

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

THOMAS SULLIVAN, a permanent  
certificated employee,

Respondent.

OAH No. 2012110036

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Fullerton, California, on August 19-22 and 27-30, 2013. The Commission consisted of Tamara McElroy, Luciano Ortiz, and Administrative Law Judge Erlinda G. Shrenger, Office of Administrative Hearings, State of California, who presided.

Margaret A. Chidester, Attorney at Law, Margaret A. Chidester & Associates, represented Fullerton School District (District).

Andrea K. Loveless, Attorney at Law, Reich, Adell & Cvitan, represented Thomas Sullivan (Respondent).

Oral, documentary, and stipulated evidence was received, and argument was heard. The record was held open for the filing of written closing briefs by September 27, 2013, and any response briefs by October 11, 2013. The District timely filed its written closing brief and response brief, which were marked as Exhibits 152 and 153, respectively. Respondent timely filed his written closing brief and response brief, which were marked as Exhibits BB and CC, respectively. The Joint Stipulation as to Admission of Deposition Excerpts was filed on September 24, 2013, and marked and admitted as Exhibit 154. The case was deemed submitted for decision on October 11, 2013.

FACTUAL FINDINGS

*Parties and Jurisdiction*

1. Respondent is a permanent certificated employee of the District.
2. On October 9, 2012, the Board of Trustees of the District voted to immediately suspend and dismiss Respondent from his employment with the District. By letter dated October 10, 2012, the District notified Respondent of the Board's intent to immediately

suspend him and to dismiss him from employment. The letter included a copy of the Statement of Written Charges, which was the basis for the Board's proposed action. The letter also included a Notice of Immediate Suspension and Intention to Dismiss, which notified Respondent that he would be dismissed from employment unless he requested a hearing within 30 days.

3. On October 10, 2012, Respondent was placed on unpaid statutory leave.

4. On October 26, 2012, the District served an Accusation and other related documents on Respondent. On October 29, 2012, Respondent, through his counsel, appealed his dismissal by filing a Notice of Defense and Request for Hearing. Respondent waived the 60-day deadline under Education Code section 44944, subdivision (a), for commencing the hearing in this matter. All jurisdictional requirements have been met.

#### *Respondent's Background*

5. Respondent holds a multiple subject elementary credential, SB 2049, and a GATE credential. He received his multiple subject credential in December 2005/January 2006. Respondent is 54-years-old. Teaching is his second career. Previously, Respondent worked 20 years in restaurant operations and management.

6. Respondent was hired by the District in 2006 and assigned to Beechwood Elementary School (Beechwood). Respondent has not taught at any other school in the District. He taught kindergarten from 2006 to 2008, first grade from 2008 to 2009, and third grade from 2009 until February 24, 2012, when he was placed on paid administrative leave, related to the charges in this case, for the remainder of the 2011-2012 school year. He began the 2012-2013 school year on paid administrative leave and continued in that status until October 10, 2012, when he was immediately suspended without pay.

#### *Complaint by Student AR*

7. Student AR was a male student in Respondent's third grade class from approximately December 2011 through February 24, 2012. AR lived with his mother at a local women's shelter. His family had a history of domestic violence. AR was one of several children from the shelter who were students at Beechwood. The children from the shelter were dropped off by a school bus at approximately 7:30 a.m. and attended a morning intervention class for 30 minutes before the start of the school day. Respondent volunteered to teach the morning intervention program for the students from the shelter.

8. On the morning of February 24, 2012, student AR did not attend the morning intervention class. He reported to another teacher, Christine Olivolo, that he was afraid to go to Respondent's class because Respondent had spanked his bottom at the class Christmas party in December. Student AR was removed from Respondent's class that morning and placed in the third grade class of Katie Allen. Allen had to hurry and make room for AR in

her classroom before school started. Allen was told by Olivolo to keep student AR in her class for the entire day, which she did.

9. When Allen's class returned from morning recess, she noticed that AR was not in line with her other students. Allen stood at the ramp to the entrance of her classroom and saw AR alone on the playground with Respondent. Respondent was kneeling in front of AR, who was sitting on a bench, slumped over, with his head down. Allen saw that AR looked upset and uncomfortable. When AR walked up the ramp to Allen's classroom, Allen asked if he was O.K. AR indicated that he told Respondent that he had reported that Respondent had "touched my bottom." Allen reported her observation of Respondent with AR on the playground to administrators.

