

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
PLACER UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Accusation and Statement of Charges

Against:

JEREMY JEFFREYS, Respondent

OAH No. 2022120422

DECISION

A Commission on Professional Competence of the Placer Union High School District (Commission) heard this matter May 2 through 5 and August 21 through 23, 2023, by videoconference from Sacramento, California. The Commission members were Scott Collins, John Peterson, and Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, chairperson.

Jacob G. Grillot and Katherine A. Reiche of Currier & Hudson, APC, represented the Placer Union High School District (District). Elena DalFavero, Assistant Superintendent of Human Resources, also appeared on behalf of the District.

Matthew Chevedden of Langenkamp, Curtis, Price, Lindstrom & Chevedden, LLP, represented respondent Jeremy Jeffreys, who was present.

Evidence was received, the Commission met in Executive Session, the record was closed, and the matter was submitted for decision on September 11, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

RESPONDENT'S BACKGROUND

1. Respondent began teaching as a noncommissioned officer in the military. He was appointed his unit's instructor. He transitioned from the military into a career in law enforcement. As a police officer, respondent had opportunities to teach other officers various law enforcement tools and techniques.

2. Respondent transitioned from law enforcement and obtained his Emergency Long-Term Single Subject Teaching Permit with Authorizations for Industrial and Technology Education and Social Science. He began working as a long-term substitute for the Vacaville Unified School District in 2000. Respondent obtained his Preliminary and then Clear credentials with the same Authorizations in 2005 and 2006, respectively. The Fairfield-Suisun Unified School District hired him as a full-time teacher. In 2015, respondent and his wife, also a teacher, moved to Rocklin, California. He obtained employment with the Rocklin Unified School District, and she began teaching for the District at Del Oro High School.

3. Nicholas Zerwas taught Video Production Pathway courses at Del Oro High School. He was promoted to the school's Assistant Principal for the 2017/2018 school year. The District hired respondent as Assistant Principal Zerwas's replacement in the classroom. Respondent continued teaching Video Production Pathway courses

at Del Oro High School for the following four school years until he was placed on paid administrative leave toward the end of the 2021/2022 school year. He returned from leave at the beginning of the following school year and taught World Studies at Del Oro High School and Video Production Pathway courses at Foresthill High School. Respondent has been out of the classroom on special assignment since approximately October 19, 2022.

NOTICE OF UNPROFESSIONAL CONDUCT

4. On May 18, 2022, George Sziraki, Jr., Ed.D., Superintendent of the District, signed a Notice of Unprofessional Conduct (Notice of Unprofessional Conduct). The Notice of Unprofessional Conduct described the following conduct as unprofessional:

Failure to base student grades on impartial, consistent observation and evaluation of student learning consistent with District policy;

Using inappropriate and subjective grading practices;

Failure to instruct students on course content, instead directing students to watch video lectures from the internet for content instruction;

Engaging in grossly dishonest, immoral conduct, including by manipulating student test scores by providing students the answers and questions to District-wide assessments;

Failure to appropriately implement student accommodations in accordance with federal law and

discrimination against students based on protected status (disability); and

Exhibiting extremely poor treatment of students and insensitivity with respect to boundaries and appropriate behavior for students.

5. The Notice of Unprofessional Conduct expressly referenced Enclosure 15, which was respondent's Teacher Summary Evaluation Form (Step 4) dated March 27, 2022. The evaluation was attached to the Notice of Unprofessional Conduct.

6. Assistant Superintendent DalFavero is the District's custodian of records. She also was involved in preparing the Notice of Unprofessional Conduct and preparing the enclosures. She placed a copy of the Notice of Unprofessional Conduct in respondent's official personnel file. She identified Exhibit 3 as an accurate copy of the Notice of Unprofessional Conduct.

ACCUSATION AND STATEMENT OF CHARGES

7. On October 18, 2022, Dr. Sziraki signed the Accusation and Statement of Charges (Accusation). The Accusation alleged cause to dismiss respondent as a permanent certificated employee of the District for immoral conduct, unprofessional conduct, dishonesty, evident unfitness for service, and persistent violations of or refusal to obey the school laws or regulations of the State of California or the District. Respondent timely requested a hearing on the Accusation.

2020/2021 School Year

STUDENT LV

8. LV was a senior in respondent's Introduction to Video Production and Broadcasting class during the spring semester. He excelled academically in high school. He received straight A's his freshman year. He generally received A's and B's his remaining three years.

9. Del Oro High School offered instruction during the spring semester through a hybrid format. Some students appeared in the classroom with the teacher and others appeared remotely via the Zoom platform. LV chose to attend class remotely. He used a computer, web camera, and microphone to transmit his video and audio to a computer in respondent's classroom simultaneously with respondent providing instruction in the classroom. Respondent's image and audio was transmitted to LV and other students appearing remotely through a web camera and microphone.

10. LV described the format of respondent's class as incredibly "rigid" and intimidating." He found the class "not enjoyable at all." He "had a very poor experience in the class." LV felt as though he was under constant pressure and stress both in and out of class. He would not recommend respondent as a teacher to any prospective student because he felt his final grade in the course, a B, was based on respondent's subjective standards and in retaliation for questioning his grade rather than LV's objective performance.

11. One component of LV's overall grade was his Workplace Skills grade. His Workplace Skills grade was based on following respondent's rules and policies, e.g., arriving for class on time, not using a cell phone without permission, and being respectful to respondent, classroom equipment, and classmates. It was also based on

LV's work ethic during class, e.g., completing daily warm-up assessments, completing summative assessments, staying focused and on task, following instructions, working for the entire class period, being actively engaged in learning, and participating and collaborating with group members during group projects. For those students appearing through Zoom, active engagement in learning included having their cameras on for the entire duration of class.

12. In March, LV noticed his Workplace Skills grade had dropped from a "middle A" to "a low C." He scheduled a Zoom meeting with respondent to discuss why his grade had dropped. During the meeting, respondent responded defensively. He alleged there were several days on which LV either did not turn on his camera, turned it off during class, or did not turn in his daily warm-up assignment on time. Respondent provided a list of those dates.

13. Respondent video-recorded his classes so students who missed class could review the video to catch up. LV reviewed the videos for all the dates respondent identified. He confirmed he arrived each day on time with his video camera on and his camera remained on for the entire duration of class. He confirmed this by seeing himself at the beginning of each video and then "high-speed scrubb[ing]" until the end of class to confirm his video camera never turned off. LV also verified his timely submission of warm-up assignments on each date respondent identified by reviewing the date and time stamp for each assignment.

14. LV sent respondent an email with the above results of his review of class videos and history for turning in assignments. Respondent replied that he double-checked everything, and LV's grade was correct. This response made LV feel "terrible," "powerless," and as if he was "stranded in the middle of the ocean."

15. LV felt he had done all he could do to advocate for himself as a student, so he told his parents. His mother, TDV, sent respondent an email scheduling a meeting for March 11, 2021.

16. LV described the meeting as having gone "poorly." He and his parents arrived in respondent's classroom on time, but respondent was helping some students and told LV and his parents to wait. The meeting started a few minutes later.

17. Respondent was reluctant to review any of the class videos during the meeting. He insisted he double-checked everything and agreed to do "triple-check" by reviewing the videos later. He agreed to watch the videos during the meeting only after LV's father insisted they review the videos "now."

18. Respondent, LV's parents, and LV reviewed videos for all the dates respondent originally provided LV. They confirmed LV was present with his camera on the entire time and completed his warm-up assignment on time each day. After, respondent identified additional dates on which LV purportedly did not have his camera on or turned in a warm-up assignment late. They reviewed the videos for each of those dates and confirmed respondent was wrong.

19. When initially reviewing the videos, respondent had no expression on his face. As they began to confirm his mistakes, his face began to turn red. He explained, "I have never made a mistake" in 21 years. He apologized and agreed to give LV the missing credit. LV's Workplace Skills grade increased to 95 percent. Respondent explained LV's grade was not 100 percent due to an unexcused absence.

20. LV did not believe respondent's apology was "genuine." Respondent's demeanor and comments were more consistent with an attitude of "I never make a mistake," rather than an expression of regret or sympathy for making a mistake. Based

on respondent's reaction to LV questioning his grade, LV feared respondent would retaliate during future grading.

21. About one month after the meeting, LV noticed his Workplace Skills grade dropped to 70 percent. He emailed respondent but received no response. He told his father, and his father emailed respondent. Respondent explained LV's grade dropped due to his score on Project 6.

22. LV's father responded that his son was under the impression the Workplace Skills grade was based on participation and not projects. He also noted LV's grade had dropped long before Project 6 was due. Respondent responded by explaining LV's Workplace Skills grade had dropped only one point since the March meeting. LV's father expressed disbelief that a grade could drop 25 percent from losing only one point.

23. Dissatisfied with respondent's responses, LV's father sent Assistant Principal Zerwas an email expressing concerns with respondent's treatment of LV. LV's parents subsequently met with Assistant Principal Zerwas. They expressed concerns that respondent was "targeting" LV by grading him unfairly because he questioned his grade.

24. Assistant Principal Zerwas met with respondent, during which they reviewed a spreadsheet on which respondent tracked students' Workplace Skills points. The spreadsheet showed LV lost points on 15 days, one of them for having his camera turned off. Assistant Principal Zerwas asked if that was a day for which respondent reviewed video footage during his meeting with LV and his parents. Respondent said it was not, and Assistant Principal Zerwas asked him to pull up the video for that day.

25. Respondent looked for the video on his computer and could not find it. He acted surprised and searched again. When he still could not find it, he told Assistant Principal Zerwas he had stopped recording his classes because most students had returned to the classroom. He opined he must have accidentally deleted the videos. Assistant Principal Zerwas directed respondent to search the trash folder on his computer. Respondent found the deleted videos. Assistant Principal Zerwas instructed him to restore the videos and not to delete them again. Assistant Principal Zerwas and respondent reviewed the applicable video and confirmed LV was present with his camera on.

26. Assistant Principal Zerwas asked respondent to provide a list of the 15 dates on which LV lost Workplace Skills points and the specific reasons why. Respondent's list indicated LV lost points: (1) three times for having his camera turned off, not participating, or not responding; (2) seven times for not completing the warm-up assignment; (3) three times for not completing the formative assessment; and (4) twice for being late to class and missing class discussion.

27. Upon receipt, Assistant Principal Zerwas forwarded respondent's list to LV and asked him to verify the accuracy of the information. LV responded by email and disputed "most of" the dates provided. LV explained he reviewed videos of the dates on which he purportedly had his camera turned off, did not participate, did not respond, or was late to class and missed class discussion. All the videos showed otherwise. Additionally, he produced several warm-up assignments with date and time stamps indicating they were timely submitted.

28. LV's email also expressed his belief respondent retaliated against him by artificially deflating his grades. Assistant Principal Zerwas compared LV's scores to the class average for the two projects completed before respondent's March meeting with

LV and his parents and the two completed after the meeting. LV's scores for the former were higher than the class averages, but his scores for the latter were lower.

