holtz, and Daniel R. Shinoff, Esq., Gil Abed, Esq., and Jeanne Blumenfeld, Esq., represented Complainant Anaheim Union High School District (AUHSD).

Dale M. Fiola, Esq., represented Christopher Ontiveros (Respondent). Respondent was present on each day of hearing.

The record was left open until October 14, 2013, for the parties to file closing and reply briefs. The parties filed briefs timely; they were marked for identification.

The parties submitted the matter for decision on October 14, 2013.

**STATEMENT OF THE CASE**

AUHSD seeks the dismissal of Respondent, contending he engaged in immoral or unprofessional conduct, displayed evident unfitness for service, and persistently violated or refused to obey school laws and regulations. More specifically, AUHSD contended that, among other things, Respondent sexually communicated, interacted, and touched a minor female student in a sexual manner, sent her sexually explicit and otherwise inappropriate text messages and electronic mail (email) messages, and posed in inappropriate photographs with the student.

Respondent denied inappropriate contact with the student. He argued that the student used a digital technology commonly available on the internet to make the improper text messages falsely appear to have originated from Respondent's cellular telephone. He denied all of the other allegations pled by AUHSD.

## FACTUAL FINDINGS

1. Respondent is a permanent, certificated employee of AUHSD. He holds a clear single subject credential with authorizations in social science and English.

2. At all times relevant to the issues herein, Respondent was a teacher at Oxford Academy (OA). OA is a college preparatory school, within AUHSD, from grades seven to 12. OA is a well regarded and academically rigorous school.

3. AUHSD has employed Respondent as a teacher since August 2000. He has been married for approximately 19 years. He has five daughters.

### Pre-Hearing Procedural History

4. On September 22, 2011, before a properly noticed meeting, Complainant Russell Lee-Sung, Superintendent of Human Resources, filed the Statement of Charges with the Governing Board of AUHSD (Board).

5. On September 23, 2011, the Board served Respondent with a Notice of Intention to Dismiss and a Statement of Charges.

6. On October 7, 2011, Respondent requested an administrative hearing.

7. On a date undetermined by the evidence, AUHSD filed the Accusation and Statement of Charges. AUHSD filed the First Amended Accusation on March 29, 2012, and the Second Amended Accusation on or about September 20, 2012. Respondent was deemed to have controverted the allegations and charges in the amended pleadings, in accordance with Government Code section 11507.

8. The parties met all jurisdictional requirements.

### Jane Doe

9. Jane Doe<sup>1</sup> came to the United States at age six from South Korea. She lived in her family home with her mother, father, and two younger siblings. Since seventh grade, Doe attended OA. Doe received good grades at OA. In the 2008-2009 school year, Doe was

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<sup>1</sup> The pseudonym, "Jane Doe," is used to preserve the student's privacy.

a high school junior. In that year, Doe was a student in Respondent's advanced placement (AP) United States History class, known by its acronym, "APUSH."

10. In her junior year, Doe was 16 years old in the fall semester, and 17 years old in the spring semester. During that school year, Doe was experiencing personal, social, and academic stress. Among other things, Doe felt that her parents were unaffectionate with her, she had no friends at school, she and her family were having immigration problems, she feared she would not be able to enter college, and she was experiencing conflict with her mother regarding her mother's religion. Further, Doe was actively experiencing bulimia. Doe had a history of bulimia, dating back to middle school. Doe had a reduced class schedule at OA due to her health problems.

#### Respondent and Doe

11. During her junior year, Doe developed an intensive, personal relationship with Respondent. Respondent and Doe began speaking outside of the APUSH class and the discussions ranged from class-related topics to personal, non-class related topics. Doe eventually placed her trust in Respondent as her confidant and mentor.

12. In January 2009, Doe disclosed to Respondent that she believed her parents did not love her and further related to him those problems described in Factual Finding 10. Thereafter, Respondent became more attentive to her. Respondent offered to help her by, among other things, researching helpful information about eating disorders, summer programs, and colleges. Respondent also prepared food at his home and brought it to her at school. As Respondent and Doe continued to talk and interact, their relationship became more personal and intimate. Respondent showed intense interest in Doe's personal needs. During this time, Doe continued to experience significant personal and emotional problems.

13. In an email, dated February 9, 2009, from Doe to Respondent, Doe stated that things were better at home and that she was going to begin seeing a psychiatrist and engaging in therapy sessions. Doe's personal problems, however, continued and she related these continuing problems to Respondent during their personal conversations.

14. In early 2009, Doe and Respondent began to develop romantic feelings for each other. They flirted with each other.

#### Respondent's RV

15. In February 2009, in response to Doe confiding in Respondent that she was having trouble studying and dealing with her bulimia, Respondent suggested to Doe that she move into his recreational vehicle (RV). Indeed, one of Doe's health care providers suggested a change in environment for her. Respondent owned an RV that he kept parked on his home property.

16. Doe related Respondent's offer to her parents. Doe's mother saw the potential arrangement as an offer to assist Doe with her studies during a time when Doe was having serious health problems and conflict at home with her parents. Doe's mother also had concerns with the arrangement, but she trusted Respondent and believed the situation would serve Doe's educational and health needs. During Doe's mother's testimony at hearing, it became clear that, due at least in part to their cultural background, Doe's parents hold teachers in high regard and consequently, Doe's mother placed significant trust and faith in Respondent as Doe's teacher.

17. In March 2009, Respondent and his wife met with Doe and Doe's mother to discuss his proposal that Doe stay in his RV.

18. Respondent and his wife drafted documents related to Doe's stay in the RV. Doe's mother signed a document, dated April 29, 2009, prepared by Respondent, entitled, "Expectations for staying with the Ontiveros.'" That document listed the following expectations, "1) there will be a "trial stay" first to discover if this is a step in the right direction for [Jane]; 2) if the trial is promising, we will continue with more stays; 3) if and when it does not work out, either for [Jane], her parents, or the Ontiveros', we may reduce the stays, or discontinue; 4) regular overnight stays with parents will continue weekly; 5) [Jane's] parents will continue to arrange for her medical care including transportation to and from appointments; 6) [Jane] may accompany the Ontiveros' on our errands and family activities (children's classes after school); 7) [Jane] will have privacy and evening time to complete schoolwork; 8) Ontiveros' will transport to and from school; 9) [Jane] will call her parents frequently to relate her whereabouts."

19. Doe and Doe's parents signed a "Liability Release Form," dated April 29, 2009, releasing Respondent and his wife from liability for personal injuries and damages "occasioned by, or in connection with auto transportation to and from their residence and at any other time."

20. Much later during her stay in the RV, on May 4, 2009, Doe's parents signed a form that authorized Respondent and his wife to consent to Doe's medical treatment, if needed, until Doe turned 18 years old. Doe turned 18 in December 2009.

21. In March 2009, Doe's mother met with Kathy Scott (Scott), OA's principal. Doe's mother inquired with Scott about Respondent. Scott was surprised by the RV proposal; she thought it was a poor idea. The evidence failed to establish the specific discussion between Scott and Doe's mother. In response to questions and comments by Doe's mother, Scott told Doe's mother that Respondent was a good teacher and that Respondent and his wife were "good people."

22. Thereafter, Scott spoke with Respondent and Respondent's wife and conveyed her opinion that the RV proposal was not a good idea. Respondent became defensive in the meeting, telling Scott the proposal was their idea and their private business. Scott notified

others in administration and determined that the arrangement was a “gray area.” She did not feel she could stop the arrangement.

23. Respondent contested Scott’s testimony, but his assertions, that she was being untruthful, were without support. Scott testified credibly; there was no evidence to support a finding that Scott was untruthful, other than Respondent’s assertions. Additionally, in light of the finding that Respondent lacked credibility overall (see Factual Finding 173), his attack on Scott’s truthfulness was unpersuasive. The majority of Scott’s assertions were credited.

#### Doe’s Use of Respondent’s Classroom

24. In March 2009, Scott became aware that Doe was using Respondent’s computer alone in his classroom with Respondent’s knowledge and permission. On March 26, 2009, at 11:19 p.m., via email, Doe asked Respondent for permission to use his classroom during the fifth to seventh periods. At 11:37 p.m., in a responsive email, Respondent wrote, “Room 106 is yours anytime.” Room 106 was Respondent’s classroom. Scott told Doe that using Respondent’s classroom alone was not appropriate and she directed Doe to use the school’s resources at the school’s library or counseling office. When Scott talked to Respondent about Doe’s use of his classroom, Respondent defended Doe’s use of it, saying that she was working on various academic program applications. Respondent continued to allow Doe to use his classroom when no one was in it. He also began spending time with her alone in it.

25. In his classroom, with no one else present, Respondent and Doe watched movies including, “West Side Story,” and “Moulin Rouge.” AUHSD argued that Respondent did so to plant the notion of prohibited love in Doe’s mind. The evidence did not establish that particular intention. However, it was nonetheless concerning that Respondent found it appropriate to view movies with Doe in his classroom alone.