10. Later that morning, principal Julie Graham (Graham) spoke with student AR. AR reported that Respondent spanked him and he was afraid to go to Respondent's class. Graham saw that AR appeared uncomfortable and nervous. AR reported to Graham that the incident with Respondent occurred in his classroom before Christmas. In addition, AR also reported that Respondent called him "mijo" and "baby."

11. In the early afternoon, Graham and Craig Bertsch, Director of Administrative Services, held a meeting with Respondent. Graham asked if Respondent had any interesting conversations on the playground. Respondent answered that he spoke to AR because AR was unsure where he was supposed to go after recess. Respondent then asked for a union representative. A few minutes later, a union representative joined the meeting. When asked again about any conversations on the playground, Respondent answered that AR mentioned something about his buttocks but the context was unknown to Respondent because AR was crying. At the conclusion of the meeting, Graham notified Respondent that he was being placed on paid administrative leave pending the District's investigation of AR's complaint, and his keys and District-issued laptop computer would be collected. Respondent was also told not to contact any Beechwood students or staff.

12. At this hearing, Respondent denied that he touched or patted student AR on the buttocks at the Christmas party. Respondent testified that a Christmas party was held in the classroom where the children were to exchange books instead of gifts. AR was upset because he did not have a book to exchange. Respondent testified that AR appeared upset, so he placed his hand on the child's back and shoulder to console him and guide him towards the door so he could compose himself. Respondent testified he had brought some extra books to the party so AR was able to participate in the book exchange. During his administrative interview with the District's investigator on August 14, 2012, Respondent was asked if he touched student AR on the buttocks for any reason. He responded, "Not that I recall."

13. The District's allegation that Respondent patted or touched student AR on the buttocks during the Christmas party in Respondent's classroom was not proven by sufficient evidence. The hearsay testimony of the District's witnesses was not sufficient, over the timely objection of Respondent's counsel, to establish that Respondent touched or patted AR

on the buttocks. (Gov. Code, § 11513, subd. (d).) No direct evidence of the incident, as described by AR, was presented, such as testimony by AR himself or another person who witnessed the incident.

14. On the other hand, Respondent was dishonest in his statements to Graham and Bertsch regarding his conversation with student AR on the playground. Respondent changed his story during the interview. Respondent denied that his story changed from before and after the union representative joined the meeting. He contended that he was continuing the statement he started before the union representative arrived. Respondent's contention is not persuasive. The evidence has a tendency in reason to prove that Respondent contacted AR on the playground to find out what the child may have reported about him. Respondent's own testimony established that AR did not attend the morning intervention class and did not report to Respondent's classroom when school started on February 24, 2012. By these circumstances and seeing AR on the playground at recess, Respondent had to know something happened to cause AR's removal from his classroom. The Commission feels that Respondent should have contacted an administrator or other school staff for information about AR's status that day, rather than contacting AR on the playground alone and placing the burden on the boy to explain the situation.

#### *Respondent's District-Issued Computers*

15. At the end of Respondent's interview with Bertsch and Graham on February 24, 2012, he was told that his keys and District-issued computers would be collected from him. Graham and Respondent walked to his classroom so he could retrieve his belongings. Respondent requested to download some files from his computer related to his personal tutoring business. Graham allowed him to download the files. She waited outside the classroom while Respondent entered his classroom alone. After several minutes, Graham went inside the classroom to check on Respondent. Graham observed a change in Respondent's demeanor. She saw that Respondent appeared fidgety and distressed, and could barely operate the computer or use the keyboard because his hands were shaking. Given that adult sexual materials were later found on Respondent's laptop computer, as described more fully below, the change in Respondent's demeanor was more likely evidence of consciousness of guilt rather than being upset about being placed on administrative leave.

16. The District took possession of Respondent's laptop computer. In the evening of February 24, 2012, the District conducted a review of Respondent's laptop computer and flat panel computers in his classroom for any inappropriate material. Adult sexual materials were found on the computers. Some of the materials included images of young women who appeared that they might be under age 18. The District contacted law enforcement and turned over Respondent's computers for further analysis.