29. Assistant Principal Zerwas watched one of the video projects for which LV received a score lower than the class average. He also watched other students' videos for the same project. Based on his familiarity with the subject matter from teaching it for over five years, he opined that LV's project was "pretty good" and respondent retaliated against him by giving him a lower score. He explained grading in classes like Video Production is inherently subjective. Some subjectivity can be eliminated by allowing students to resubmit projects with revisions. Respondent did not provide LV with that option.

30. Assistant Principal Zerwas forwarded LV's father's complaint to Assistant Superintendent DalFavero, who initiated a formal investigation. Assistant Superintendent DalFavero interviewed respondent. Respondent initially reported LV had lost Workplace Skills points for not completing warm-up assignments. He later changed his explanation to LV not having completed the assignments before class discussion. Assistant Superintendent DalFavero reviewed respondent's class syllabus, which stated warm-up assignments were due "before scoring." She asked respondent how students knew when the assignments were going to be scored, but he did not respond.

31. Assistant Superintendent DalFavero asked to review respondent's class videos on two separate occasions. Both times, respondent said the videos had been deleted, and she was never able to watch them. This occurred after Assistant Principal Zerwas's explicit instructions for respondent to restore the videos from his trash folder and not delete them again.

32. Assistant Superintendent DalFavero summarized her findings and conclusions after investigating LV's father's complaint in a letter to respondent. She concluded respondent failed to follow his and the District's grading policies and provided inconsistent reasons for LV losing Workplace Skills points. She directed him to create, publish, and use a grading system based on clearly articulated expectations applicable to all students. She further instructed that his grading system must be consistent with the course's Essential Learning Outcomes (ELO's) and the District's grading policies. Additionally, his grading system had to include clear notice to students of his expectations, specific deadlines for assignments, and be free from vague standards that deducted points based on performance and work.

33. Assistant Superintendent DalFavero also concluded respondent deliberately destroyed evidence by deleting his class videos. She directed him to maintain detailed records of students' grades, including all information relied upon in assigning grades.

34. Assistant Superintendent DalFavero offered respondent support and assistance for meeting his directives and improving his teaching skills. She directed him to contact Assistant Principal Zerwas to discuss additional support and assistance. Respondent never did so.

2021/2022 School Year

STUDENT KS

35. Student KS was a sophomore in respondent's World Studies class during the fall. She described the class as "different" than her others because respondent did not interact with the students very much. She explained he played long videos and documentaries "most days of the school week," unless they were taking a quiz or test.

36. The videos or documentaries generally lasted the entire class. Respondent usually sat at his desk. He paused the video or documentary and repeated what was just said "every so often." KS found it "incredibly difficult" to focus because of the long videos or documentaries, and she nearly fell asleep a couple of times.

504 Plan

37. KS was diagnosed as having attention deficit disorder and autism spectrum disorder the summer before she started high school. Del Oro High School's 504 Planning Team met at the beginning of her freshman year and created a 504 Plan. Accommodations included five-minute breaks whenever she felt anxious or frustrated, providing hard copies of notes and assignments, and dividing assignments into smaller parts when appropriate.

38. KS's 504 Plan was updated during her sophomore year to clarify her accommodation for breaks. Assistant Principal Zerwas explained the update in an email to respondent and KS's other teachers as follows:

The student will be granted brain breaks of reasonable length (no more than five minutes) upon request. These breaks may include things like drawing or reading. If more than five minutes are needed, the student should check in with the instructor and proceed to the front/nurse's office for an extended break.

(Italics omitted.)

39. Respondent immediately responded by asking how the 504 Plan was created, if he missed a meeting, and why he was not included in the meeting to amend

the 504 Plan. He explained, "This accommodation, as written, is not acceptable." He imagined a scenario in which KS took a break in the middle of an important lecture. He described the scenario as "both a classroom management issue and a problem with her getting important information." He also pontificated that allowing KS to go to the office for a five-minute break would accomplish little given that it would take her four minutes to walk to and from the office.

40. Assistant Principal Zerwas "was blown away" by respondent's email. He responded the following morning by explaining several other students had a similar accommodation. He provided examples of how to implement the accommodation. He further expressed appreciation for respondent's concern that KS could miss important information during a break. But he also pointed out:

She may already be missing that important information because of her becoming totally overwhelmed. That's exactly why we want to have this accommodation in place so that when she realizes she is missing important information she can make the necessary adjustment so that she can refocus (this way she will only miss a few minutes instead of potentially zoning out for much longer).

41. Respondent replied that the District's policy requires the "504 team," a group of staff familiar with the student, to develop 504 Plans. Had the policy been followed and he been contacted, he could have explained how implementing KS's accommodation would create "a classroom management issue." Respondent concluded by stating, "I refuse to allow this type of activity during a test." He described his exclusion from the 504 Planning Team as "yet another example of this

administration devaluing the professional thought and professional opinions of the teachers here.”

42. Two teachers included in the email chain between Assistant Principal Zerwas and respondent also responded. One offered to allow KS to come to his classroom during her breaks. His classroom was next door to respondent’s, and his “preparation period” was during KS’s World Studies class. The other teacher described his success with implementing KS’s need for breaks.

43. The following week, Assistant Principal Zerwas sent an email thanking the two teachers for their input. He also offered to meet with respondent to “brainstorm” ideas on how to implement KS’s accommodation while also addressing his concerns. Respondent did not accept the offer.

Denial of Accommodation

44. Intervention period was a block of time during the school day during which students did not have an assigned class and were allowed to seek additional support from teachers, take tests they missed, or retake tests on which they did poorly. A few weeks after respondent had learned about KS’s updated accommodation, she went to his classroom to retake her World Studies Unit 5 test during intervention period.

45. When KS asked to retake the test, respondent told her she could not until she completed the study guide for the test. KS returned to her seat to complete her study guide. A friend sitting next to KS said respondent allowed the friend to retake the test without completing the entire study guide. This information upset KS, caused her to become “shaky,” and she felt a “breakdown” coming. She asked respondent for a break, which he denied. KS became more upset and stressed.

46. KS returned to her seat. She felt an “autism meltdown” approaching, so she texted her mother and explained what had just happened. Her mother told KS to leave class and go to the office to talk to Assistant Principal Zerwas. KS quietly gathered her belongings, left the classroom, and walked to the office to talk to Assistant Principal Zerwas. Respondent did not attempt to stop her. Instead, he sent SRS, KS’s mother, an email explaining KS had walked out of intervention without permission, thereby disrupting his class. He further explained he was suspending her for two days.

47. Assistant Principal Zerwas described KS as “emotionally heightened” and frustrated when she arrived in his office. Her mother arrived shortly thereafter and took her home from school early. The following Monday, Assistant Principal Zerwas emailed respondent explaining KS would not return to his classroom for the remaining three days of the term and would spend those days in the front office.

SRS’s Complaint

48. SRS filed a formal complaint with the District alleging respondent discriminated against her daughter by denying her request for a break. Assistant Principal Zerwas interviewed respondent as part of the District’s investigation. Respondent explained he did not allow KS to take a break based on previous directions at a staff meeting that students were not allowed to leave during intervention period. Specifically, respondent explained Del Oro High School Principal Kim Barry stated students were abusing intervention period by telling one teacher they were going to another’s classroom but then roaming the halls with friends. To prevent this, Principal Barry said students should not be allowed to go to other classrooms during intervention period. Assistant Principal Zerwas followed up by stating students should not be allowed to leave even to use the restroom.

49. Assistant Principal Zerwas also interviewed SRS. She explained respondent had emailed her earlier in the semester because he had “growing behavioral concerns” with KS during World Studies, including her being off-task, talking to classmates when she should not be, and not following instructions. Respondent described having to redirect her on multiple occasions, and she was starting to become argumentative. He threatened to start suspending KS from class.

50. SRS spoke with respondent after receiving the email. She proposed various alternatives when KS needed a break from watching videos in class, such as reading a book on the same topic or allowing her to doodle for short periods of time while listening to the video. Respondent rejected those options due to concerns that other students would get off-topic if they saw what KS was doing. SRS explained why KS’s disabilities made staying focused on watching a video for an extended period difficult and breaks were critical to her ability to refocus when her mind wandered. Respondent was unsympathetic and expressed no desire to accommodate KS’s needs.

51. SRS also complained about respondent’s subjective grading of KS’s assignments. She also criticized his use of videos and notetaking as his primary source of instruction as discriminatory against those with attention deficit disorder or other processing disabilities.

52. After conducting a thorough investigation into SRS’s complaint, the District found her concerns were “substantiated.” In particular, the District concluded respondent taught his World Studies course with minimal direct instruction, instead relying on videos. He did not adjust, differentiate, or scaffold his instruction to meet his students’ needs.

53. The District also found respondent graded his students in a subjective manner that did not properly assess their understanding of the ELO's for the course. A comparison of KS's responses on the Unit 5 examination showed she received no credit for responses that were substantially similar to others who received credit.

54. The District concluded respondent took a harsh, uncompromising approach to implementing KS's accommodation. It noted respondent knew he was obligated to implement her accommodation and found his explanation for not doing so "implausible." Even if he believed his explanation to be true, the District pointed out he could have called the office for help in giving KS a break rather than denying her one.

STUDENT AC

55. AC was a sophomore in respondent's World Studies class in the spring. She described his class as "fairly boring" because they did pretty much the same thing every day. Class started with a warm-up video that took about 10 to 15 minutes. Each student watched the video on his or her own monitor and then answered questions in an online threaded discussion.

56. The warm-up video was generally followed by a second video that lasted either 40 or 80 minutes. Shorter videos were often followed by a third that lasted the remainder of the class. These videos were shown on numerous bigger screens throughout the classroom.

Inappropriate Touching

57. One day, the class was watching an hour-long documentary. AC briefly closed her eyes due to irritation from staring at the screen for so long. Respondent

approached from behind without warning, placed four fingers on AC's shoulder, and shook her with enough force to cause her chair to move and her to grab the armrests to steady herself. Respondent then walked away without saying anything.

58. AC and a friend sitting next to her immediately looked at each other. Her friend asked what just happened, and AC said, "That was weird." AC noticed respondent walked by other classmates who had their eyes closed or heads down as if they were asleep, but he did not shake or touch them. She felt "violated" by respondent touching her.

59. The following day, AC began feeling anxious while completing her warm-up assignment. She asked respondent to go to the office, and he told her she could leave after completing the assignment.

60. AC completed her warm-up assignment and went to the library. Later, she went to the front office and asked if someone could help her. Someone asked why AC was not in class, and she became very emotional.

AC's Complaint

61. Assistant Principal Matthew Rickabaugh came out to see what was wrong. He asked AC what was wrong, and she broke down and had trouble speaking. He brought her into his office, and she explained she was uncomfortable returning to respondent's classroom. AC then explained what had happened the day before. Assistant Principal Rickabaugh asked her to provide a written statement, which she did.