26. In his classroom, Respondent kept a medicine ball (a heavy ball meant for exercise). He used it for various classroom activities. On at least one occasion, Respondent used the medicine ball with Doe, teaching Doe how to exercise with it. Respondent taught Doe to do sit-ups while holding the medicine ball. The evidence did not establish how each of them was positioned during this exercise. On April 26, 2009, at 8:54 p.m., Respondent sent Doe an email (in response to Doe’s email of April 25, 2009) entitled, “latest draft of Questbridge.” The message read, “Hi there! I hope this moves us along, word count is 263ish. *imagining medicine balling*, [signed] Mr. O.” (Italics added.)

27. On April 26, 2009, at 3:45 a.m., Respondent sent Doe an email message, entitled, “delightful image.” The message read, “strange, but can’t seem to get an image of a medicine ball out of my head. :) amazing.”

28. Respondent denied any improper intention by these two emails. He explained that the first email (Factual Finding 26) was simply referencing the fact that he had shown her how to exercise with the medicine ball. Respondent asserted that the second email

(Factual Finding 27) was not sexual, but only a reference to Doe getting stronger. Respondent's explanations of these emails were unpersuasive. The emails were improperly intimate, had sexual undertones, and intended to convey Respondent's sexual interest in Doe.

#### Doe in Respondent's RV

29. Doe moved into Respondent's RV on April 29, 2009. She stayed in the RV three to four days per week and would return to her family home the remainder of each week. The evidence did not establish the actual days of her stay. At hearing, the parties referenced nine days as the total days that Doe spent the night in the RV. Doe's stay was at least nine days. Respondent kept handwritten notes on Doe's general schedule and activities while she stayed in the RV. Those notes show activities from April 29, 2009, to May 28, 2009, but not on consecutive days.

30. At hearing, Doe conceded that, at first, while she stayed in the RV, Respondent was helpful to her studies and her academics improved. Doe further conceded that she found the time in the RV helpful to her emotionally by providing her with time away from her parents at a time when she was experiencing significant conflict with them.

31. Doe would occasionally study inside Respondent's house with Respondent present and assisting her. When they did so, Respondent's wife and children were not present. Doe would otherwise study in the RV.

32. Respondent would drive to school with Doe and his wife on a regular basis. Respondent's wife was also a teacher at OA.

33. Respondent took it upon himself to cook for Doe often. At times, Doe would eat with Respondent and Respondent's family. Respondent prepared Doe's school lunch.

34. At various times, including well before Doe's stay in the RV (in late 2008), Respondent would write to Doe on "Post-It" adhesive notes. During the time of her stay in the RV, Respondent would leave such notes for Doe on her school desk, in her lunch that he would prepare, and in the RV. Doe also wrote notes to Respondent, but it was not until Respondent began leaving them for Doe in the RV that they became romantic and sexual. At that point, the notes made Doe feel uncomfortable.

35. On a date undetermined by the evidence but during Doe's stay in the RV, Respondent gave Doe pajamas and a blanket. Upon seeing Doe wear those gifted pajamas, Respondent commented that fact to her. Thereafter, Respondent left one note on top of Doe's pajamas within the RV in a drawer Doe used exclusively during her stay. It read, "i miss you sooo bad u don't even know wear me for warmth for smiles for style forever."

36. Respondent left Doe a second handwritten note on a card together with flowers. The evidence did not establish whether Respondent gave Doe the flowers and card while she stayed in the RV or afterward. The card read, in part, "cry without weeping talk

without speaking she brings me white golden pearls stolen from the sea hanging on you're all that's left to hold on to I can lose myself you, I can't live without. there is too much to say to make reasons too many reasons why it's you. Truly Yours."

37. At hearing, Respondent asserted that the notes were "love notes" intended for, and given to, his wife. According to Respondent, it was his custom to send her such notes and he did so frequently throughout their marriage. He denied sending the notes described in Factual Findings 35 and 36 to Doe. Respondent accused Doe of taking his wife's notes and falsely asserting that he gave them to Doe. Respondent's assertions were not believable. (See Factual Finding 173.) He failed to offer any other similar "love notes" to show his asserted custom. If such notes were his custom and practice, it appears reasonable that he would have been able to find at least one or two such notes that he or his wife would have kept over their 19 years of marriage. Respondent's assertion was not corroborated by, for example, his wife's testimony or by a written declaration from her. Respondent's wife did not testify at hearing.

38. While staying in the RV, Respondent assisted Doe in exercising. Among other things, he showed Doe how to weightlift. The next day, at school, Respondent left her a note on her classroom chair wherein, according to Doe's testimony, he stated he was "hard," "horny," and "aroused." Doe told him she felt uncomfortable with his note. Around that time, she made the decision to leave the RV. Doe left the RV at the end of May or very early June 2009.

39. Via email, Doe thanked Respondent and Respondent's wife for inviting her to stay in the RV. In her email, dated June 29, 2009, at 10:58 p.m., Doe wrote, "I just wanted to share with you my improved blood test results! I improved by about 14% in blood count, and am almost at normal range (= I cannot thank you enough for helping me in my road to recover; your kindness and generosity is incomparable to any others – golden and admirable. I hope you the best of this summer vacation!"

40. Doe explained that, although she felt uncomfortable by Respondent's sexualized note after their weightlifting session, since Respondent had apologized to her for the note, she believed similar actions would not reoccur. She felt comfortable ignoring Respondent's sexual note.

41. Doe wrote a thank you note to Respondent's wife that read, "Thank you for letting me use your resources & everything else, Mrs. Ontiveros! (aka supermom!)."

42. After Doe left the RV, Respondent became slightly detached from her. She conceded at hearing that Respondent continued to be helpful to her in school with regard to her eating disorder and her immigration concerns.

43. Within a few weeks of moving out of the RV, Doe and Respondent became romantic with each other again. Respondent and Doe began to act more boldly in expressing their attraction to each other.

## Photographs

44. At the end of Doe's 11th grade school year, on June 16, 2009, Doe and Respondent remained inside Respondent's classroom alone. They posed together while Doe took photographs of them using her cellular telephone.<sup>2</sup> The eight photographs described in Factual Findings 46-53 show poses that convey sexuality and intimacy between Respondent and Doe that one would generally see in photographs between a husband and wife or a boyfriend and girlfriend. They convey a lack of physical boundary and propriety that should exist between a student and a teacher.

45. The photographs are numbered solely for reference within this Decision. They are as follows:

46. Photograph 1 shows Doe's buttocks area and Respondent's crotch area, with Doe's and Respondent's hips touching and with Doe and Respondent wearing jeans. The picture is framed lengthwise from just above the waist to mid-thigh and widthwise to the outer edges of their outer hips.

47. Photograph 2 contains a similar pose and framing, with Respondent's buttocks area and Doe's crotch area facing the camera.

48. Photograph 3 shows Respondent standing behind Doe with the front of Doe's torso facing the camera and with Respondent's arms around Doe's waist and his left hand loosely holding his right forearm. He is, in essence, hugging her around the waist from behind her. The picture is framed lengthwise from just below Doe's neck to her upper thigh. Respondent's face and body are not visible. Respondent admitted at hearing that it is he who is standing behind Doe with his arms around her.

49. Photograph 4 shows Respondent standing behind Doe with each of his thumbs in her front pant pockets and the remainder of his hands loosely on Doe's upper front thighs over her front pant pockets. The picture is framed lengthwise from just above Doe's waist to her mid-to-low thighs.

50. Photograph 5 shows Respondent standing in front of Doe, facing Doe, with each of his thumbs in her rear pant pockets and the remainder of his hands touching Doe's buttocks over her rear pant pockets. The picture is framed lengthwise from Doe's mid-back to the bottom of her buttocks.

51. Photograph 6 shows Respondent's and Doe's hands touching with their pinky fingers intertwined. The picture is framed lengthwise from their wrists to approximately an inch above the top of their hands and widthwise just beyond the outer sides of their hands.

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<sup>2</sup> All references to "telephone" mean cellular telephone.



52. Photograph 7 shows Respondent sitting in a reclined position. He is wearing jeans and the photograph encompasses his right leg from the mid-calf to his waist. His torso is not visible. Doe's right leg is resting on Respondent's thigh; her calf is resting on Respondent's upper thigh. Her calf is very close, just a few inches, from Respondent's crotch. Doe is wearing jeans. The photograph shows only Doe's right foot to her upper thigh; the rest of her body is not visible.

53. Photograph 8 shows Respondent's and Doe's feet exposed (no socks or shoes) with Doe's foot over Respondent's foot. It does not appear that they are touching, but they are, at most, less than one inch apart. They are wearing jeans. The picture is framed to include their feet and legs up to their mid-calves and the rest of the picture encompasses the floor.

54. There are several pictures that show Respondent's and Doe's faces close together, possibly touching although the pictures could not establish that they were indeed touching. Those pictures, while odd and cause for concern, were not inappropriate in the same intimate manner as the others already described.