17. The Fullerton Police Department and the Orange County Regional Computer Forensics Laboratory (OCRCFL) analyzed Respondent's computers and the adult materials found on the computers. They investigated the computers for evidence of child pornography. The investigations by law enforcement were completed in or about April or May 2012. Law

enforcement could not determine if any of the young women in the videos and images on Respondent's computer were under age 18. No criminal charges for possession of child pornography were filed against Respondent.

### *Misuse of Computers*

18. On December 8, 2010, Respondent signed a Proof of Receipt and Acknowledgement agreeing to follow District Board Policy 4040, which is the District's policy for Employee Use of Technology. (Exh. 12.) At or about this time, Respondent received a District-issued laptop computer.

19. Board Policy 4040 provides that district employees "shall be responsible for the appropriate use of technology and shall use the District's technological resources primarily for purposes related to their employment." Under the policy, the Superintendent "shall ensure that all District computers with Internet access have a technology protection measure that prevents access to visual depictions that are obscene or child pornography and that the operation of such measures is enforced." Further, the Superintendent "may monitor employee usage of technological resources" and "[m]onitoring may occur at any time without advance notice or consent." Further, the Superintendent "shall establish administrative regulations and an Acceptable Use Agreement, which outline employee obligations and responsibilities related to the use of technology. . . . Inappropriate use may result in . . . disciplinary action and/or legal action in accordance with law, Board policy, and administrative regulation."

20. The District's regulation for Employee Use of Technology is Regulation No. 4028. (Exh. 11.) That regulation provides, in part: "Employees shall not access, post, submit, publish, or display harmful or inappropriate matter that is threatening, obscene, disruptive or sexually explicit . . . ." The regulation also provides: "Employees shall use the system responsibly and primarily for work-related purposes."

21. (A) During his administrative interview with the District's investigator on August 14, 2012, Respondent admitted using his District-issued laptop computer to view adult sites which contained sexually graphic materials, during the two years he was issued the laptop. He estimated that he accessed adult material more than 10 times but less than 100 times. When asked to describe the type of adult sites he viewed using his District-issued computer, Respondent stated: "A collective or a consortium of video clips through a server called Daily Motion, everything from girls gone wild to topless beaches in Rio de Janeiro." (Exh. 113, p. 11.) Respondent admitted that accessing the adult sites with his District-issued computer violated district policy.

(B) During the administrative interview on August 14, 2012, when asked to describe the process for accessing adult sites with his District-issued computer, Respondent explained, "I use the web browser Firefox and I switch over to a private browsing feature. The reason for that, private browsing is a feature employed by Firefox that automatically deletes any history of currently used sites under that window, as well as deletes any material

that could have been downloaded during that web experience. I went to efforts to see that nothing was stored on my computer." (Exh. 113, p. 13.) Respondent's use of the private browsing feature was an attempt by him to disguise his Internet history on his District-issued laptop computer related to his viewing and accessing of adult sites. Respondent admitted there was no legitimate work-related reason to view images from adult internet sites.

22. During the administrative interview on August 14, 2012, when asked if there was a reason why he used his District-issued computer instead of his own personal computer to view images of partially and fully nude females, Respondent stated: "I was stupid." When asked if he would do anything differently, Respondent stated, in part: "Oh, my God. Well, let's start with not being stupid, not accessing porn through district owned property to begin with, not accessing porn." (Exh. 113, pp. 36, 46.)

23. It was established, as alleged in paragraph 14 of the Statement of Written Charges, that Respondent's District-issued computer equipment contained inappropriate images and videos. All but one of the images and videos are adult pornographic material primarily of fully or partially nude young women, as established by Exhibits 48 and 60 through 65. The image of Respondent and a young child depicted in Exhibit 22 is not pornographic, but it is inappropriate because of the close proximity of Respondent's face to the child's face, with Respondent's hand around the child's head, holding it in place in a controlling manner. The child looks scared and uncomfortable. The image is also inappropriate because it serves no educational purpose. Respondent testified that the young child and other children were projecting their images through the Promethean Board in the classroom and taking pictures. Respondent claimed that Exhibit 22 was the result of his "photo-bombing" the picture by jumping in at the last minute. This explanation was not credible. Respondent presented no evidence of pictures of other children who also used the Promethean Board as he claimed.