62. Assistant Principal Rickabaugh talked to four or five of AC's classmates to see if they could confirm or refute her description of what had happened. Each

classmate described respondent touching AC in a manner substantially similar to AC's description. Assistant Principal Rickabaugh found each student credible.

63. Assistant Principal Rickabaugh also interviewed respondent. Respondent explained AC was wearing headphones while watching the documentary. He first tried getting her attention by calling her name and then tapping her chair. When neither worked, he touched her shoulder. Respondent denied shaking AC.

64. The District concluded AC's complaint that respondent touched her shoulder and shook her because he thought she was asleep was substantiated. The District also concluded her complaint that respondent did not engage in similar conduct toward other students who appeared to be sleeping was substantiated.

DISTRICT-WIDE MIDTERM AND FINAL

65. During the District's investigation into SRS's complaint, Assistant Principal Zerwas heard from several students that respondent provided a study guide for the Fall 2021 District-wide World Studies midterm and allowed them to use it during the test. He obtained a copy of the study guide and compared it with the District-wide midterm.

66. Respondent's study guide contained 41 bullet points of information students "should know." The midterm contained 53 questions. The numbering of the study guide's bullet points did not match the numbering of the questions on the midterm, and the study guide did not cover all the questions. Nevertheless, the study guide contained the answers to 90 percent of the questions in the order in which they appeared on the midterm.

67. Assistant Principal Zerwas also learned respondent prepared a study guide for the District-wide World Studies final and allowed students to use it during the test. He obtained a copy of the study guide and compared it with the final.

68. Respondent's study guide contained 45 questions. The students were told to fill in the answers on the study guide. The final also contained 45 questions. Although the questions on the study guide were worded differently, each question on the study guide appeared in the same order on the final.

NOTICE OF UNPROFESSIONAL CONDUCT

69. As previously mentioned, the District issued respondent a Notice of Unprofessional Conduct. The Notice was based on the outcome of the District's investigation of LV's father's, SRS's, and AC's complaints. It also included allegations about respondent's study guides for the District-wide midterm and final.

70. The Notice of Unprofessional Conduct contained the following directives:

- (1) prepare detailed lesson plans using the five-step format which demonstrate appropriate differentiation of instruction to meet students' individual needs;
- (2) submit lesson plans and a weekly assessment schedule to Assistant Principals Zerwas and Jackson every Thursday for the following week;
- (3) review his job description and perform all essential functions of his position:

- (4) follow the District's policies, procedures, directives, protocols, and guidance and demonstrate appropriate planning, scheduling, and professional judgment when performing his job;
- (5) engage in active instruction for the entire duration of class, avoid using videos for content instruction, and differentiate teaching methods to meet students' individual needs;
- (6) revise grading policies so they are clear, accurate, and conform with District policies and administrative regulations;
- (7) send grading policies and all class syllabi to Assistant Principals Zerwas and Jackson a minimum of 48 hours before providing them to students;
- (8) develop clear, objective, written grading rubrics that give credit for showing competency and motivate student learning, send copies of rubrics to Assistant Principals Zerwas and Jackson at least seven calendar days before the concomitant quiz, assessment, or test, and keep copies of all student work and corresponding grading rubrics for administration's review;
- (9) avoid using aggressive, intimidating, demeaning, rude, hostile, or unprofessional language when communicating with students or parents, do not discourage students or parents from contacting administration or counselors, and treat everyone with dignity, professionalism, and respect;
- (10) timely read and respond to all communications from the District, parents, or students;
- (11) review Individualized Education Programs (IEPs) and 504 Plans for assigned students upon receipt, prepare a written plan outlining how each

student's accommodations will be implemented in the classroom, email the plan to Assistant Principals Zerwas and Jackson for review, and timely contact case carrier and site administrator with any questions about implementing an IEP or 504 plan; and

- (12) ask the appropriate department, Professional Learning Community, and administrator for additional support if needed.

2022/2023 School Year

CHANGE IN TEACHING ASSIGNMENT

71. Jamie Jackson has been an Assistant Principal at Del Oro High School since the 2019/2020 school year. Before that, she taught health and culinary for the Roseville Joint Union High School District for 17 years.

72. One of Ms. Jackson's duties as an Assistant Principal is to work with a team to develop the schedule for the following school year. The schedule lists the courses Del Oro High School will offer, the teachers who will teach each course, and the times each course will be offered.

73. Video Production Pathways was a series of three courses that helped prepare students for joining the workforce upon graduation from high school – Introduction to Video Production, Video Production, and Advanced Video Production. Students needed to earn a minimum grade of "C-" to proceed to the next course. Any one of the Video Production Pathways courses fulfilled the "elective" or "technology" graduation requirement.

74. When selecting electives, students indicated their first and second choices. Every effort was made to give students their first choice. If there was enough

interest in a particular course and there was a teacher available, another section would be offered. Similarly, if there was not enough interest in a particular course, it would not be offered.

75. Respondent has been the only teacher of the Video Production Pathway courses since the District hired him. Enrollment in those courses has “declined significantly” during respondent’s tenure. His Introduction to Video Production class averaged a 44 to 47 percent failure rate. Students who failed were not able to progress to the next course in the series. This failure rate was more than four times the typical failure rate for electives. It was nearly double the failure rate for math, the most difficult core class. Ms. Jackson described the failure rate as “alarming.”

76. Ms. Jackson was able to fill only one Introduction to Video Production class during the Fall 2022 semester. There were no other courses that did not have an assigned teacher for which respondent was qualified to teach. Additionally, Erin Davenport, Ed.D., the Principal at Foresthill High School, saw an opportunity to bring back a freshman Tech Essentials course and offer Introduction to Video Production for the first time. Therefore, respondent was given a “split assignment” teaching at both schools.

77. A full-time teacher with the District was assigned six “sections” each day. Those sections were broken into “blocks.” The teacher was assigned a class to teach during three of those blocks, had a preparation period during another, and an intervention period during another on Tuesdays through Fridays. On Mondays, there was no intervention period and the students were dismissed early. The last block of the day involved training or collaboration with other teachers.

78. Respondent was assigned to Foresthill High School for his first four sections of the day and to Del Oro High School for the remaining two. He taught Tech Essentials and Introduction to Video Production at the former and World Studies at the latter. He traveled from Foresthill High School to Del Oro High School Tuesday through Friday during what would have otherwise been his Intervention period. But because there was no intervention period on Monday, he taught his World Studies class on Mondays live by video camera from Foresthill High School while his students were in a classroom at Del Oro High School. Another certificated employee was physically in the classroom with students.

79. The District notified respondent of his split teaching assignment at the end of the 2021/2022 school year. The assignment was effective at the beginning of the following school year.

REQUEST TO CHANGE TEACHING ASSIGNMENT

80. Respondent emailed Kimberly Barry, Del Oro High School's Principal, shortly before his new assignment began and proposed that he teach Study Skills instead of World Studies during the fifth block. He rationalized that World Studies will be taught "only Tuesday through Friday (as I am at Foresthill all day on Monday)" and "students will be missing 20 days of instruction this term (because I won't be there on Mondays)." Additionally, "students would not have the opportunity to see me for help during intervention and also could not be given an opportunity for test retakes."

81. Principal Barry met with respondent the following day and explained she could not make the proposed schedule change because the teacher with whom respondent proposed trading schedules was not scheduled to teach Study Skills during the fifth block. Additionally, Principal Barry clarified that respondent would

teach World Studies during the fifth block five days a week, with him teaching by live video provided synchronously from Foresthill High School on Mondays. She further clarified that a certificated employee in the classroom will supervise the students on Mondays.

EMAIL TO PROSPECTIVE STUDENTS AND PARENTS

82. After meeting with Principal Barry, respondent sent an email to his prospective World Studies students and their parents. He explained his class "will be significantly different than every other World Studies course at Del Oro." Instruction on Mondays will be "online-based learning" with "students supervised by a non-credentialed staff member in violation of state law." Also, students will not be able to retake tests or receive extra support from him.

83. Principal Barry learned about respondent's email after a counselor reported receiving an unusual number of requests from parents to transfer their child out of respondent's World Studies course. She sent an email to the same students and parents explaining instruction on Mondays will be "live, synchronous instruction to the class via videoconference for the entirety of fifth block." She also clarified that a certificated employee will be physically in the classroom with students. Students who received respondent's approval to retake a test "may do so before school, at lunch, or during intervention period. Retakes will be proctored by a school staff member." She further detailed that students would have access to additional help from other World Studies teachers during intervention period. She copied respondent on the email.

NOTICE OF CONCERN AND DIRECTIVES

84. Principal Barry sent respondent a Notice of Concern and Directives in response to the email he sent prospective students and their parents (Notice of

Concern). She summarized the sequence of events regarding his proposed schedule change, their subsequent meeting, and his email. She explained he knew he would teach synchronously on Mondays, yet his email led recipients to incorrectly believe students would receive asynchronous assignments with no instruction. He also incorrectly represented that students will be supervised in a manner contrary to law.

85. Principal Barry explained several students and parents contacted Del Oro High School upset over his misrepresentation that students will not be able to retake tests or receive additional support for World Studies. She clarified students can retake tests proctored by an appropriate staff member and the other World Studies teachers can provide additional help.

86. Principal Barry characterized respondent's decision to send an email he knew contained false or incomplete information as "poor professional judgment." She directed him to ensure all future "communications to parents, students, and staff are entirely accurate, complete, carefully prepared, and reflect sound professional judgment."

DEL ORO HIGH SCHOOL'S BACK TO SCHOOL NIGHT

87. Del Oro High School's Back to School Night was at the beginning of the school year. Principal Barry started the program by giving a brief welcome in the school's gymnasium. Afterward, she and Assistant Superintendent DalFavero attended respondent's fifth block World Studies presentation, during which the issue of respondent's prior email to students and their parents was raised. Respondent put Principal Barry and Assistant Superintendent DalFavero in an "incredibly uncomfortable" position when he told parents, "Your children's experience is going to be significantly different than anyone else here. These ladies right here (gesturing

towards Principal Barry and Assistant Superintendent DalFavero) are the reason the schedule is the way it is.”

88. Respondent’s Notice of Concern explained the legality of the way students will be taught and supervised on Mondays. Respondent provided parents information contrary to what was in the Notice of Concern. For example, he reiterated that the way students will be supervised on Mondays was “illegal.” When Principal Barry clarified that it was not illegal, respondent interjected, “No, it is illegal. That’s what my attorney says.”

89. Respondent also told parents his split assignment did not allow him to be on Del Oro High School’s campus until fifth block, contrary to the schedule outlined in the Notice of Concern. He further stated he would not provide study guides because he was “written up for that last year.” His explanation ignored the true reason the Notice of Unprofessional Conduct was issued.