55. The framing of the pictures is noted herein because Respondent asserted at hearing that he did not know how Doe was framing the pictures. He expected the pictures to show more of each person and he argued that if they had, the pictures would not appear inappropriate. Respondent asserted that, at the time, he believed the pictures were framed with a wider background, capturing more of their bodies and the surrounding environment. According to Respondent, the photographs look inappropriate based on their close-up framing. Respondent argued that Doe suggested all of the poses and he felt compelled to pose as such. Respondent asserted at hearing that none of the photographs had any intimate or sexual nature, and that even as framed, the photographs were not inappropriate. Later in his testimony, however, Respondent asserted that the pose in photograph 5 made him feel uncomfortable.

56. Respondent's arguments and assertions as to the photographs were unavailing. First, had Doe suggested all of the poses, it is not believable that Respondent, being the adult and teacher, could not have refused the pose or stopped Doe from taking the photographs. There is no evidence that the photographs were taken hastily, that is, without Respondent having time to react to the pose. None of the photographs are blurry and, given the poses, it is undeniable that Respondent held each pose for more than a brief moment. He had time to reject each pose, but instead, he willingly held each pose. Second, no wider angle or greater framing would remove or lessen the inappropriate nature of these photographs, particularly those where his arms are around her waist (photograph 3), where his hands are resting on her buttocks (photograph 5), and where his thumbs are in her front pant pockets (photograph 4).

#### The Trip to U.S.C.

57. On June 30, 2009, Respondent drove Doe to the University of Southern California (USC) to visit the campus. Respondent did not ask Doe's mother or father for

permission. Doe told her mother that other students were going on the trip although she knew that was untrue. Doe's mother would not have sanctioned the trip had she known that Respondent and Doe were going alone. Doe informed Respondent that she did not tell her parents the truth about the trip. Respondent did not inform Doe's parents himself, nor did he advise Doe to disclose the truth to her parents.

58. Respondent saw nothing inappropriate about taking Doe to USC alone without informing Doe's parents.

59. On the day of the trip, Respondent did not pick up Doe at her home. Instead, Respondent picked her up in his automobile at a local park (Oak Knoll Park) parking lot, away from her home.

60. During the trip to USC, Respondent also drove Doe to the Los Alamitos racetrack and allowed Doe to drive his automobile in the parking lot even though Doe did not have a driver's license.

61. On their return, Respondent took Doe to the OA campus to allow her to work on a computer in his classroom. School was not in session and no one was in the room occupied by Doe and Respondent. While Doe typed on the computer, Respondent massaged Doe's neck, kissed her left ear, neck, and face, and then turned her around and kissed her on the lips. Thereafter, according to Doe's testimony, Respondent and Doe left the classroom separately and Doe walked home. According to Respondent's testimony, he dropped her off at Oak Knoll Park because Doe asked him to do so.

62. At hearing, Respondent asserted that, because Doe requested it, he saw no problem with picking her up away from her family home. Respondent also asserted that during the trip to USC, he had a conversation with Doe, conveying the fact that he was solely her teacher and nothing more. Respondent explained that he felt the need to tell her this because the pose in photograph 5 made him feel uncomfortable. Respondent's assertion that he had this particular conversation with Doe is not believable in light of Factual Finding 61.

63. Respondent asserted at hearing that he did not think he needed to inform Doe's parents about the trip because he had a release form for her RV stay. Later in his testimony, Respondent asserted that he did not tell Doe's mother about the trip because he thought she already knew about it. These inconsistent statements provided further evidence of the unreliability of Respondent's testimony on this point and added to the finding that Respondent lacked credibility overall. (See Factual Finding 173.)

#### Other Trips

64. In September or October 2009, Respondent took Doe on trips with him alone. Respondent took Doe to the Cerritos Mall, Downtown Disney, Seal Beach, and the Queen Mary. Respondent and Doe were intimate with each other during these trips. While at Downtown Disney, Respondent told Doe that he loved her. He kissed her. They held hands

and Respondent touched Doe's body, particularly her shoulder, arms, and legs. While at Seal Beach, Respondent and Doe walked on the Seal Beach pier. They became intimate in Respondent's car. Respondent and Doe kissed and Respondent slid his hand into her underpants and stroked her vaginal area, and inserted his finger into her vagina. In October 2009, Respondent took Doe to the Queen Mary in Long Beach, California. Among other things, Respondent told Doe not to go far away to college. While at the Queen Mary, Respondent kissed Doe and, while in his car, Respondent inserted his finger into Doe's vagina. On at least one of these trips, Respondent told Doe he was willing to risk everything for her. She was confused by his actions and expressed feelings of hesitation and confusion to Respondent. Still, Doe was a willing participant in the intimate activity that took place on each of these trips.

65. On October 8, 2009, at 11:58 p.m., Respondent sent Doe the following text message: "Did meditate? I did, at the pier." Respondent meant the Seal Beach pier.

66. At hearing, Respondent denied ever taking Doe on any trip to the places in Factual Finding 64. He asserted that Doe was lying and "delusional." On this and all issues in dispute between Doe's and Respondent's testimonies, Doe was believable and Respondent was not believable. (See Factual Findings 173 & 174.)

#### Doe's Senior Year

67. In the 2009-2010 academic year, Doe's senior year, Doe was eventually assigned to Respondent's cluster class. A cluster class is roughly equivalent to a traditional homeroom class. Doe felt awkward in Respondent's cluster class, but they quickly resumed their intimate relationship. By the end of September, Doe was staying after school in Respondent's classroom, continuing to spend significant time with him beyond what other students would spend with Respondent. Doe would regularly stay in Respondent's classroom, even while he would take a lunchtime jog, a semi-regular occurrence for him.

#### Respondent's Assistance and Allowances re: Doe's School Work

68. During the 2008-2009 school year, Respondent would not penalize Doe's homework assignments when she failed to turn them in or when she turned them in late.

69. During the 2008-2009 and 2009-2010 school years, Respondent assisted Doe with classwork. During the 2008-2009 school year, Respondent corrected, proofread, reworded, and restructured Doe's homework assignments and applications related to summer programs and college solicitations. For example, on March 26 and 27, 2009, Respondent edited and suggested changes to Doe's essay in her AP Language and Composition class. During the 2009-2010 school year, Respondent assisted Doe with summer programs and college applications. The email correspondence between Doe and Respondent on these types of matters was voluminous.

## Emails between Respondent and Doe

70. Respondent sent Doe emails throughout Doe's junior and senior years at OA. Many of the emails contained flirtatious comments and intimate and inappropriate symbols and wording drafted by each and sent to each other. Factual Findings 71, 72, 75, and 76 are examples of such emails.

71. On September 21, 2009, at 3:34 p.m., Doe emailed Respondent a document entitled, "[Jane]Essay.doc." The email was entitled, "Biography in need of trimming." Her message read, "1000--> 800 words pleaseeee. [Jane]" In her sign off, Doe repeated the final letter of her first name two times.

72. On September 23, 2009, at 4:01 p.m., Doe sent Respondent an email message entitled, "essay needs title." The only text in the email message was, "[Jane]" with the final letter of her first name repeated two times and followed by the symbol, "<3." Respondent responded to Doe's email by sending her an email on September 24, 2009, at 1:21 a.m. Respondent gave Doe three suggested essay titles, "painting the art of culture," "painting a culture of community," and "tracing a culture of memories." Respondent followed these suggested titles with the following message, "imy squirrel <3."

73. The reference to "squirrel" was a private joke between Doe and Respondent; it was an apparent term of endearment.

74. "The letters "imy" mean, "I miss you." The symbol "<3" represents a heart on its side and means, "I love you" or "love." At hearing, Respondent defended his use of "imy" and the "<3" symbol as an appropriate, in his words, "expression of love" because "I love my students." He explained that he knew his intention in using these letters and symbols and, in his view, it was not inappropriate. Respondent further asserted that in the instances where Doe would send an email with the "<3" symbol to him, he was not concerned that her use of it was inappropriate or that he should have taken action to curtail such use by her.

75. On September 29, 2009, at 1:07 a.m., Respondent sent Doe an email entitled, "apology draft." The email message read, "<3." Respondent attached a document to the email that was a letter written to a Mr. Wittman and set forth an apology for having cheated at school on an undetermined date. Doe explained at hearing that she cheated on a pre-calculus quiz in the 11th grade in the class of her teacher, Mr. Wittman. Doe conceded that Respondent was helpful to her in drafting the apology.

76. On September 30, 2009, at 10:15 p.m., Respondent attached another document entitled, "apology2.doc" to an email he sent to Doe and himself. The attachment was similar to the earlier September 29th email.

77. The record contains numerous (greater than 50) emails between Doe and Respondent during Doe's junior and senior years, wherein Respondent assisted Doe, as

described in Factual Findings 71-76, and where he used the “<3” symbol in his message. Doe similarly sent Respondent requests for assistance and also used the “<3” symbol in her emails to Respondent.