24. It was established, as alleged in paragraph 16(B) of the Statement of Written Charges, that Respondent's District-issued laptop computer displayed a list of possible file names unrelated to his work assignment and in violation of the District's technology use policy. The possible file names were found when the OCRCFL searched the computer using a keyword search for "Lolita" in unallocated disk space. As established by Exhibit 41, the list of file names, which appear to be for adult sexual material, included "iko-kazano-school-girl\_sexy," "hot-school-girl\_sexy," "japanese-lolita-a-cup-girls," "alice-eve-amazing-breasts\_sexy," "japanese-see-thru-my-clothing-girls\_sexy," and "naked-lust\_sexy."

25. It was established, as alleged in paragraph 16(C) of the Statement of Written Charges, that Respondent's District-issued laptop computer contained photographs and videos taken of Respondent's students in his classroom. (Exhs. 42-47.) The photographs and videos are inappropriate because they are unrelated to Respondent's work assignment and serve no educational purpose, and therefore violate the District's technology use policy.

26. It was established, as alleged in paragraph 17(A) of the Statement of Written Charges, that Respondent's District-issued laptop computer contained videos unrelated to his

work assignment and in violation of the District's technology use policy. All but three of the videos were adult materials of a sexual nature, primarily of partially or fully nude young women, as established by Exhibits 66, 68 through 74, and 76 through 87. The videos described in paragraph 17(A), subparagraphs (ii), (x), and (xxiii), and corresponding to Exhibits 67, 75, and 88, respectively, are not, on their face, sexual or pornographic. Exhibit 67 depicts a young woman wearing a white shirt and red shorts stretching her arms. Exhibit 75 shows a woman running her hands through a bowl of what appears to be clear massage oil; only her face and hands are shown on the video. Exhibit 88 shows a young female in a bathing suit sliding down a waterslide. None of these videos are related to Respondent's work assignment.

27. It was established, as alleged in paragraph 17(B) of the Statement of Written Charges, that Respondent's District-issued laptop computer contained inappropriate photographs unrelated to his work assignment and in violation of the District's technology use policy. The photographs were adult materials of a sexual nature, primarily depicting fully and partially nude young women, as established by Exhibits 49 through 59.

28. It was established, as alleged in paragraph 17(C) of the Statement of Written Charges, that Respondent's District-issued laptop computer contained inappropriate internet history indicating that on May 2, 2011, and July 6, 2011, he used the laptop to access adult sexual material. The materials were accessed on the dailymotion.com website for adult materials, as established by Exhibits 89 through 111. The materials Respondent accessed, or sought to access, on the internet using his District-issued laptop computer were unrelated to his work assignment and in violation of the District's technology use policy.

29. Respondent accessed adult materials on his District-issued laptop computer on Monday, May 2, 2011, at or about 10:30 a.m. This was a school work day for Respondent. Respondent contends he stayed at home because he was waiting to find out if he was going to testify by telephone in his brother-in-law's criminal case in Florida. Respondent told principal Ramon Miramontes in April that he might be absent on May 2 because of the criminal case. The court records indicate that on April 29, 2011, a plea agreement was reached, so Respondent's testimony was not needed. Yet Respondent was absent for one-half of the day on May 2, and reported to work at or about lunch time. Respondent did not report his absence on the school's on-line system for reporting absences and requesting a substitute for his class. Respondent was paid his full day's salary for May 2.

#### *Physical Contact with Students*

30. The District has a policy for Professional Standards. (Exh. 16.) The policy includes a provision governing staff conduct with students, which provides in pertinent part: "The Board expects all employees to exercise good judgment and maintain professional standards and boundaries when interacting with students both on and off school property. Inappropriate employee conduct shall include, but not be limited to, engaging in harassing or discriminatory behavior; engaging in inappropriate socialization or fraternization with a student; soliciting, encouraging, or establishing an inappropriate written, verbal, or physical

relationship with a student; furnishing tobacco, alcohol, or other illegal or unauthorized substances to a student; or engaging in child abuse." The policy further provides: "An employee who observes or has evidence of inappropriate conduct between another employee and a student shall immediately report such conduct to the principal or Superintendent or designee." The District's policy for Professional Standards was reviewed with Beechwood teachers during orientation at the start of each school year.