90. Following Back to School Night, parents contacted Del Oro High School’s administration and expressed concerns with respondent’s depiction of how he will teach his class. Additionally, several parents noted the tension between respondent, on the one hand, and Principal Barry and Assistant Superintendent DalFavero, on the other.

FORESTHILL HIGH SCHOOL’S BACK TO SCHOOL NIGHT

91. Foresthill High School’s Back to School Night was 10 days after Del Oro High School’s. Three days prior, the administration sent an email to all teachers reminding them of a staff meeting at which Back to School Night would be discussed. Approximately 30 minutes before the start of Back to School Night, Assistant Principal

Jeff Walters sent an email to all teachers telling them what time they should arrive at the school's theater.

92. Principal Davenport started Back to School Night with her staff on stage behind her as she provided brief introductory remarks in the school's theater. She first learned respondent was not at Back to School Night when she did not see him on stage. Immediately after completing her introductory remarks, Principal Davenport and Assistant Principal Walters "scrambled" to find another teacher to attend respondent's Tech Essentials and Introduction to Video Production courses. Respondent never told Principal Davenport, Assistant Principal Walters, or anyone else why he did not attend Back to School Night.

NOTICE OF SERIOUS CONCERNS WITH DIRECTIVES AND NOTICE OF POSSIBLE DISCIPLINARY ACTION

93. The District issued respondent a Notice of Serious Concerns with Directives and Notice of Possible Disciplinary Action (Notice of Serious Concerns). The Notice of Serious Concerns was "based on [his] display of continued unprofessional conduct that was previously identified and addressed" in the Notice of Unprofessional Conduct, as well as his violations of directives in the Notice of Unprofessional Conduct and Notice of Concern. The District explained respondent provided inaccurate and misleading information and acted unprofessionally at Del Oro High School's Back to School night. The Notice of Serious Concerns wrote it was "unacceptable and increasingly concerning considering it was in direct contradiction with the written communications provided to [him] which set forth the correct information."

94. The District cited respondent's failure to appear at Foresthill High School's Back to School Night without advance warning as a violation of his directive

to timely and accurately communicate with administration. It explained, “had [he] discussed or informed Foresthill Principal Erin Davenport or Interim Assistant Principal Walters that [he] would be unable to participate in Back to School Night, they would have communicated [his] absence to [his] students’ parents, in advance.”

95. The District noted respondent posted his grading practices and syllabus on Canvas (a course management system that allowed respondent to post grades, information, and assignments online) just before Back to School Night. This violated his directive to obtain Assistant Principals Jackson’s and Zerwas’s approval before disseminating syllabi or grading procedures to students.

96. Furthermore, respondent’s fifth block World Studies Day 7 lesson plans about World Religions fell woefully short of the requisite level of detail, preparation, and consideration his directives required. His continued use of videos to teach course content violated his directives to provide direct instruction on course content without relying on video lectures as a substitute.

97. The District directed respondent to follow all previous directives, including those about preparing lesson plans and plans for implementing IEPs and 504 Plans. Principal Davenport and Assistant Principal Walters were added as people to whom respondent was to send documents. It further directed him to acknowledge all future emails and communications from administration and parents within seven business hours.

STUDENT MM

98. MM was a senior at Foresthill High School. She was assigned to respondent’s second block Tech Essentials course in the fall. She found him “very aggressive and very intimidating” as a teacher. She described his classroom

environment as “very unwelcoming.” MM felt respondent provided little instruction during class. The lack of structure often caused her mind to “race,” and she would not know what to do. MM transferred out of the class after three or four weeks.

99. MM had anxiety. An IEP team met and developed an IEP outlining various services and supports to accommodate MM’s learning disability and help her access her education. Accommodations included taking breaks as needed to decrease stressful situations and stepping outside the classroom to eat or drink at any time.

100. Nathan Swesey was a Resource/Special Education teacher at Foresthill High School. This year was his fourth year at Foresthill High School and as MM’s case manager.

101. At the beginning of the year, Mr. Swesey sent respondent a list of special education students assigned to respondent’s classes and their respective accommodations. He included MM and her accommodations. Mr. Swesey ended his message by inviting respondent to “please let [him] know if [respondent had] any questions.” Respondent never contacted Mr. Swesey, Principal Davenport, Assistant Principal Walters, or anyone else with questions about MM’s accommodations.

102. One day MM came into Tech Essentials, took her seat, and began the daily warm-up assignment. She disregarded respondent’s classroom rule that students leave their cell phones at the front of the classroom before taking their seats and kept her cell phone in her pants pocket. The warm-up assignment involved watching a short video that included audio. Respondent’s classroom rule was to listen to the audio using headphones to not disturb others. MM instead muted the audio and read the subtitles.

103. Respondent noticed MM not wearing headphones and instructed her to use her headphones. She responded that she was reading subtitles instead. Shortly thereafter, respondent called MM up to his desk and started a discussion about her not following instructions and being disrespectful. MM became visibly upset and embarrassed because the classroom was silent except for respondent talking. She worried other students could hear what he was saying.

104. MM became more upset and frustrated as the conversation continued. She eventually asked to see Assistant Principal Walters. Respondent asked if she had a pass to see Assistant Principal Waters, but she did not. He told her she could see Assistant Principal Walters after class. MM again asked to talk to Assistant Principal Walters. Respondent explained she would be suspended if she left class. When she questioned why she would be suspended if her IEP allowed for breaks, respondent explained her leaving would be considered defiance.

105. As the discussion continued, MM became more upset and frustrated, her voice started cracking, and she began shaking. She felt the beginning of an anxiety attack. MM told respondent she was taking a break and left the classroom to find Assistant Principal Walters. She found Mr. Swesey instead.

106. MM walked into Mr. Swesey's classroom upset and crying uncontrollably. He asked her what was wrong, and she described what had just occurred in respondent's classroom. Mr. Swesey asked what he could do to help, and MM asked him to get her personal belongings from respondent's classroom. She waited in his classroom while he retrieved her belongings.

107. After MM left respondent's classroom, he called the front office and told Assistant Principal Walters she "just took off" and he did not know where she was.

Assistant Principal Walters went to respondent's classroom and spoke to him in the hallway. Respondent explained, "I asked [MM] to put her phone away, she got upset, and she took off." He further explained MM left without permission.

108. Mr. Swesey arrived to pick up MM's belongings while Assistant Principal Walters and respondent were talking in the hallway. Mr. Swesey told Assistant Principal Walters MM was in his classroom and he has "never seen [MM] this upset."

109. Assistant Principal Walters went to Mr. Swesey's classroom to get MM and bring her back to his office. MM had called her mother in the meantime, and her mother was waiting in the front office. When Assistant Principal Walters and MM arrived in the office, MM's mother said she had never seen her daughter that upset. It took MM two hours to calm herself. She never returned to respondent's class.

110. Later that afternoon, respondent emailed a Guidance/Counselor Specialist at Foresthill High School and asked for assistance with finding MM's IEP accommodations in the school's document management system. The Guidance/Counselor Specialist referred respondent to Mr. Swesey for assistance because MM was a special education student. She copied Mr. Swesey with her response.

111. Mr. Swesey sent respondent an email explaining he had sent a previous email with MM's accommodations. He further explained he was "available pretty much every morning before school" if respondent had any questions about MM's accommodations. Mr. Swesey also offered to schedule a meeting if that was more convenient for respondent. Respondent acknowledged Mr. Swesey's email by explaining he "missed" the prior email but subsequently found it.

112. Principal Davenport was unable to speak with respondent in person about the incident with MM because he had to leave for Del Oro High School to teach his World Studies course. Instead, she emailed him the following morning and asked him to email her a description of what had taken place. He responded and described MM's request for a break as follows:

She then asked if she could go and see Mr. Walters. I asked if she had a pass to leave. She did not. I then told her that she could absolutely go see Mr. Walters but that she would need to wait until after class to do so. She then stated that she needed to take a break. Knowing that this student's IEP allowed for this, I allowed her to leave the classroom to take a break.

FAILURE TO FOLLOW DIRECTIVES AND NOTICE OF POSSIBLE DISCIPLINARY ACTION

113. The District sent respondent a Failure to Follow Directives and Notice of Possible Disciplinary Action (First Failure to Follow Directives). The District cited his continued failure to follow directives provided in his Notice of Unprofessional Conduct and Notice of Serious Concerns. For example, he was directed to provide Assistant Principals Zerwas and Jackson detailed daily lesson plans every Thursday for the following week. The directives were intended to allow the administration to provide feedback and support to maximize respondent's effectiveness as a teacher. Respondent instead provided Assistant Principals Zerwas and Jackson a link to the lesson plans he posted on Canvas. The lesson plans did not contain the level of detail the directives required.

114. The Notice of Unprofessional Conduct also required respondent to provide Assistant Principals Zerwas and Jackson copies of grading rubrics for tests and quizzes at least seven days before administering the assessments. The purpose of the directive was to provide administration the opportunity to help respondent create grading rubrics that accurately assessed his students' understanding of course material. Respondent did not provide grading rubrics within the timeframe specified.

115. Finally, the District noted that the Notice of Unprofessional Conduct and Notice of Serious Concerns required respondent to review the IEP's and 504 Plans for all his students, prepare a written plan explaining how he intended to implement each student's accommodations, and send his implementation plan to Assistant Principals Zerwas and Jackson. The purpose of the directives was to ensure he was aware of his students' accommodations, require him to think about how best to implement the accommodations, and provide the administration an opportunity to confirm respondent was complying with the anti-discrimination laws.

116. As previously discussed, Mr. Swesey emailed respondent a list of his assigned special education students and their respective accommodations at the beginning of the school year. The following week, a Guidance/Counselor Specialist emailed respondent a list of his assigned students who had 504 Plans and their respective accommodations. A week after receiving the second email, respondent created a document entitled "2022–2023 IEP & 504 List," saved it in a Google folder, and shared the folder with the administration. He indicated on the document that he had no students with accommodations in first or fifth block but had five students with accommodations in second block.

117. For the students with accommodations, respondent provided the name of one and copied and pasted the information the Guidance/Counselor Specialist had

previously provided about that student's accommodations. He provided no information about how he intended to implement the accommodations. He also provided the names of the four other students and wrote "No IEP or 504 documents listed in Aeries" after each. Mr. Swesey had previously identified three of those students, including MM, as special education students and provided their accommodations.

118. The First Failure to Follow Directives repeated respondent's prior directives, including those about preparing lesson plans and a plan for implementing IEP's and 504 Plans. It also confirmed his participation in upcoming training on preparing lesson plans and the District's offer of other resources, such as sample lesson plans and curriculum.

FAILURE TO FOLLOW DIRECTIVES REGARDING IMPLEMENTATION OF STUDENT ACCOMMODATIONS

119. The District sent respondent a Failure to Follow Directives Regarding Implementation of Student Accommodations (Second Failure to Follow Directives). The District summarized prior directives about student IEP's and 504 Plans. Although it was the beginning of "the seventh week of the 2022–2023 school year," respondent had not provided a written plan for implementing the accommodations for the students identified in the First Failure to Follow Directives.