### Evidence of Parental Abuse against Doe

78. AUHSD alleged that Respondent failed to report the suspected abuse of Doe when she disclosed to him that she had had an altercation with her father and suffered a scratch to her upper chest on a date undetermined by the evidence. The evidence was insufficient to find that Respondent’s actions or lack of actions warranted dismissal.

### Text Messages

79. Respondent and Doe exchanged inappropriate, sexual, and otherwise intimate text messages on their cellular telephones. Many were sent at inappropriate times, well after school or business hours.

80. Respondent sent the following text messages to Doe:

81. On September 22, 2009, at 1:04 a.m., “Essay is dwn to 842, imy; and I don’t think we should trim any more, ily; I’m ready for . . . food, ur next paper . . . Korean BBQ, a kiss . . .”

82. On September 22, 2009, at 1:18 a.m., “Doubt and hesitancy r good; I trust those emotions in u and need to be a gentleman, in conversation in teasing in post its in eating and sharing there is imperceptable [*sic*] baby steps.”

83. On September 22, 1:58 a.m., “I’m going to kiss u while u sleep darling;) u won’t know; ur sooo smart and delightful; I love our chemistry! u make me laff even jst the thought of ur squirrels or something; I can’t wait to see u, to long and ache such sweet pain; there is no release, none but that makes me want u more; I’m so glad u came back today I could cry.”

84. On September 22, 2009, at 2:11 a.m., “Me neither! So we r agreed :) we snuggle daily and steal glances, kisses, touch and smell; I run and imagine us together; I pass oaknoll and recall ur white shorts; sooo unfair! My pjs, u working out, I ache again hshs.” “U make my desk area smell heavenly! Intoxicating.” This message references Oak Knoll Park, where Respondent picked up Doe to take her to USC.

85. On September 22, 2009, at 2:22 a.m., “”Let’s sleep together tonight, shalli climb through ur window? Will u let me in? I’ll quickly undress and disappear into you <3.”

86. On September 22, 2009, at 2:32 a.m., “I’m going to ache all night now! Not letting me in! Ur making me so hard but ily and the teasing.”

87. On September 22, 2009, at 2:38 a.m., “Ohhh u r so bad! Soo good I can’t stand it, imagining ur form, ur curves, ur smiles lips hips ahhhhhh.”

88. On September 25, 2009, at 1:19 a.m., “Also the stealth; the risk keep me restrained when my heart insists I thrust and moan; it is not us yet; we can be more sooo much more :) If I may be so bold, to ask u to wear an article that allows easy access in . . . I have something rather intimate for u, but it will have to be quick . . . .”

89. On September 28, 2009, at 3:36 a.m., “May I sleep with u? Pleasuring u all night? Rubbing quickly, kissing long, fffing.”

90. On October 2, 2009, at 12:29 a.m., “Today, I wanted to tear ur hot shorts off! I felt ur silk panties and slowed, wanting to run ur wetness against the material; when u stay in motorhome I’ll.”

91. On October 3, 2009, at 5:14 p.m. and 5:15 p.m., “Ok if I can’t hear u where does that leave me? Can i see upnday at 1:30ish? I’m in meetings until 2 p.m.; I would leave my room unlocked for u whenever u need it; maybe I could help u with math or something?? I really miss u.” Regarding this text message, the evidence demonstrated some inconsistency, but that inconsistency was not fatal to the finding that Respondent sent the text message. Respondent’s telephone bill shows that he sent two text messages at 5:14 p.m. Doe’s telephone, however, contains the first part of the text message up to the first two letters of the word, “need,” and shows it received at 5:15 p.m. Doe’s telephone shows that the remainder of the message was received at 5:14 p.m., a minute sooner. That could not have occurred. However, the inconsistency can reasonably be explained as a glitch in the telephone clock. The numerous other text messages in the record firmly established that Respondent sent all of the text messages in evidence.

92. On October 7, 2009, at 5:59 p.m., “I am worried about causing u emotional turmoil, that’s the last thing I want to do; like u need that! Instead, I like the idea of cocreating with u a partnership based on mutual admiration, explosive passion, deep honesty, and intellectual parity; I promise to tell u everything; I had to process today, rather than keeping a secret, I sought to corral my emotions a bit, I didn’t understand them myself; oh [Jane], I wish I could speak with u on the phon.”

93. On October 9, 2009, at 2:32 a.m., “I wish . . . I wish I could wake u up tomorrow with kisses and caresses and love divine, probing ur sweet skin along ur neck, spreading ur legs mmmmm.”

94. On October 9, 2009, at 3:06 a.m., “I want to write it on your skin with my tongue to make you moan softly; touch my chest, feel me I like proving it, even if it’s hard and secret, we know. I love you [Jane]; can you hear me say that? Now, to you? I wish it translated to Korean :).”

95. On October 9, 2009, at 1:15 p.m., “Maybe there’s post it’s for u in 106.” This message supported the finding of Respondent’s use of Post-It notes and his leaving them for Doe.

96. On October 9, 2009, at 4:06 p.m., “My knees r hurting <3.”

97. On October 11, 2009, at 10:00 p.m., “Imyyyyyy.”

98. The text messages set forth *ante*, are a small percentage of the numerous messages Respondent sent to Doe. These text messages, among many others in evidence, are inappropriate, containing sexual and intimate references. Several of the messages demonstrated that Respondent was involved in a sexual relationship with Doe. These messages are solely Respondent’s correspondences to Doe. The evidence did not contain Doe’s messages to Respondent for the reasons set forth in Factual Finding 99.

99. During the time of these text messages and earlier, Doe’s mother suspected that Doe and Respondent were engaging in an inappropriate relationship. Doe’s mother began checking Doe’s cellular telephone. She found the inappropriate text messages between Respondent and Doe. In October 2009, Doe’s mother went to OA and informed Scott of the inappropriate text messages, describing them to Scott as the type of messages that should only be between a husband and wife. Doe’s mother informed Scott that she did not want anyone to get into trouble, but just wanted the text messages to stop. Thereafter, Scott called Doe into her office to speak with her. Doe was aware of the purpose of the meeting. While waiting to speak with Scott and realizing Scott might ask Doe for her cellular telephone, Doe erased her entire “Sent” box, deleting all graphic messages Doe sent to Respondent. She also erased most of the messages sent to her by Respondent. At hearing, Doe explained that she consciously did not erase all of the messages she received from Respondent so as not to raise greater suspicion about her deletions. That is, she believed that if she erased only some of the messages, it would look less obvious that she had erased any.

100. Respondent denied sending Doe the text messages; he denied sending her any inappropriate text messages ever. The text messages in Factual Findings 81-97 and all other text messages herein attributed to Respondent were found in Doe’s cellular telephone. The text messages in the record were not found in Respondent’s cellular telephone. Although he denied deleting any messages from his telephone, Respondent’s denial and his explanation for the text messages on Doe’s telephone were not believable. Furthermore, the evidence established that Respondent actually suggested to Doe that she text. On March 21, 2009, at 7:42 p.m., Respondent sent Doe an email entitled “RE: Questbridge.” Respondent’s message read in pertinent part, “We’ve just got to get you texting. it is better than air!” This supports the finding that, contrary to Respondent’s assertions, Respondent did text Doe.

101. To account for the messages from him on Doe’s telephone, Respondent argued that the messages must have been “spoofed.” Spoofing is where a person uses an internet site to create a text message that falsely appears to originate from a particular telephone sender. With spoofing, a person can make a text message falsely appear to originate from a

telephone number that did not send the text message. Respondent argued that Doe spoofed the messages to herself, making the messages appear to originate from him.

102. Respondent speculated that when he would jog during lunchtime at OA, and Doe would remain in his classroom, Doe accessed Respondent's cellular telephone and computer, and used this time to send messages to herself. He further speculated that she could have used the time that she spent in the RV to access his telephone and computer as well.

103. However, had Doe used Respondent's cellular telephone herself, the sent messages would be visible on his telephone and he would have eventually seen the messages in his "Sent Box." Logically, if he had not sent them but, at some later point, seen the inappropriate nature of the messages therein, he would have, at the least, brought those messages to Doe's and Scott's attention. He did not.

104. Respondent argued that Doe was computer-savvy and could have spoofed the messages at any time.

105. The evidence did not support Respondent's arguments or assertions. There was no evidence that Doe spoofed the text messages at issue in this matter or that she sent the messages to herself while surreptitiously accessing Respondent's cellular telephone or computer.

106. Respondent made other arguments as to why he could not have texted the messages in evidence. None of those arguments were persuasive. In all instances, he proffered arguments with no supportive evidence.

107. For example, on October 8, 2009, at 7:08 a.m., Respondent texted Doe the following: "At per. [period] 8, I'm taking suburban to office parking across from library; I'm running in to change clothes in the mens room at the east end; passenger door will be unlocked jst in case; have a wonderful day!" At hearing, Respondent argued he could not have sent that message because, on that date, he and his wife were running multiple errands and they had each taken a different automobile to do so. On that day, argued Respondent, his father-in-law had taken his Suburban vehicle, while Respondent drove his Mustang. Respondent explained that the Suburban had the child seats needed to transport his children, and (presumably) his father-in-law was transporting them. However, Respondent provided no evidence to support this argument, other than his testimony. Respondent did not offer the testimony of his father-in-law or another family member to corroborate his assertion. Respondent's assertion alone was insufficient evidence.