31. It was established that, between 2008 and 2012, Respondent failed to maintain professional boundaries when interacting with students, as more fully described in Findings 32-41, below.

32. (A) It was established that Respondent allowed two female students to sit on his lap during a movie played for all third grade students. On September 26, 2011, the students in the third grade classes of Katie Allen, Blair Campbell, and Respondent gathered in Campbell's classroom to watch the movie "James and the Giant Peach." The classroom was dark as the children watched the movie. During the movie, both Allen and Campbell saw Respondent was sitting on a chair in the back of the room with two female students on his lap, one girl sitting on each of Respondent's legs. Both Allen and Campbell felt Respondent's conduct was not appropriate. Neither Allen nor Campbell spoke to Respondent about the incident. Later, they each separately reported the incident the principal, Ramon Miramontes. Miramontes spoke to Respondent about the incident and found him to be receptive to his feedback. In Miramontes' opinion, no further action was needed on his part.

(B) Respondent testified that his students arrived late to Campbell's classroom and the movie had already started. Respondent's students sat on the floor to watch the movie. Respondent sat on a chair that had been left for him in the back of the room. According to Respondent two girls were having a hard time seeing the movie while sitting on the floor. The two girls climbed onto his lap. Respondent sat with the two girls on his lap for 10 to 15 minutes. He then got up from the chair and let the two girls share the chair between themselves.

33. It was established that Respondent allowed students to sit on his lap during birthday celebrations when he taught first grade and third grade. When it was a student's birthday, Respondent let the birthday student wear a plastic crown and sit in front of the class while the child's favorite book was read aloud. If the child was nervous, Respondent allowed the child to sit on his lap while the book was read aloud. When he taught first grade, Respondent allowed four or five students to sit on his lap during birthday celebrations. When Respondent taught third grade, he similarly celebrated students' birthdays by having the child wear a crown and sit in front of the class to read his or her favorite book. Respondent testified he did not let the third grade students sit on his lap. Instead, if the child was nervous, he brought two chairs or stools to the front of the classroom and sat next to the child. C ■■■■■ M ■■■■■ is a Beechwood parent who volunteered as the "room mom" for Respondent's third grade class. M ■■■■■ testified that she saw Respondent hold one third grade student on his lap during a birthday celebration.



34. (A) It was established that Respondent sat at his classroom computer, on at least one occasion, with a student standing between his legs. In January or February 2012, principal Julie Graham visited Respondent's classroom and saw Respondent sitting at his desk, in front of his computer, with a student positioned between him and the desk, and the student standing between Respondent's legs and Respondent's arms around the child. Other students were lined up at the desk, waiting to have Respondent grade their work. Graham did not counsel Respondent about his conduct but decided to keep the incident in the back of her mind. She had only been principal at Beechwood for approximately one month and observed only this single incident.

(B) At this hearing, Respondent did not deny this incident. He explained that a small group of his students were learning how to use the mouse to drag-and-drop pictures on the computer. Some of the students "didn't get it." Respondent slid his chair back from his desk so he could demonstrate how to use the mouse for the student. Respondent did not recall Graham being present in his classroom at the time. Respondent testified that Graham did not talk to him about this incident prior to being placed on administrative leave.

35. It was alleged, but not established, that Respondent picked up two injured female students during P.E. on separate occasions, inappropriately cradling them. However, it was established that Respondent picked up one female student who was injured during P.E. and carried her to the office. Teacher Blair Campbell saw Respondent carry the injured female student over his shoulder and take her to the office. Campbell felt Respondent's carrying the student was inappropriate and reported the conduct to principal Ramon Miramontes. Miramontes discussed the incident with Respondent. He told Respondent that teachers should not move injured students themselves. According to Miramontes, his conversation with Respondent was not disciplinary but was merely a "heads-up." Miramontes testified that Respondent did not have any similar incidents after their conversation.