120. The Second Failure to Follow Directives instructed respondent to "immediately" determine how to implement his students' accommodations and send a written implementation plan to Assistant Principals Zerwas and Jackson for review. Additionally, he was told to implement those accommodations "as soon as practicably possible with fidelity."

STUDENT BM

121. BM was a student in respondent's fifth block World Studies course in the fall. He had a 504 Plan that included accommodations for sitting near the front of the classroom to limit distractions and receiving hard copies of class notes.

122. Respondent prepared an implementation plan explaining how he would implement BM's accommodations during World Studies. He indicated BM's assigned seat was "in the very front row closest to my podium," and agreed to print class notes and allow additional resources for BM.

123. Two days after respondent prepared his implementation plan, Assistant Principal Jackson observed the entirety of respondent's fifth block World Studies course. She noticed BM was sitting in the last row furthest from respondent's podium for most of the class. He was frequently off task and at times was watching his cell phone that he had propped up against his computer while respondent was providing instruction. Respondent provided a notetaking template to the entire class, but he did not provide a hard copy of the class notes to BM.

Observations and Impressions of Respondent

ASSISTANT PRINCIPAL ZERWAS

124. Assistant Principal Zerwas estimated he observed respondent teaching World Studies about eight times during Fall 2022. He noticed respondent relied on videos "a lot" for content instruction, and there was little collaboration between respondent and his students. He explained respondent would pause the video "awkwardly often" and repeat what was just said. Assistant Principal Zerwas provided a written observation report containing constructive feedback and suggestions for

improvement after at least one observation. He invited respondent to contact him with any questions about the observation or feedback. Respondent never did. Nor did he ever ask questions about implementing IEP's or 504 Plans.

125. Assistant Principal Zerwas described developing effective lessons and differentiating the methods of instruction as the "meat" of what a teacher does because not every student learns the same way. A teacher is responsible for helping all his students learn. An effective lesson plan contains enough details to demonstrate the teacher thought critically and carefully about the covered topic and how best to teach it to increase the likelihood of reaching all students.

126. The District repeatedly directed respondent to prepare lesson plans using the five-step model and submit them for review. That model includes the following steps: (1) anticipatory set—engage students by introducing the topic that will be covered and explaining how it relates to prior and future learning; (2) introduction of new material—provide direct instruction on the topic, model new skills, and assess students' level of understanding; (3) guided practice—facilitate students' work; (4) independent practice—assign work for students to complete independently during class or at home; and (5) closure—students briefly summarize what they learned.

127. The lesson plans Assistant Principal Zerwas reviewed did not satisfy the District's directives. Respondent had previously posted outlines of different topics on Canvas. He simply copied and pasted those outlines into his lesson plans without demonstrating any thought about how he would differentiate or scaffold his instruction to meet his students' individual learning needs. His plans were not in the five-step model format because they were not broken down into different steps.

128. Assistant Principal Zerwas explained study guides, in general, are permissible. However, he does not consider what respondent provided to his World Studies students to be a study guide. Respondent's study guide provided the answers in the order in which the corresponding questions appeared on the test. He opined, "This was cheating."

129. Assistant Principal Zerwas was "totally shocked" over LV's father's allegations against respondent. However, he was not surprised by the rigidity respondent displayed because he has "demonstrated arrogance in the past."

130. Assistant Principal Zerwas's impression of respondent as a teacher is that he is really organized and excels with technology. However, he is "very rigid" and can be very difficult for students to work with. He is unwilling to adjust based on his students' individual needs.

131. Assistant Principal Zerwas has not seen respondent show any willingness to improve. In fact, respondent never acknowledged any wrongdoing or need to improve. Additionally, Assistant Principal Zerwas believes respondent deliberately deleted the videos of LV's classes to cover up evidence of his wrongdoing. He opined respondent should not remain employed with the District.

ASSISTANT PRINCIPAL RICKABAUGH

132. The District hired Assistant Principal Rickabaugh as a resource teacher at Del Oro High School for the 2013/2014 school year. He continued teaching at the school until he was promoted to Assistant Principal for the 2021/2022 school year.

133. Assistant Principal Rickabaugh observed the entirety of respondent's World Studies course on September 1, 2022. He estimated students spent 90 percent

of their time looking at a computer screen, either watching a video, following a PowerPoint presentation, reviewing slides, or reading documents. He expected less reliance on computer screens and more collaboration and interaction between respondent and his students because it was a social science class. Student interaction is an effective method for a teacher to assess his students' level of comprehension.

134. Assistant Principal Rickabaugh prepared a written report of his observation in the form of a timeline of the day's activities. He provided constructive criticism and specific suggestions for improvement after various events. For example, he noted the day's warm-up exercise introduced the Industrial Revolution as a new topic. He suggested introducing a new topic with a brief introduction or discussion, rather than having students learn about it on their own. Also, respondent discussed "substantial farming." It was clear to Assistant Principal Rickabaugh some students did not understand the term, and he suggested that would have been a good time for respondent to incorporate new vocabulary into his lecture.

135. Assistant Principal Rickabaugh met with respondent the following week to discuss his observations, provide support, and answer any questions. Respondent requested additional support with preparing lesson plans.

136. Assistant Principal Rickabaugh and Principal Barry met with respondent and explained the five-step method for preparing lesson plans and how to use it. They provided sample lesson plans and recommended colleagues respondent could talk to who were well-versed in the five-step method. Assistant Principal Rickabaugh referenced his last observation of respondent and explained how some of the sample lesson plans would have eliminated some of the problems he observed.

137. Respondent became frustrated and defensive when shown how his lesson plans were deficient. After the meeting, Assistant Principal Rickabaugh had mixed feelings about the meeting. He was confident he and Principal Barry provided respondent sufficient support for preparing lesson plans that complied with his directives. He was less confident respondent was willing to implement the suggested changes. Assistant Principal Rickabaugh left the meeting with the impression respondent requested and attended the meeting just so he could say he did, without any real motivation to learn or change.

138. Respondent subsequently sent his World Studies lesson plans for Day 29 for review. Assistant Principal Rickabaugh reviewed the lesson plans and provided written feedback and suggestions for improvement. Respondent did not ask any follow-up questions or request additional support. Nor did he ever ask for help with implementing students' IEP's or 504 Plans.

139. Assistant Principal Rickabaugh's impression of respondent is that he has a set method of teaching from which he is unwilling to deviate. That method is challenging for some of students, and respondent is inflexible and unwilling to adapt to his students' needs and learning styles.

140. Respondent's interactions with AC also negatively impacted Assistant Principal Rickabaugh's confidence in respondent as a teacher. He explained teachers are held to a high standard of conduct when interacting with students. Any physical contact with a student that makes her feel unsafe or uncomfortable is a breach of that standard. Also, Assistant Principal Rickabaugh believes respondent was dishonest when recounting his interactions with AC.

141. Assistant Principal Rickabaugh opined respondent should not continue as a teacher in the District. He described teachers as a resource to facilitate student learning. Therefore, a teacher should always be willing to put in the work necessary to improve his skills and meet his students' needs. Respondent has consistently demonstrated otherwise.

PRINCIPAL DAVENPORT

142. The District hired Principal Davenport as a counselor in 2017. She subsequently promoted to Assistant Principal. In Spring 2022, she interviewed to be Foresthill High School's Principal. She was offered the position, and she started her principalship at the beginning of the following school year.

143. Principal Davenport was aware respondent had "some issues" at Del Oro High School when she hired him to teach Tech Essentials and Video Production, but she decided to give him a chance. Additionally, Foresthill High School had canceled its Freshman Tech Essentials course and never offered a Video Production course in the past. She was excited about the opportunity to bring back the former and offer the latter.

144. Principal Davenport observed respondent teaching only a few times informally and once formally before the school was relocated due to a wildfire. She found him to be very specific when discussing the day's activities and his expectations. After his introduction, students engaged in a warm-up exercise on their individual computers. Respondent did not interact with the students during the warm-up exercise.

145. Principal Davenport estimated students spent 95 percent of their time working by themselves on their computers. During this time, she never saw

respondent differentiate his methods of instruction, attempt to confirm students understood what they were learning, or engage with the students or encourage them to engage with each other. Principal Davenport explained all three teaching methods are important because there are a variety of learning needs and styles, and a teacher is responsible for teaching all of them. Furthermore, a teacher may have a student with an IEP or 504 Plan accommodation that needs to be implemented. Finally, student engagement is an effective method of assessing what students have learned.

146. Principal Davenport was “shocked” when she read respondent’s explanation that he allowed MM to leave class for a break because he knew “that this student’s IEP allowed for this.” Principal Davenport was aware of respondent’s email communications with a Resource/Special Education teacher and a Guidance/Counselor Specialist during which he indicated a lack of awareness of MM’s accommodations when she left class.

147. Principal Davenport believed respondent was dishonest in his description of his interactions with MM. “The fact that he lied to cover his butt” removed any trust she had in him. Respondent never asked her how to implement IEP’s or 504 Plans. Principal Davenport opined respondent is unfit to continue teaching in the District.

PRINCIPAL BARRY

148. The 2022/2023 school year was Principal Barry’s 32nd year with the District. She taught English for the first 16 years, served as an Assistant Principal for the next 13, and has been Del Oro High School’s principal for the last three.

149. Principal Barry observed respondent teaching his World Studies course during Fall 2022. “A large portion” of his instruction relied on videos. The warm-up

involved students watching a video and then answering questions as part of an online threaded discussion.

150. After the warm-up exercise, respondent played a video about the day's topic. He paused the video every 30 seconds to two minutes, "more often than not" to reiterate what the video said. Principal Barry found respondent's repeated interruption of the video distracting. She did not see a lot of student engagement or collaboration during the class.

ASSISTANT PRINCIPAL JACKSON

151. At the end of the 2021/2022 school year, Assistant Principal Jackson and respondent began working on an Independent Support Plan (ISP) for the following school year. The ISP identified six areas of growth. For each area, the ISP outlined respondent's specific goal, a deadline for meeting the goal, evidence that would demonstrate he met the goal, and training and support the District would provide to help him reach the goal. Some of the training and support mentioned were provided before the ISP was implemented the following school year.

152. Assistant Principal Jackson's impression of respondent is he wants to do only the bare minimum. She feels he just wants to "check the box." She does not get the sense he wants to make changes, grow as a teacher, and help his students. Assistant Principal Jackson "really tried" to help respondent understand the challenges students with special needs face accessing their education. She never received feedback that he understands those challenges and is willing to make changes to help his students overcome them.