108. The forensic digital data expert testimony offered by both parties in this case is more specifically set forth *post*, however, on this issue of spoofing, the expert testimony established that a spoofed message would not show in the telephone's "dynamic dictionary." The dynamic dictionary is a part of the telephone's digital memory that is a compilation of



the main words and lettering keyed into the device. It is essentially the telephone's button-pressing history, save for some conjunctions, prepositions, and other small words and letters.

109. Respondent physically keyed the particular text messages set forth in Factual Findings 81-97 into his cellular telephone and sent them to Doe. The contents of the dynamic dictionary in Respondent's cellular telephone tracked, that is, was patently similar to the text messages in Doe's telephone. The following examples (Factual Findings 110-114) support this finding, in conjunction with the expert testimony discussed in greater detail, *post*.

110. On September 22, 2009, at 1:28 a.m., Respondent texted to Doe, "I think of u constantly, see u everywhere, steal a session with photoalbum, write bad post its, constantly; I fell when I stole extra long stares at u as u left 106 late after class allthose times last year; I stumbled forever at apush nights watching u stretch and reposition itself on the red couch; u grabbed my hand in the onion feast and my heart leapt . . . I can go on and on . . . may I please hold u? May I explore and kiss each lip tenderly? Ache from longing :)."

111. The dynamic dictionary within Respondent's telephone contained the following: "think of constantly see everywhere steal session with write bad post its constantly fell when stole extra long stares at as left late after class times last year stumbled forever at nights watching stretch and reposition itself on the red couch grabbed my hand in the onion feast and my heart leapt can go on and on may please hold may explore and kiss each lip tenderly ache from longing."

112. With regard to the "onion feast" reference in Factual Finding 111, Respondent and Doe both corroborated the fact that, at some point while Doe was staying in the RV, they ate raw onions together, during a particularly jovial and personal time together.

113. On October 8, 2009, at 3:07 p.m., Respondent texted to Doe, "Touching, loving u." The dynamic dictionary within Respondent's telephone contained the following: "Touching, loving u."

114. On October 9, 2009, at 3:44 a.m., Respondent texted to Doe, "I want to kiss you everywhere with ur legs spread wide for me." The dynamic dictionary within Respondent's telephone contained the following: "want to kiss everywhere with legs spread wide for me."

115. Doe was in Respondent's cellular telephone's contact list.

116. The expert testimony at hearing established that spoofed text messages would not appear on the false sender's telephone bill because when spoofing, the spoofer is not using the telephone's carrier company.

117. All of the text messages in evidence, and the messages set forth in Factual Findings 81-97 were contained in Respondent's paid telephone bills.

118. Respondent's telephone bill that covered his usage from September 2, 2009, through October 1, 2009, addressed to Respondent, contained, among other things, a listing of each text message sent and received during the billing period. The listing included the telephone number to which each message was sent, or the telephone number from which a message was received, the date and time it was sent, and whether the text was incoming or outgoing. During this billing period, Respondent sent or received 896 text messages. The bill required a payment of \$200.21. The text messages Respondent sent during this billing period to Doe, including those highlighted in this Decision, are noted in the telephone bill, clearly showing Doe's cellular telephone number and the time and date each message was sent. Saliently, on September 22, 2009, from 12:34 a.m. to 7:05 p.m., Respondent's bill shows 46 text messages sent and received between Respondent and Doe. This bill contains about 14 pages of delineated text messages, listing 64 instances of sending or receiving text messages per page. Throughout these 14 pages, Doe's telephone number is the most prevalent number and is easily identified on each page. Respondent and/or his wife paid the bill. Respondent did not challenge the bill or the text messages attributed to his telephone to the telephone company.

119. Respondent's telephone bill that covered his usage from October 2, 2009, through November 1, 2009, addressed to Respondent, contained 569 text messages. It included the messages to Doe during this billing period, noting again her telephone number and the dates and times of the messages. This bill required a payment of \$257.83. Respondent and/or his wife paid the bill. Again, he did not challenge the bill or the text messages attributed to his telephone to the telephone company.

120. At hearing, Respondent admitted that the telephone bills in the record were his telephone bills for his cellular telephone. He explained that he did not contest the existence of the voluminous text messages on the bills because he did not remember ever seeing the bills. He did not remember paying the bills, although it was clear the bills were paid. He further asserted that it might have been his wife who paid the bills. He asserted that he only saw the bills months later as part of discovery in this matter.

121. Respondent's assertions that he never saw his telephone bills were not believable. Even if it were true that his wife paid the bills and Respondent had not seen them, one would reasonably expect that his wife would have raised the issue upon seeing the times and volume of text messages to a (Doe's) particular telephone number. It is highly unlikely that Respondent's wife would have overlooked the numerous messages sent in the early morning (nighttime) hours to one particular telephone number.

122. Respondent also telephoned Doe. On October 7, 2009, at 6:28 p.m., a Wednesday, Respondent had an 89-minute telephone call with Doe, a call that Respondent initiated. This telephone call is captured on Respondent's telephone bill. When questioned on cross-examination regarding this call, Respondent first said he did not recall it. Thereafter, while still being examined, he said he thought he had had a long telephone call with Doe, saying specifically, "I think so." His response appeared disingenuous, as he failed

to credibly explain why he had such a long call with a student in the evening and appeared strained to accept that the call took place, despite the telephone record.

123. To further support the findings that Respondent texted Doe and that on October 7, 2009, he telephoned her, the record contained a text message from Respondent that foreshadowed the 89-minute telephone call of that same date. At 6:13 p.m., on October 7, 2009, Respondent texted Doe the following message, “*May I call u soon love; I love u and want to be coherent.*” (Italics added.) This text message was sent 15 minutes before the telephone call in Factual Finding 122. (See also Factual Finding 92, *ante*, where Respondent texted Doe on October 7, 2009, at 5:59 p.m., stating among other things, “. . . oh [Jane], I wish I could speak with u on the phon.”)

#### Expert Opinion re: Cellular Telephone Contents

124. Both parties offered expert testimony on the extraction of the digital contents of Doe’s and Respondent’s cellular telephones. Both experts were competent to opine as they did.

125. AUHSD offered the testimony of Glenn Finley (Finley). Finley is a Detective with the Westminster Police Department, currently working as a Digital Forensic Examiner assigned to the High Tech Crime Unit of the Orange County District Attorney’s Office. He is a certified digital forensic examiner. Finley has been a California peace officer for over 18 years and he has over seven years experience as a computer forensic examiner. Finley’s training and certifications make him competent to opine as an expert in digital forensics and particularly here, as to the contents of Respondent’s and Doe’s cellular telephones.

126. Finley inspected Doe’s and Respondent’s cellular telephones. He found photographs but no text messages on Doe’s telephone. Finley used the SecureView, Cellebrite, and Encase software programs. Each of these programs is a competent tool with which to extract digital data from cellular telephones. Nothing in the record supported a finding that Finley misused the programs, mishandled the telephones, or did anything to compromise the extracted data.

127. In his “Report of Examination,” dated November 6, 2009, to the Cypress Police Department, Finley explained his examination process and findings. He obtained Respondent’s and Doe’s cellular telephones on October 21, 2009. Finley was unable to extract text messages from Doe’s telephone; he manually located each text message on the telephone and took photographs of each individual message. That is, he took a picture of each screen image on Doe’s telephone. Finley found and photographed a total of 97 messages from Respondent, identified on Doe’s telephone as, “Chris Ontiv.” The messages ranged in dates from September 21, 2009, at 10:23 p.m., to October 12, 2009, at 1:54 a.m. Finley described many of the messages as referencing “romantic love and sexual desire.” Finley wrote, “Some of these text messages were also located on the suspect’s [Respondent’s] phone.” Finley extracted the photographs described in Factual Findings 46-53 from Doe’s telephone.

128. As to Respondent's telephone, Finley found some text and email messages that he noted in his report as follows, "Several text artifacts, either originating as SMS or E-mail, were recovered. Many of the artifacts match text messages sent to the victim's [Doe's] phone from the suspect's phone. Many of the messages expressed feelings of love, admiration, concern and sexual desire." Finley highlighted examples from Respondent's dynamic dictionary. Finley wrote, "This example illustrates how the Dynamic Dictionary in the iPhone strips a text message of what it considers erroneous or unnecessary entries. It appears that the Dynamic Dictionary removes some abbreviated substitutes for words such as (e.g. 'ur' = your; 'U' = you; I = I). It may also remove some conjunctions such as 'at' and 'not.'"

129. As an example, Finley found words accumulated within Respondent's telephone's dynamic dictionary and compared it to the text messages found on Doe's telephone. The wording was consistent and matched.