Respondent's Evidence

RESPONDENT'S ADDITIONAL TESTIMONY

Genesis of Warm-Up Assignment

153. Respondent taught Video Production Pathway courses during the COVID-19 pandemic. He found teaching during the pandemic particularly difficult because the courses required a lot of collaboration, which was nearly impossible through remote instruction. Also, Adobe Production software was essential to his courses, but students could not access it remotely. Additionally, he used to recruit prospective students by inviting seventh and eighth graders to a weekend to show off the Video Production Pathway courses. That stopped during the pandemic.

154. Respondent found it difficult to engage with students and for students to engage with each other during remote instruction. Therefore, he dedicated the beginning of each class to an "icebreaker" that involved students watching a short video on their individual computers and answering questions by posting their answers to an online threaded discussion. He found this exercise "was somewhat effective," so he continued it when students returned to hybrid and then in-person instruction.

Student LV

155. Respondent recalled LV was a student in his Video Production course during the Spring of 2021. About one-third of the way through the semester, LV became concerned about losing points for Workplace Skills, which constituted about 20 percent of his overall grade. He contacted respondent about his concern, and respondent explained LV often lost Workplace Skills points because he had a bad habit of not turning his video camera on at the beginning of class or turning it off during

class. Del Oro High School's policy was for students to have their cameras on for the entire duration of class.

156. Respondent thought he had satisfactorily addressed LV's concern until LV's parents contacted him and requested a meeting. Respondent started the meeting by giving LV and his parents a tour of the classroom because he had never met them. They then sat down to discuss LV's grade. Respondent was concerned about the parents' request to review the videos during the meeting because there were about 12 hours of video, and he did not want to give them the false impression that they would watch all 12 hours during the meeting.

157. After reviewing some of the videos showing LV was present in class with his camera on, respondent "gave him the benefit of the doubt" and agreed to adjust LV's Workplace Skills grade. "It was sometime after that" that respondent deleted all his class videos from his Google Drive because he had stopped recording classes after students had returned to in-person learning. Additionally, he thought the concerns over LV's grade had been resolved, he wanted to free up space on his Google Drive, and he had backed up the videos to a personal external hard drive.

158. Respondent explained he did not do anything wrong in calculating LV's grade or responding to LV's and his parents' complaints. However, he conceded that he "can always improve" the way he communicates with others.

World Studies Teaching Assignment

159. The 2022/2023 school year was the first time respondent taught World Studies for the District. Although he is authorized to teach social sciences, he had not taught under that authorization since he taught Government during his first year as a long-term substitute. He had never taught World Studies before.

160. Respondent admitted to being “out of his comfort zone” at the beginning because he was not a subject matter expert in World Studies and lacked confidence in his ability to teach it. He described meeting “almost daily” with other social science teachers at Del Oro High School, watching instructional videos, and exploring educational websites at home. He identified Rebecca Dunkel, Marc Castle, and Julie Melbourne-Weaver as some of the teachers from whom he sought support. Respondent was given access to an electronic textbook and the History Department’s Google Drive folder that contained modules, lesson plans, videos, and other supports.

161. Respondent explained he incorporated lectures, Socratic seminars, activities, and class projects as teaching strategies to encourage collaboration. He also used recorded videos. He asserted his videos, including the daily warm-up, never lasted more than one-third of the class.

162. Respondent had the opportunity to review the District-wide World Studies midterm examination shortly before it was administered. He noticed it contained several questions not covered in the curriculum he was teaching. He was told the test would not count towards the students’ grades. Additionally, he was concerned students would be emotionally impacted by being asked questions not covered in class. Therefore, he prepared a study guide as a “valuable learning tool.”

163. Respondent was absent on the day of the midterm examination. He had not previously told the students they could use the study guide during the test. He did not leave instructions for his substitute to allow students to use the study guide during the test.

IEP's and 504 Plans

164. Respondent estimated he has taught 200 students each year he has been a full-time teacher. He further estimated approximately 10 percent of his students each year have IEP or 504 Plan accommodations. He believes it is important for every student to have the "maximum opportunity" to access their education.

165. Respondent usually learned a student had an IEP or 504 Plan when the administration or a teacher sent him an email. After receiving the email, he looked in Aeries and read the actual IEP or 504 Plan. In his experience, it was important to review the actual document rather than a summary of the accommodations required because he had received summaries that did not match the IEP or 504 Plan.

Student KS

166. KS arrived during respondent's intervention period to retake a World Studies test. She had not completed the study guide prior to her arrival, and she was aware of the History Department's policy requiring students to complete study guides before retaking the test. Therefore, respondent told KS she had to complete the study guide before she could retake the test.

167. While completing the study guide, KS became frustrated and upset. She asked for a break, but respondent explained Assistant Principal Zerwas had specifically stated during a staff meeting that students could not leave during intervention period, even to use the restroom. KS became even more frazzled.

168. Respondent eventually noticed KS had left the classroom without permission. He immediately sent an email to the administration explaining KS had left

his classroom without permission. Respondent had previously tried calling the administration when KS asked for a break, but no one answered.

169. After the incident with KS, respondent requested additional training on teaching special education students. He thought such training would be helpful because of the apparent conflict between KS's accommodation for breaks and Assistant Principal Zerwas's instruction that students cannot leave during intervention period. Respondent was never provided additional training.

170. Respondent did not believe he did anything wrong in denying KS's request for a break. However, he believed he could have handled the situation better. He agreed he should have spent more time trying to contact the administration.

Student AC

171. Respondent was walking around his classroom when he noticed AC had her headphones on and was leaning back in her chair with her head tilted back and her eyes closed. He initially was not alarmed because it was not uncommon for students to fall asleep during class. But then he began to wonder if she was in distress because students have suffered medical emergencies during class or arrived under the influence of drugs or alcohol. However, he had no factual basis for believing AC was having a medical emergency or was under the influence.

172. Respondent called AC's name as he walked towards her. She did not respond, and he tapped the back of her chair. She still did not respond, so he tapped her shoulder. AC opened her eyes, removed her headphones, and looked at respondent. Respondent told her that if she was tired, she could stand up and get some air, but she could not sleep in class. Respondent denied placing his hands around AC's neck or shaking her.

Student MM

173. Respondent learned about MM's accommodations before the incident because she had discussed them during an icebreaker on one of the first days of class. Respondent did not believe he denied MM an accommodation because she did not have a pass to see Assistant Principal Walters. Furthermore, Assistant Principal Walters had previously stated during a staff meeting students should not be sent to the office without a pass.

174. In hindsight, respondent wished he had spent more time establishing and building a relationship with MM before the incident. Also, he regretted not having immediately contacted the administration for guidance.

Student BM

175. BM's assigned seat was in the front of the classroom closest to respondent's podium, as required by his 504 Plan. BM sat in his assigned seat throughout the day of Assistant Principal Jackson's classroom observation, except when he collaborated with classmates on a class project. Assistant Principal Jackson entered the classroom while BM was working on the project.

Email to Prospective Students and Parents

176. Respondent was not assigned an intervention period for the 2022/2023 school year because that was when he would travel from Foresthill High School to Del Oro High School. Additionally, he was not available before school or during lunch. Nor was he available after school because he considered that period to be his "family time." Respondent was concerned about the negative consequences his split

assignment would have on his students, and he felt he had an obligation to advise his prospective students and their parents of his concerns.

177. Respondent told his prospective students and their parents the way the students would be supervised on Mondays was illegal because he was told a classified employee would be in the classroom supervising the students. It was his understanding that state law required a certificated employee to provide such supervision.

178. Respondent also told his prospective students and their parents they will not be able to retake tests because he would not be on campus when retakes normally occur. Also, a student's grade was based solely on their test scores, so he was not comfortable with someone else proctoring his tests.

Back to School Nights

179. Respondent admitted he received a written reprimand for sending his prospective students and their parents an email containing false information. Nonetheless, he provided the same false information at Del Oro High School's Back to School Night because he "was just answering questions." He believed he handled himself professionally when answering those questions.

180. Respondent did not attend Foresthill High School's Back to School Night because he understood from talking to other teachers that attendance was optional. Additionally, he had attended Del Oro High School's Back to School Night 10 days prior, and he was not aware of any other teacher who was required to attend two Back to School Nights in the same year. Furthermore, his daughter had her eighth-grade ice cream social that evening. Respondent agreed he erred by not telling Principal Davenport in advance that he would not attend Back to School Night.

Directive Regarding Lesson Plans

181. Respondent was unfamiliar with the five-step format for lesson plans when he initially received the District's directive to submit detailed lesson plans. He researched that format online and requested training. He found Principal Barry and Assistant Principal Rickabaugh's training helpful. Respondent believed he complied with the District's directives since he received the training, although he admitted some of the lesson plans submitted were criticized for being in the wrong format or not being thorough enough.

Continued Employment

182. Respondent "absolutely" wants to remain with the District because "teaching is what I do." Additionally, his wife is a teacher in the District. Their daughter is a freshman at Del Oro High School, and respondent has been waiting for the opportunity to teach at the school his daughter attends.

CHARACTER WITNESSES

Julie Cowan

183. Jennifer Cowan's daughter graduated from Del Oro High School in 2021 or 2022. As a freshman, she joined the Film and Broadcasting Club. Respondent was the club's staff advisor. Ms. Cowan credited respondent with helping her daughter discover her interest in film. She took every film/video class Del Oro High School offered, all of which respondent taught. His teaching, support, and encouragement helped turn Ms. Cowan's daughter's interest in film into a passion. She became president of the Film and Broadcasting Club. She is currently majoring in film with an

emphasis on directing and screenwriting at Ringling College of Art and Design in Sarasota, Florida.

184. Ms. Cowan chaperoned two of respondent's weeklong field trips while her daughter attended Del Oro High School. She noticed a strong sense of mutual respect between respondent and his students. Based on her experiences as a chaperone and a mother of one of respondent's students, Ms. Cowan formed the opinion that he was an effective teacher. She was unaware of the reasons for which the District seeks to terminate respondent's employment.

Julie Melbourne-Weaver

185. Julie Melbourne-Weaver has taught for the District since January 7, 1997. She has taught at Del Oro High School since 2010. She currently teaches Government, Economics, and U.S. History. She previously taught World History, most recently during the 2020/2021 school year.

186. Ms. Melbourne-Weaver is familiar with respondent as a colleague. Additionally, she previously served as a union representative at Del Oro High School and attended various meetings between District staff and respondent as respondent's representative.

187. When Ms. Melbourne-Weaver learned respondent was going to be part of the History Department, she began including him in "Department matters." She recalled him requesting support because he was new to teaching World Studies. Ms. Melbourne-Weaver provided verbal support, shared her prior World Studies curriculum, and provided any other support respondent requested. She found him "very, very receptive" to her help.

188. Ms. Melbourne-Weaver has never observed respondent interact with LV, KS, or AC. Similarly, she has not seen his interactions with others at Foresthill High School.

Rebecca Dunkel

189. Rebecca Dunkel is currently in her 25th year teaching Social Sciences at Del Oro High School. She is familiar with respondent as a colleague. During Fall 2022, respondent occasionally used Ms. Dunkel's classroom to teach his World Studies course because she had her preparation period during fifth block. When he used her room, she would sometimes have an opportunity to observe his teaching style.

190. Ms. Dunkel described respondent's teaching style as "formulaic" and "routine." He started each day off by greeting his students. He then lectured and finished the day with some type of activity. Respondent showed videos, which Ms. Dunkel did not find unusual because she did the same. He stopped the video every 15 minutes to expand upon or explain what the video had just said.

191. Ms. Dunkel watched respondent develop a good relationship with students over his years of teaching. She believes he is an honest person. She has never seen him interact with LV, KS, AC, or MM.

Marc Castle

192. Marc Castle has taught for the District off and on for 10 years. He currently teaches World Studies, U.S. History, Government, and Economics. He teaches welding at night. Mr. Castle is familiar with respondent as a colleague. The District hired respondent during Mr. Castle's second or third year with the District.

193. Mr. Castle had never seen respondent act in an unprofessional manner. Respondent appeared “nervous” and “stressed” when he was first assigned to teach World Studies, but Mr. Castle did not find such behavior atypical for a teacher assigned a new subject.

194. Mr. Castle shared everything he had for teaching World Studies with respondent. Respondent was “very willing and open” to receiving all the guidance Mr. Castle provided. Mr. Castle believes respondent has the qualities of a good teacher because he works hard. Additionally, respondent “spent countless hours” building the video studio at Del Oro High School.

195. Mr. Castle was uncertain whether he ever saw respondent interact with LV, AC, or KS. However, he never saw respondent interact with MM.

Applicable Board Policies and Administrative Regulations

196. The District’s governing board has adopted various policies and administrative regulations applicable here. For example, Policy 4119.21 establishes professional standards for all District employees by outlining the board’s expectations that employees “maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws, and exercise good judgment” while performing their duties. Engaging in dangerous behavior, discriminating against others, and dishonesty are just three examples the board identified as inappropriate conduct.

197. The board has adopted a specific policy prohibiting discrimination in the District’s programs and activities. Policy 0410 sets forth the board’s commitment “to equal opportunity for all individuals in district programs and activities.” It requires all such programs and activities to be free from discrimination based on a protected class.

The board expressly acknowledged individuals with disabilities and the District's obligation to comply with the Americans with Disabilities Act.

198. Policy 5121 reflects the board's belief "that grades serve a valuable instructional purpose by helping students and parents/guardians understand performance expectations and by identifying students' areas of strength and those areas needing improvement." The board recognizes that "students have a right to receive grades that accurately reflect competency in the course."

199. The board directed the Superintendent or his or her designee to "establish a uniform and consistent grading system based on standards with clearly articulated expectations that apply to all students in a given course." Teachers are directed to "base students' grades on impartial, consistent observation and evaluation of students' learning and their proficiency in Essential Learning Outcomes (ELOs)."

200. Board Administrative Regulation 5121 requires "the Superintendent or designee [to] inform teachers of the district's policy regarding grading, including expectations that grades shall reflect student learning and directly measure student knowledge and skills in the content area and shall not include non-academic factors (e.g., behavior, attendance, extra credit, late work, etc.)." Grades must be accurate, equitable, and motivational. Therefore, a score of zero should be avoided in grading rubrics. Additionally, more recent assessments may be given greater weight when determining a student's overall grade. Providing opportunities to retake tests may be used to motivate student learning.

201. The board "recognizes that student assessments are an important instructional and accountability tool." (Policy 6162.5.) Assessment data is used to determine a student's progress, mastery of academic standards, appropriate

placement in different programs, and/or eligibility for graduation. It can also be a factor when evaluating program effectiveness and staff performance. Tests must be administered in a manner that is “fair and equitable for all students.”

202. Policy 6162.54 outlines the board’s commitment to maintaining the integrity of the student assessment process “in order to obtain an accurate assessment of student achievement in the district and maintain accountability to the community and state.” Teachers are prohibited from providing “inappropriate test preparation.” They may not “provide inappropriate assistance to students during test administration.” Nor may they “engage in any other practice to artificially raise student scores without actually improving underlying student achievement.”

Analysis

EVALUATION OF EVIDENCE

203. The persuasive evidence established the truth of the allegations in the Accusation. LV, KS, AC, and MM testified about their interactions with respondent. Each testified credibly, persuasively, and without any signs of bias against respondent. They showed no interest in a particular outcome or motive to testify untruthfully. Though BM did not testify, Assistant Principal Jackson saw him sitting in the back of respondent’s classroom in violation of his 504 Plan. Her testimony was credible and persuasive.

204. TDV and SRS testified in a similar manner about their interactions with respondent while advocating on behalf of their children. Several administrators testified extensively about their interactions with respondent, observations of his conduct, investigation into parent and student complaints, and efforts to assist and support respondent as a teacher. Principal Davenport credibly testified to her

willingness to give respondent a chance and hire him despite her awareness of “some issues” at Del Oro High School.

205. To the extent there was evidence to the contrary, such evidence was not credible. Respondent was the sole witness to refute the allegations, and he was not credible. His explanation that he allowed MM to take a break because he knew her IEP “allowed for this” was belied by the persuasive evidence to the contrary. Such dishonesty seriously undermined his credibility. So did his characterization of KS’s accommodation as “not acceptable” and explicit refusal to implement it during a test. Respondent’s subsequent refusal to implement KS’s accommodation was entirely consistent with his prior statements.

206. None of respondent’s witnesses was qualified to refute the allegations. Ms. Cowan had no idea why the District seeks to terminate respondent’s employment. None of his colleagues witnessed his interactions with LV, KS, AC, or MM. Such lack of familiarity also made their assessments of respondent’s character and fitness to teach less persuasive. (*Seide v. Committee of Bar Examiners of the State Bar of California* (1989) 49 Cal.3d 933, 940 [a witness’s assessment of a respondent’s character receives less weight when the witness is unaware of the nature and extent of the respondent’s misconduct].)

FITNESS TO TEACH

207. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, the California Supreme Court identified the following eight factors to consider in determining whether a teacher’s conduct indicates an unfitness to teach: (1) the likelihood the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct;

(4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229–230.) “Only the pertinent Morrison factors need to be analyzed.” (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

Adverse Effect

208. Respondent’s misconduct adversely affected the students who were the subject of the Accusation, their classmates, and the educational community as a whole. LV explained respondent’s class was “not enjoyable at all,” and he would not recommend respondent as a teacher to any prospective student. KS and MM were so distraught over their interactions with respondent they never returned to his class. MM suffered an anxiety attack to the extent never seen before by her mother or her case manager. AC felt “violated” by respondent.

209. There were indirect victims of respondent’s misconduct as well. Assistant Principal Jackson testified to a significant decline in interest in the Video Production Pathway courses since respondent began teaching them. Additionally, his classes have a disproportionately high failure rate, which means several students are unable to progress to the next level course.

Proximity in Time

210. Respondent’s misconduct began during the second half of the 2020/2021 school year and continued over the course of the next two school years.

However, he was removed from the classroom in the middle of the 2022/2023 school year and has not returned. Therefore, all of respondent's misconduct occurred over the span of less than four semesters of teaching.

Type of Credential

211. Respondent holds a Single Subject Teaching Credential with Authorizations for Industrial and Technology Education and Social Science. His misconduct was inappropriate regardless of the type of credential he holds.

Extenuating or Aggravating Circumstances

212. Respondent did not introduce evidence of any extenuating circumstances to mitigate his misconduct. In fact, he repeatedly testified he did nothing wrong, notwithstanding compelling evidence to the contrary. His complete lack of insight into his misconduct and refusal to acknowledge any wrongdoing are factors in aggravation.

Blameworthiness of Respondent's Motives

213. Respondent demonstrated disdain towards students' IEP and 504 Plan accommodations for reasons not articulated. Those reasons are, quite frankly, irrelevant. Implementation of all IEP and 504 Plan accommodations is mandated by federal and state law and board policy. Respondent's refusal to implement KS's and MM's exposed not only him to personal liability, but also the District.

Likelihood of Recurrence

214. Respondent does not think he engaged in any misconduct. Therefore, there is no evidence that suggests he will change his behavior, and his misconduct is likely to recur.

Adverse Impact or Chilling Effect of Imposing Discipline

215. Respondent produced no evidence that terminating his employment would have an adverse impact or chilling effect on his or someone else's constitutional rights.

Publicity or Notoriety of Respondent's Misconduct

216. Del Oro High School has seen a significant decline in interest in Video Production Pathway courses since respondent began teaching them. There was so little interest in those courses at Del Oro High School for the 2022/2023 school year that they were not offered, and he split his time between that school and Forest Hill High School.

217. Applying the Morrison factors to the specific facts of this matter, respondent's misconduct impairs his continued fitness to teach.

LEGAL CONCLUSIONS

Applicable Burden/Standard of Proof

1. The District has the burden of proving the allegations in the Accusation and Statement of Charges by a preponderance of evidence. (*Lopez v. Imperial County Sheriff's Office* (2008) 165 Cal.App.4th 1, 4 ["In disciplinary administrative proceedings, the burden of proving the charges rests upon the party making the charges"]; *Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040 [the standard of proof in an administrative proceeding for the dismissal of a teacher is a preponderance of the evidence].) This evidentiary standard requires the party with the burden of proof to produce evidence of such weight that, when

balanced against evidence to the contrary, is more persuasive. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) In other words, the District must prove it is more likely than not that respondent engaged in the conduct alleged. (*Lillian F. v. Superior Court* (1984) 160 Cal.App.3d 314, 320.)

Applicable Law

2. Education Code section 44932, subdivision (a), authorizes dismissal of a permanent certificated employee for: "(1) Immoral conduct. . . . (2) Unprofessional conduct. [¶] . . . [¶] (4) Dishonesty. [¶] . . . [¶] (6) Evident unfitness for service. [¶] . . . [¶] [and] (8) Persistent violation of or refusal to obey . . . reasonable regulations prescribed for the government of the public schools . . . by the governing board of the school district employing him or her."

3. The District may not file charges to dismiss respondent for unprofessional conduct "unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given . . . written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish [him] an opportunity to correct his . . . faults and overcome the grounds for the charge. (Ed. Code, § 44938, subd. (a).) A performance evaluation must accompany the written notice. (*Ibid.*)

4. It was undisputed that respondent was provided the Notice of Unprofessional Conduct at least 45 days before the board authorized filing the Accusation and Statement of Charges. It was also undisputed that the Notice of Unprofessional Conduct referenced respondent's March 27, 2022 performance evaluation as Enclosure 15. The Notice of Unprofessional Conduct was admitted as the

District's Exhibit 3. However, the District inadvertently omitted Enclosure 15 from Exhibit 3.