130. Finley found explicit and obscene wording found in Respondent's telephone's dynamic dictionary. Pursuant to Finley's findings, the evidence established that Respondent texted the following message to Doe: "let's me be candid naughty where exactly can my hands my tongue explore to make ache may taste soft pussy is it o.k. to such and finger ass stroking gorgeous and tearing at silk panties ass makes me devour can't stand it watching especially cleavage wanna suck and kiss and lick nipple while my finger looks for hole stole looks today at ass across the room during cluster always do that was jealous of the desk wanna moan too taste wet cum today."

131. In an effort to show how the dynamic dictionary removes "small" words, Finley added letters and words that the dynamic dictionary did not retain and highlighted them in red ink in his report. The following quotation is from Finley's report with the added words, letters, and punctuation marks bolded. In a few instances, as noted in the inserted footnotes, Finley added certain punctuation signs and letters, but failed to type them in red ink. Finley reiterated with his insertions: "let's me be candid **and** naughty.<sup>3</sup> where exactly can my hands **and** my tongue explore to make **u** ache. may **I** taste **ur** soft pussy? **Is**<sup>4</sup> it o.k. to such and finger **ur** ass stroking **u** gorgeous and tearing at silk panties ass makes me devour **u**. **I** can't stand it watching **u** especially **ur** cleavage.<sup>5</sup> **I** wanna suck and kiss and lick **ur** nipple while my finger looks for **a** hole. **I** stole looks today at **ur** ass across the room during cluster<sup>6</sup>. **I** always do that. **I** was jealous of the desk. **I** wanna moan too. taste **ur** wet cum today."

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<sup>3</sup> Finley added this period, but failed to type it in red.

<sup>4</sup> Finley failed to note that the "I" in "Is" was lower case in the dynamic dictionary and that he had made the letter upper case in this example.

<sup>5</sup> Finley added this period, but failed to type it in red.

132. Respondent keyed the words in Factual Finding 130 into his cellular telephone. Although the evidence did not specifically establish the recipient of this text message, it is noted that Respondent mentions “silk panties,” like he did in the text message to Doe set forth in Factual Finding 30. Additionally, Respondent’s message states he looked at the message recipient’s buttocks “across the room during cluster,” a reference to his cluster classroom in Doe’s senior year.

133. Respondent offered the expert testimony of Mark J. Eskridge (Eskridge). Eskridge is a digital forensic investigator and a license private investigator. From 1996 to 2010, Eskridge was a criminal investigator for the Orange County District Attorney’s Office, assigned to the computer forensic laboratory since 1999. From 1987 to 1996, Eskridge was a police officer and detective for the Fountain Valley Police Department.

134. Eskridge has a Bachelor of Arts degree in criminal justice from California State University, Fullerton.

135. In his recitation of the facts provided to him by Respondent’s counsel, Eskridge wrote in his declaration, dated January 18, 2012, “[Doe] claims that the SMS text messages came from [Respondent’s] iPhone, but [Respondent] denies sending those SMS text messages and such SMS text messages were not found on his iPhone. This raises an issue of “spoofing.” Eskridge goes on to declare that spoofing was an available technology in 2009, when the text messages at issue in this matter were created and sent. Eskridge further declared that in spoofing, the name and telephone number of a sender of a text message can be falsified using any of several internet websites that facilitate the sending of such messages.

136. Eskridge conceded at hearing that Finley did a competent job in investigating Doe’s and Respondent’s telephones and he described Finley as an excellent investigator.

137. Eskridge opined that the dynamic dictionary of a telephone is reliable as to what is being “captured,” that is, keyed, but that not much is known about it. He conceded that as to the contents of Respondent’s dynamic dictionary, he could not dispute that the content was created by user input. Nevertheless, Eskridge was concerned that there was no time reference attached to the contents of the dynamic dictionary. Eskridge explained that the contents of the dynamic dictionary could include years of user input.

138. Eskridge opined that one cannot conclusively assert that a text message is not spoofed. Saliently, Eskridge could not state with any certainty whether spoofing was likely in this matter. He did not inspect Respondent’s or Doe’s cellular telephones. Eskridge’s testimony did not establish that the text messages from Respondent to Doe set forth in this Decision and that are otherwise part of the record herein were spoofed by Doe or anyone else.

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<sup>6</sup> Finley highlighted these underscored words with the computer’s yellow highlighting feature.

### In Respondent's Classroom After Hours

139. In her senior year, Respondent continued spending significant time with Doe and spending the school lunchtime together in Respondent's classroom. On September 18, 2009, at 7:50 p.m., Doe sent Respondent an email entitled, "biographical essay draft." It read, "Hi (: Sorry for sending late. Mr. Hoshi came into 106 and began to lecture me because I was there still . . . I hope this doesn't cause you troubleee =/ Tyyyyyyyyyyyy <3 [Jane Doe]. Thereafter, Doe continued to use Respondent's classroom alone and with Respondent but without other students present and with Respondent's permission and encouragement.

140. In October 2009, during Doe's senior year, on a school day around 4:00 p.m., Doe's mother went to OA looking for Doe. Doe's mother went to Respondent's classroom and tried to open the classroom door. It was locked. Seconds later, Respondent unlocked and opened the door. Respondent and Doe were inside the classroom alone. To Doe's mother, a very credible witness, Respondent looked surprised. Doe appeared odd. Doe's mother did not report the incident to the principal, but she suspected that Respondent and Doe were engaged in inappropriate intimate behavior inside the classroom.

141. The evidence at hearing established that in October 2009, while in Respondent's classroom after school and alone with Doe, Respondent and Doe engaged in sexual acts. Respondent performed oral sex on Doe. Respondent rubbed and otherwise touched Doe's vaginal area. Respondent inserted his fingers into Doe's vagina. Respondent and Doe engaged in sexual conduct of this nature on more than one occasion in Respondent's classroom after hours. Whenever they did so, Respondent would lock the classroom door.

142. Respondent denied any such actions. He explained that, at approximately 4:00 p.m., on the day in question, Respondent was about to leave the classroom and had already locked the door when Doe came by and asked him if she could stay in the classroom for a few minutes. He allowed her to stay. She sat, placed her head on the desk, and said she just needed a few minutes. After about five minutes, Doe's mother knocked and Respondent opened the door and he let her in. Doe and her mother spoke to each other in Korean for a moment and they left together. Respondent asserted that he did not talk to Doe or touch her during the five minutes that she was in his classroom alone with him. Respondent's assertions and explanation were not believable.

### The District's Report of Child Abuse

143. On October 13, 2009, Scott filed a Suspected Child Abuse Report with the Orange County Child Abuse Registry, stating that she was concerned that there was an inappropriate relationship between Respondent and Doe. Scott also reported the text messages to the Cypress Police Department.

### Doe's Hospitalization

144. AUHSD placed Respondent on administrative leave, effective October 14, 2009.

145. From October 16, to October 19, 2009, Doe was hospitalized at the University of California, at Irvine Medical Center on an involuntary psychiatric hold as a danger to herself.

### Respondent's Criminal Acquittal

146. In June 2011, the Orange County District Attorney prosecuted Respondent for the following alleged acts against Doe: three counts of sexual penetration by a foreign object on a victim under 18, oral copulation of a person under 18, luring a child with the intent to commit specified crimes, and touching the intimate part of another person (*People v. Ontiveros*, Orange County Superior Court case number 09WF2599). After a trial by jury, the jury acquitted Respondent of all charges.

147. AUHSD argued that the criminal acquittal is irrelevant to the instant matter. Respondent argued that this Commission must defer to Respondent's criminal acquittal and, in similar fashion to the criminal court outcome, dismiss the Second Amended Accusation in this matter.

148. The Commission considered the acquittal, but Respondent's ultimate argument was unavailing. The criminal matter is a separate venue with different allegations and a significantly different standard of proof. Saliently, it need not assess the evidence in the record beyond a reasonable doubt.<sup>7</sup> This Commission is not asked to determine whether Respondent committed sexual acts on Doe, for example. Instead, this Commission is asked to determine whether Respondent engaged in immoral conduct, unprofessional conduct, is evidently unfit for service, and whether he persistently violated or refused to obey school laws, regulations, or Board rules, and to assess the evidence by a preponderance of the evidence. These distinctions make the criminal matter and the jury's decision of little value in the disposition of the instant matter.

149. Respondent's acquittal was considered but given minimal, indeed nominal weight in light of the distinctions discussed *ante*.

150. After being notified that Respondent was charged with criminal charges, AUHSD placed Respondent on unpaid mandatory leave, effective January 6, 2010. After being notified that Respondent was acquitted of all criminal charges, AUHSD paid

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<sup>7</sup> At various times throughout the proceeding, Respondent argued as if the standard of proof here were beyond a reasonable doubt, as in a criminal trial. For example, he attempted to place doubt in the finding that he texted Doe. In this case, where the standard of proof is a preponderance of the evidence, those attempts failed in every respect.

Respondent for the period of unpaid leave (January 6, 2010, to June 16, 2011). AUHSD changed Respondent's status to paid administrative leave, effective August 25, 2011.