5. Respondent drew attention to this omission during his closing argument. He did not, however, argue he never received Enclosure 15. Nor did he introduce any evidence to support such an argument. Therefore, he did not rebut the official duty presumption that the Notice of Unprofessional Conduct he received included Enclosure 15. (Evid. Code, § 664 ["It is presumed that official duty has been regularly performed"]; *Petricka v. Department of Motor Vehicles* (2001) 89 Cal.App.4th 1341, 1350 [the party against whom the presumption applies has the burden of proving the government official did not properly carry out official duties].)

6. The court in *Board of Education of San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, said the following about immoral conduct in the context of the Education Code:

In *Orloff v. Los Angeles Turf Club*, 36 Cal.2d 734, at page 740 [227 P.2d 449], the Supreme Court quotes with approval the following statement from Words and Phrases, permanent edition, volume 20, pages 159-160: "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the

community, and as an inconsiderate attitude toward good order and the public welfare.”

(*Id.*, at p. 811.)

7. “[T]he definition of immoral . . . conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed “responsibilities and limitations on freedom of action which do not exist in regard to other callings.” [Citation.]” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

8. A charge of “evident unfitness for service” requires proof that the teacher is “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. [It] connotes 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, 1444.) When considering such a charge, the *Morrison* factors “must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service.” (*Id.*, at p. 1445.) Only if the conduct demonstrates an unfitness for service does one proceed to the next step of determining “whether the ‘unfitness’ is ‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (*Ibid.*)

9. A charge of persistent violation of or refusal to obey requires a showing of insubordination. (*Midway School District of Kern County v. Griffeath* (1946) 29 Cal.2d 13, 18-19.) Furthermore, “persistence” requires a showing of “continuing or constant” behavior. (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 27 Cal.App.3d 77, 82.) “Persistence, in the sense intended, is referable to past

conduct. The Legislature undoubtedly intended that opportunity for correction be available and refrained from providing for dismissal for a single violation of regulations, or until repeated violations could be considered persistent.” (*Midway School District of Kern County v. Griffeath, supra*, 29 Cal.2d at p. 18.)

10. The following has been said about evaluating a teacher’s conduct when deciding whether discipline is warranted:

Goldsmith v. Board of Education, 66 Cal.App. 157, 168 [225 P. 783], quoted in *Board of Education v. Swan*, 41 Cal.2d 546, 553-554 [261 P.2d 261], found that the standards for judging the propriety of a teacher’s conduct, and the extent to which that conduct may be the basis for the revocation of a credential, involves many aspects.”. . . [*sic*] the teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher’s selection and retention.”

(*Moser v. State Board of Education* (1972) 22 Cal.App.3d 988, 991.)

Conclusion

11. The preponderance of the evidence established respondent failed to implement students’ IEP and 504 Plan accommodations to help them access their education. He engaged in inappropriate physical contact that made a student feel

"violated." He also engaged in subjective grading practices not designed to determine students' understanding of course content and intended to retaliate for complaining about his grading practices.

12. Respondent taught his World Studies course using little direct instruction, instead relying largely on videos and self-instruction. He did not differentiate or scaffold his instruction to meet his students' needs. He provided study guides containing answers to the District-wide midterm and questions on the District-wide World Studies final. Students were allowed to use the study guides during both tests.

13. Respondent repeatedly ignored directives to prepare detailed lesson plans and submit them for review. He also ignored numerous directives to prepare a written plan for implementing students' accommodations, submit the plan for review, and implement the accommodations. He disregarded multiple directives to ensure all communications with others were accurate, complete, and reflected sound professional judgment.

14. Respondent was dishonest with District administrators when they investigated complaints about his misconduct. He intentionally destroyed evidence of his misconduct. He knowingly provided false and incomplete information in an email to prospective students and parents. He later repeated the misinformation despite having been provided the correct information in the interim.


15. Respondent's misconduct constituted immoral conduct, unprofessional conduct, dishonesty, and a persistent violation of or refusal to obey reasonable regulations prescribed by the District's governing board. His misconduct also demonstrated his evident unfitness for service. Therefore, cause exists to terminate his

employment with the District pursuant to Education Code section 44932, subdivision (a)(1), (2), (4), (6), and (8), individually and collectively. Respondent did not present compelling evidence that the District should continue his employment.

ORDER

Respondent Jeremy Jeffreys is DISMISSED as a permanent certificated employee of the Placer Union High School District.

DATE: 10/04/2023



Scott Collins (Oct 4, 2023 10:52 PDT)

SCOTT COLLINS

Commissioner

Commission on Professional Competence

DATE: 10/04/2023


Coren D. Wong (Oct 4, 2023 11:02 PDT)

COREN D. WONG

Administrative Law Judge, Chair

Commission on Professional Competence

DISSENT

1. I respectfully dissent from the decision made by this panel. I do not believe that the evidence presented in this hearing proves an evidence unfitness to teach. Additionally, the District engaged in a pattern of behavior towards respondent which created a situation whereby it became impossible for him to succeed by any reasonable standard. It was clear from the evidence presented that the District was

trying to force him out with the change of assignment, and subsequent change to an itinerant position, which is almost unheard of for a social studies teacher.

2. The first witness brought forth by the District in this case was a former student who had complained about receiving a "B" grade from respondent. His testimony, and the testimony of the District officials involved indicated that during the hybrid model of learning that was created in haste when the pandemic ended, students had the choice of remaining virtual or returning for in-person instruction. The student in question, LV, chose to remain virtual during this time, which created a great deal of difficulty for the classroom teacher in determining the validity of grading procedures, supervision of students in the hybrid model, and the standardization of instruction. It was alleged that throughout the course of all this confusion that respondent engaged in "blatantly dishonest" behavior by erasing videos of class cameras from Zoom that would have determined what the facts were.

3. The lack of a District policy that would have directed respondent not to store data on a personal hard drive would have made his claim that he needed to clear up space when he deleted the files a less mitigating argument. However, most of the colleagues I know who taught in the hybrid model claim that they had no confidence in the validity of the grades during that period, as it was impossible to measure student performance and learning. This was especially true of elective teachers who have to measure skill. What we are being asked to do here is to take a student who is upset about a grade they received in an elective class during the most confusing time in education in the last 50 years and deduct that the grade and the conduct of deleting the videos constitutes dishonesty. The only thing the District proved through LV's testimony is that they need to develop consistent policies that employees are well trained in.

4. To bolster the argument about dishonesty, the District then proceeded to introduce evidence that indicated respondent developed an illegal cheat sheet to assist his students in taking a District standardized checkpoint exam. The facts established that students were given a study guide with most of the facts that they needed for the exam, and that the students did better than anyone else in the District in the exam. I can completely understand the logic of an outside observer seeing this behavior as a form of cheating or dishonesty, especially someone who came of age before the information age. However, there were three components here that made it clear to me that respondent should not be punished at all for this study guide.

5. First, the test score was not a component of the grade in the class, which indicates that the teacher did not take it seriously, nor was required to by the District. How can there be dishonesty around an exam that does not even count? This fact was further bolstered by the testimony from the social studies teacher who said that the teachers do not give the test a lot of credence, and that it was developed from a bank of questions.

6. Second, respondent was in his first semester of teaching social studies after having spent his career in CTE. It is common practice in CTE courses to develop study guides much like what was presented here for the simple fact that aptitude is measured by skill in a performance task in a CTE course, and not by concepts on a written test, at least for the most part. It would have made no difference to a CTE teacher to hand a study guide out like the one presented here. It should be also noted that there was no attempt to hide the actions of the study guide. It was handed out without any concern for breaching a protocol.

7. Finally, there was no affidavit for testing procedures. When exams are given in schools where there is an expectation of a standardized set of protocols then

teachers sign affidavits indicating they will follow the protocols listed. This is what we do every January in my school. There was no affidavit here. If there were protocols that were important then why did not anyone relay them in writing to the teacher who has never taught the class before?

8. The third example of dishonesty presented by the District has to do with the testimony around whether respondent was dishonest to District personnel about IEP accommodations. In that case, I do believe he was not honest when being questioned. However, I think that there are mitigating factors present here that preclude me from saying he is unfit to teach. By the time he was being questioned in this matter, it was clear that the District was doing everything they could to make it impossible for him to succeed. He had been assigned to teach social studies for the first time in his career in the District, and then subsequently given an itinerant position to a school 30 minutes away. It must have been clear to respondent by this point that anything he said could and would be used against him. I think that it is unlikely that this would happen again, that it was a singular act under the duress created by the circumstances of his assignment and location change.

9. The District then presented evidence that respondent was willfully ignoring the provisions of individualized education plans for special education students. The testimony from the witnesses present centered around provisions in certain IEP's that allowed for students to take a break from the class for a period of time to reduce stress. This particular IEP provision has become more common in recent times as we try to cope with social and emotional issues. The central problem that I have with this particular argument as a basis for being unfit to teach is that there was no direction given to any of the teachers with regards to what to do with a student who takes one of these breaks. Where does the duty to supervise reside in a

case where a student leaves class? One of the first things we are taught in a teacher credentialing program is the most essential part of our job is the supervision of students. The District is trying to argue that respondent is denying students access to their education without any indication that there was clarity provided about who is to supervise students during these breaks. It is completely reasonable to conclude that given two conflicting ideas, one saying that there is a duty to supervise, and the other saying to let the kid leave for a break, that teachers would err on the side of supervision, especially when given no clear directive from supervision to clarify the confusion created.


10. With regards to AC, who fell asleep in class and did not respond to verbal commands to wake up, it is again a singular act where respondent wakes her up by either grabbing her or tapping her shoulder. The District is trying to make the argument that this was some type of assault. Respondent indicated he was making sure she was not in some type of duress. I was left with the conclusion that this conduct would have warranted a written directive not to place hands on students. The argument being made by the District in this incident is undermined by the fact that they have a duty to report child abuse to the local child protective agency. Since no report was ever filed as part of the investigation, then the District officials themselves never took the allegation seriously enough to warrant declaring Mr. Jeffreys unfit to teach.

11. There is another concern here with this case, and that is the fact that all the evidence presented here originated as the pandemic ended and we returned to a new normal of instruction, where chronic absenteeism and watered-down standards have become the new norm in education. If respondent is truly unfit to teach, then where is the evidence of this unfitness before the pandemic? What was established

here is that the District placed respondent into a subject he had never taught in his career and then proceeded to document his struggles to adjust as evidence of unfitness for service. When he sought help he was reassigned to an itinerant position that gave him no time to prepare for his lessons. These circumstances made it impossible for him to succeed. I do not feel he was ever given a chance to flourish in social studies. To me, this was a constructed termination orchestrated for reasons never presented to the panel. Furthermore, I believe that allowing this decision to move forward will have a chilling effect on the profession, as it rewards the aggressive targeting of teachers by districts.

12. For the above reasons, I respectfully dissent.

Date: 10/04/2023


[John Petersen \(Oct 4, 2023 10:39 PDT\)](#)

John Petersen

Commissioner

Commission on Professional Competence