#### Respondent's Character Witnesses

151. Respondent offered two character witnesses.

152. Ann Powell-Cordon (Powell-Cordon) testified on Respondent's behalf. Powell-Cordon began working for AHUSD in 1968 as a language teacher. She is a founding teacher at OA, beginning there in 1998. Powell-Cordon believes Respondent is an excellent teacher with great integrity. She has never heard a complaint against him. She supported Respondent during his criminal prosecution by attending the trial. She was relieved that he was acquitted.

153. Doe was in Powell-Cordon's seventh grade Spanish class. She confirmed seeing Doe vomit almost daily due to her eating disorder. She described Doe as a good girl, who was generally honest with her.

154. The veracity of Powell-Cordon's character testimony was diminished by other facts elicited during her testimony. First, she conceded that she did not get along with Scott, particularly with regard to the administration's termination of the French program and its block schedule. Powell-Cordon believes Scott was behind the termination of her French class and that Scott did so intentionally. Powell-Cordon went on to admit that she was upset by the fact that OA added Mandarin, presumably to take the place of the French class. Powell-Cordon was offended that the administration told her there were not enough students who wanted to take French. Additionally, when referring to Doe's mother, she conceded that she described her as a bad person. Powell-Cordon asserted that she harbors "feelings" against Jehovah's Witnesses as to how they deal with health issues (Doe's mother is a Jehovah's Witness). She believes Doe's religion played a role in her wanting to run away from her family. Powell-Cordon conceded that she believes and is still harboring "feelings" that the school administration forced her out of OA because she was a highly paid employee with long tenure. Pursuant to these findings, Powell-Cordon was deemed to be biased against the AUHSD administration and her opinion of Respondent, while credited, was given less than full weight.

155. Powell-Cordon reviewed all of the photographs in evidence, including those described in Factual Findings 46-53. She stated that she found none of the photographs inappropriate.

156. As to the text messages in evidence, after reviewing their contents, Powell-Cordon stated that she simply could not believe Respondent would say those words.

157. Powell-Cordon's testimony, as described in Factual Findings 154-155, demonstrated a bias in favor of Respondent and a lack of willingness to assess the evidence in an objective manner.



158. Bruce Stevens (Stevens) testified on Respondent's behalf. He has taught at OA since 1998. He teaches physics and AP physics at OA. Stevens believes Respondent is a good, intelligent teacher with a good reputation at OA.

159. Stevens conceded that he had many conflicts with Scott. He described Scott as a micro-manager and explained how Scott stopped him from organizing a school hiking club. He conceded, however, that Scott explained that she halted the club's formation because it was a "liability issue" for the school.

160. Doe was in Stevens' eighth grade since class and 12th grade AP physics class. Stevens described Doe as doing well in his classes, and as a subdued person and a "loner" as a senior. Stevens had heard rumors of Doe having a prescription drug problem and that Doe had been kicked out of her family home. The evidence failed to establish either of these rumors.

161. Like Cordon-Powell, and Respondent, Stevens opined that all of the photographs in evidence were appropriate. When pressed on cross-examination, Stevens opined some of the photographs could have the appearance of impropriety, but he would not say definitively that any of them were inappropriate. Stevens also showed a bias against Doe and in favor of Respondent when he opined as to one particular photograph. In a photograph where Doe was standing side-by-side with a female teacher—a completely appropriate pose—Stevens' only substantive comment was that it showed Doe wearing a non-school approved top. Stevens stated that Doe's top was "revealing" and not in accordance with school dress code. Quizzically, the top Stevens was referring to was the same top Doe was wearing in photograph 3 (Factual Finding 48). While the top could be fairly described as somewhat revealing, it is not reasonable that the photograph Stevens highlighted would render his comment about its revealing nature because in that particular photograph, Doe's chest was not exposed at all. However, in photograph 3, Doe's chest is much more exposed and Respondent's arms are around her waist, yet that photograph did not cause Stevens concern; indeed, he asserted that photograph was not inappropriate.

162. Stevens was a more credible character witness than Powell-Cordon, but given the inconsistency noted in Factual Finding 161, his testimony was given less than full weight.

#### Respondent's Other Arguments

163. Respondent attempted to impeach Scott by noting that Respondent and his wife were vocal opponents to Scott's change in the school bell schedule. Respondent also asserted that Scott was opposed to Respondent's buddy walk activities. The buddy walk was a charity event for persons with Down syndrome, a condition that affects family members in Respondent's family.

164. Neither Respondent's arguments nor the evidence impeached Scott's testimony. There was no evidence that Scott took particular action against Respondent for his opposition to the bell schedule change, an opposition that included other OA teachers.

That particular circumstance appeared to be more of a typical disagreement within the regular business of OA. As to the buddy walk, Scott credibly explained at hearing that she took action to stop the solicitation of students for the buddy walk because to participate in that event, students were required to pay and not all students could afford it. Furthermore, Scott noted that some teachers were giving extra credit to students who would pay and participate in the buddy walk and she felt the need to stop that action for the same reason. Those explanations were reasonable.

165. At hearing, Respondent argued that the trip to USC was out of this Commission's jurisdiction because the trip occurred during the summer when school was not in session and because the trip was off-campus. This argument failed. The fact that their contact occurred when school was not in session and off-campus is not dispositive of this Commission's jurisdiction. If Respondent's argument were accepted, a teacher could engage in inappropriate activities with a student, warranting dismissal, yet evade dismissal by solely doing so off-campus and during school breaks. This Commission's jurisdiction undoubtedly includes such alleged acts because they are the acts of a teacher.

166. Respondent argued that the Second Amended Accusation was biased against Respondent in that it failed to include exculpatory evidence in Respondent's favor. This argument failed. There is no requirement for the Accusation in these dismissal matters to include such evidence.

167. Respondent argued that there was nothing wrong with Respondent and Doe being alone in his classroom because there was no written AUHSD policy prohibiting teachers and students from being in classrooms alone. Respondent's argument is misplaced. The alleged impropriety was not the fact that a teacher and student were alone in the classroom, although allowing such a circumstance is, at best, an example of Respondent's extremely poor judgment. The improprieties were his sexual and intimate acts on Doe while in the classroom, as set forth in Factual Findings 141.

168. With regard to Doe, Respondent made several attempts to impeach her that were unsuccessful. Respondent intimated that Doe was mentally unstable and came from a chaotic, even violent family background. At the same time, Respondent attempted to show Doe to be manipulative by, for example, arguing that she spoofed the text messages in evidence. Respondent also argued that Doe's allegations were motivated by financial interest in that Doe had filed a complaint for damages and personal injury against AUHSD and Respondent in September 2010. Respondent then attempted to show Doe to be a problem student pointing to her school disciplinary history. Her disciplinary history was not significant. Doe suffered dress code violations while at AUHSD, including when on January 16, 2008, Doe wore a plaid vest with a striped sweater, and on October 3, 2009, when Doe wore striped black shorts. In the eighth grade, on September 23, 2005, Doe was found by school staff lighting a cigarette after a school dance. For that act, AUHSD suspended Doe from school for two days. In December 2008, Doe cheated on a quiz denoted in her record as, "academic honesty quizzes in Wittman," and was required to do AUHSD's Saturday Work/Study Program in January 2009. The records further established that Doe was tardy to

class at various times and suffered resultant instances of detention. While worthy of some consideration, these acts failed to impeach Doe's testimony in this matter. Some of the acts, such as her history of detention and dress code violations constituted, at best, specious attempts at impeachment.

169. Respondent also attempted to impeach Doe by describing her as dressing inappropriately; that is for example, wearing very short shorts and revealing tops, including during the time she stayed in the RV. While she stayed in the RV, Respondent explained that he and his wife had to speak to Doe about wearing more appropriate clothing. At another part of the hearing, Respondent offered evidence that Doe wore thigh high stockings with shorts for a senior class luau at OA. These attempts by Respondent were not well taken. In essence, these attempts offered the long-ago discredited argument that the girl "brought it upon herself" by the way she dressed. This argument failed.

170. Respondent also asserted that Doe came from an abusive home. To support that assertion, Respondent presented evidence that, at some point early in her relationship with Respondent, Doe told him that her parents would disconnect the lights in the family home. This was not accurate. Doe's mother credibly explained that she and her husband were greatly concerned that Doe was studying too hard and long while dealing with her bulimia. In an effort to force Doe to rest and sleep, they would turn off the electricity in her room and tell her to sleep even if her homework was not completed. While not an ideal manner of support, Respondent's description of Doe's parents as abusive was nonetheless exaggerated. Doe's mother conceded that, as strict parents holding to their Korean cultural norms, Doe's father had spanked Doe at times, but there was no evidence that any parental physical contact was abusive. There was evidence presented that Doe suffered scratches on her upper chest in September 2009. Doe emailed a photograph of those scratches to Respondent on September 29, 2009, at 6:35 p.m. In response, Respondent offered her antibiotic ointment and words of empathy. The evidence established that Doe obtained these scratches during an argument with her father, but the evidence did not establish that he inflicted the scratches on her purposely or with any intention to harm or abuse her. At hearing, Doe emotionally acknowledged that her parents were busy, working hard, and did not have time to spend with her during a vulnerable, confusing time for her and while battling bulimia. For purposes of this proceeding, the evidence did not establish that Doe's family home was an abusive or broken home.

#### Respondent's Reputation as a Teacher and his Overall Credibility at Hearing

171. Respondent offered evidence of commendations for his teaching and academic pursuits from 1998 to approximately 2006. This evidence was considered as to his work as a teacher but it carried little weight to support any findings favorable as to Respondent's character, integrity, or honesty.

172. The evidence did establish that Respondent is a well-regarded teacher. By all accounts, he has excellent teaching skills and has always been supportive of his students and of OA. He was and is affable. He was outwardly respectful of the proceedings throughout

the hearing. Respondent was supported daily at hearing by the presence of several members of his extended family who regularly showed him outward and appropriate signs of support and affection. On several days of hearing, a number of students and presumably friends were also present in the hearing room. He is well liked by many.

173. However, the evidence in the record, together with Respondent's arguments at hearing, led the Commission to find that Respondent was dishonest at hearing and severely lacking in credibility. His arguments were unbelievable and, in several instances, they bordered on the ludicrous. He provided no evidence of spoofing, offering only evidence that spoofing *could* have occurred. He testified that none of the photographs in Factual Findings 46-53 were inappropriate between a teacher and a student, an opinion that was hard to believe. He further argued that Doe essentially forced him into the poses in each photograph—an absurd assertion, given the evidence. His explanations regarding the inappropriate emails and his telephone bills were dubious. He put forth evidence of Doe's use of revealing clothing and attempted to impeach her, in large part, by evidence that she suffered mild school infractions like detention and dress code violations. In a word, most of Respondent's arguments were specious. When considered together, the evidence and Respondent's arguments, including his denials in the face of overwhelming evidence against him, support a finding that Respondent was dishonest and not credible at hearing.

#### The Overall Credibility of Doe and Doe's Mother at Hearing

174. In contrast, Doe and Doe's mother were credible witnesses. Throughout her direct examination and a significantly long and vigorous cross-examination, Doe testified clearly, with no hesitation, and provided consistent assertions and explanations. She spoke in a forthright manner. Although she became emotional and did not hide her disdain for Respondent; she nevertheless, at various times, gave testimony that was favorable to Respondent. For example, she conceded that he was helpful to her while she stayed in his RV. She admitted that Respondent was helpful to her by making her lunch and by helping her with her studies.

175. Although Doe was generally credible, the evidence also established that she was a willing participant in her sexual contact with Respondent. She was responsive to Respondent's inappropriate contact. Doe wanted to flirt with Respondent. She wanted to be intimate with him. It appears likely she believed she was falling in love with him. Even so, as Respondent was the adult and teacher, and Doe was a minor student for the majority of the teacher-student relationship, her willingness and responsiveness are of no consequence. Respondent should have kept a professional distance from Doe given that she was a student. The fact that Doe was undoubtedly vulnerable, suffered from bulimia, had family conflict, and was responsive to Respondent should have more obviously prompted Respondent to maintain such distance.

176. Doe's mother was also credible. Like her daughter, she endured a long and vigorous cross-examination and nevertheless responded to the questions without hesitation and consistent with the other supportive evidence. Doe's mother was respectful of the

proceedings and presented with a forthright demeanor. She conceded unfavorable facts such as that her husband spanked Doe. Her description of the time she attempted to enter Respondent's locked classroom was believable. Although her agreement to allow Doe to live in Respondent's RV was puzzling and raised concern as to her parental judgment, it is somewhat explainable when one considers that Doe's parents originate from a different culture that holds teachers in high regard and thus places significant trust in them.

### AUHSD Policies and Administrative Regulations

177. AUHSD Policy number 8708 is entitled, "Sexual Harassment, Students" (Policy 8708). Policy 8708 states that, "the district [AUHSD] prohibits the unlawful sexual harassment of any student by any employee, student, or other person at school or at any school related activity." Policy 8708 defines prohibited sexual harassment as, including but not being limited to, "unwelcome sexual advances, requests for sexual favors, and other verbal, visual or physical conduct of a sexual nature when: [¶] . . . [¶] [t]he conduct has the purpose or effect of having a negative impact on the individual's academic performance, or of creating an intimidating, hostile or offensive educational environment." The policy also defines conduct prohibited as, "[g]raphic verbal comments about an individual's body, overly personal conversations, or pressure for sexual activity," "[s]exual jokes, notes, stories, drawings, pictures, gestures, graffiti, or sexually explicit emails," and "[t]ouching an individual's body or clothes in a sexual way, massaging, grabbing, fondling, stroking, or brushing the body."

178. Respondent violated Policy 8708 by his inappropriate emails, text messages, and notes to Doe and his sexual contact with her.

### LEGAL CONCLUSIONS

1. The District has the burden of proof to prove its allegations by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. Education Code section 44932 states in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

[¶] . . . [¶]

(5) Evident unfitness for service.

[¶] . . . [¶]

(7) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governing board of the school district employing him or her.

3. “Immoral conduct,” means conduct that is hostile to the public welfare and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. It can be conduct that is willful, flagrant, or shameless, or conduct showing moral indifference to the opinions of respectable members of the community or as an inconsiderate attitude toward good order and the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

4. “Evident unfitness for service,” means that the unfitness for service be attributable to a defect or inadequacy in temperament, presumably not remediable merely on receipt of notice that the teacher’s conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School District v. Commission on Professional Competence (Zuber)* (1992) 2 Cal.App.4th 1429, 1444-1445.)

5. In *Morrison v. State Board of Education*, (1969), 1 Cal.3d 214, the California Supreme Court held that for purposes of teacher dismissal, conduct characterized as “immoral,” “unprofessional,” or “involving moral turpitude” must be limited to conduct indicating that a teacher is “unfit to teach”; otherwise, these terms would be unconstitutionally vague and overbroad. (*Morrison v. State Bd. of Ed.*, *supra*, at 229.) The *Morrison* Court listed factors relevant to determining whether a teacher's conduct indicates unfitness to teach:

[T]he likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

(*Morrison v. State Bd. of Ed.*, *supra*, at 229-230.)

6. Based on the *Morrison* factors, and all of the evidence in the record, dismissal is warranted. Respondent’s conduct adversely affected Doe and all students and teachers who blindly supported Respondent. The degree of adversity is extremely great. It has been between approximately four years since Respondent’s acts against Doe, but he has been on leave since that time. Respondent’s certification currently authorizes him to teach, among others, female high school and OA students. There were no significant extenuating circumstances in Respondent’s favor. In aggravation, Respondent’s arguments were specious and he failed to admit any responsibility for his misconduct. There was no

praiseworthiness associated with the motives behind his acts with Doe. In contrast, Respondent was solely responsible for his conduct. As he failed to accept responsibility for his actions and fully denied all of the allegations against him, the likelihood that he would repeat similar offenses against other students is great.<sup>8</sup> Respondent had a full evidentiary hearing with legal counsel. He was able to exercise his constitutional rights throughout the hearing. Thus, there is no adverse impact or chilling effect upon his rights or the rights of other teachers by the Order *post*.

7. Doe was emotionally and physically vulnerable and impressionable and Respondent took advantage of his position of trust as a teacher to have a sexual relationship with her. His actions pursuing Doe and his sexual contact with her were shocking to the conscience and severely violated the trust that Doe and her mother placed in Respondent as her teacher. Respondent's notes, emails, and text messages to Doe, his posed photographs with her, his trips with her to USC and the other non-school-related recreational locations, his improper allowances regarding her school work, and his sexual contact with her constituted immoral conduct and unprofessional conduct. He persistently violated AUHSD's Policy 8708. Consequently, Respondent is evidently unfit for service as a teacher at AUHSD. AUHSD's proposed termination of Respondent is warranted and reasonable.

8. Cause exists to terminate Respondent's employment, pursuant to Education Code section 44932, subdivisions (a)(1), (a)(5), and (a)(7), for immoral and unprofessional conduct, evident unfitness for service, and the persistent violation of school policy, pursuant to Factual Findings 1-178, and Legal Conclusions 1-7.

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<sup>8</sup> Commission Member McEachron joined in all of the factual findings and legal conclusions herein except that he did not join in the conclusion that the likelihood Respondent would repeat similar offenses against other students is great.

ORDER

The Anaheim Union High School District's dismissal of Respondent Christopher Ontiveros is sustained.

Date: \_\_\_\_\_

\_\_\_\_\_  
Daniel Juárez,  
Administrative Law Judge  
Office of Administrative Hearings,  
Commission Member

Date: \_\_\_\_\_

\_\_\_\_\_  
Joseph McEachron,  
Commission Member

Date: \_\_\_\_\_

\_\_\_\_\_  
James Vaughan,  
Commission Member