36. (A) It was established that Respondent drew students into his arms and hugged them tightly. However, it was not established that he hugged the students tightly for long periods of time, and/or talked to them softly, or that he often hugged female students in particular.

(B) It was established that Respondent often lowered himself to one knee when speaking with students, but it was not established that he did this particularly with girls. Further, it was established that Respondent positioned children very close to his body and placed his hands on their shoulders and backs, but it was not established that he placed his hands on their knees.

(C) It was established that Respondent caressed students' backs when talking to them and placed his face within inches from their faces.

37. The evidence established that students at Beechwood, especially the younger children, during times of excitement, would try to hug their current or former teachers when

seeing them on campus. The evidence established that, under that circumstance, the teacher should redirect the child to the side, so as to avoid having a frontal hug between the teacher and child. In the specific circumstance that a child is upset or crying, a hug may be appropriate at that moment. In this case, Respondent was observed by parents and teachers to lower himself to one knee when speaking with students, hugging the students close to his body, and/or being in close proximity (e.g., face-to-face) with students. The frequency and nature of Respondent's physical contact raised concerns among other Beechwood teachers because the physical contact was not in accordance with a teacher's obligation to maintain appropriate professional boundaries with students. Respondent's close physical contact with students was a common practice, rather than an exception for a child who was upset or crying. Respondent's physical contact with students was more appropriate for the parent or family relative of the child, but not for the child's teacher.

38. Teacher Blair Campbell observed Respondent put his hands on students' backs and move his hands up and down, and console and hug students. In each school year she has worked with Respondent, Campbell has seen Respondent, more than once, hug students into his chest, seen him down on one knee and hugging a student, and hold a student closely while talking to the student. Campbell described this conduct as "common behaviors" she observed of Respondent. Campbell spoke to principal Miramontes about Respondent's conduct, but she did not speak to Respondent about his conduct.

39. Christina Gilstrap is currently a fourth grade teacher at Beechwood. She knows Respondent from her employment at Beechwood. On one occasion, Gilstrap saw Respondent speaking with a student and touching the student's knee. Gilstrap was in the teacher's lounge when she observed Respondent's conduct outside the lounge. The windows to the teacher's lounge are tinted, so persons outside cannot see in but persons in the lounge can see outside. Gilstrap did not report this incident to the principal or speak to Respondent about the incident. Gilstrap testified she felt uncomfortable being around Respondent and avoided having any contact with him.

40. Respondent testified that he dropped to one knee so he could be at eye level with his students. He did this on a daily basis in his classroom. He moved through the classroom to see the students' work. He would kneel down next to a student, either to help a student who was struggling or to give encouragement and praise to a student along with a pat on the back or an "atta-boy." Respondent testified that he lower himself to one knee and gave a student a hug if the hug was student initiated. He would also hug a student who was visibly upset, frustrated, and crying. He estimated that, in a given school year and as a third grade teacher, this happened two to three times a year. Respondent claimed he had not been told by colleagues or administrators his conduct was inappropriate.

41. Respondent contends his physical contact and interactions with students was his way of developing a bond with his students and engaging them as their teacher, by showing interest in and affection for the students. He contends he was following strategies recommended by well-known educator Robert Marzano. (Exh. H.) Respondent greeted students at the door, he gave them a "high five" or hand shake, and he recognized his

students by name. He lowered himself to one knee when speaking with students to better connect with them. Beechwood parent C [REDACTED] M [REDACTED] testified that she has used the technique of lowering herself to one knee to be at eye level with her own child, which she finds has improved her communication with her child. Respondent's contention, that he was simply implementing strategies recommended by Marzano, did not excuse his conduct in this case. The nature of Respondent's touching and interactions with students was more appropriate for parents or family relatives of the child. Respondent failed to maintain professional boundaries by his close and intimate physical contact with students.

### *Afterschool Tutoring*

42. It was established that Respondent tutored students afterschool, but it was not established that he did so without adults present and with his classroom door closed. It was alleged but not established that Respondent's classroom was a "hangout" for female middle school students who had previously been in his class.

43. Respondent provided afterschool tutoring for students in his classroom, four days per week. These afterschool sessions were referred to as "homework club." Some of his former students also attended homework club while they were waiting for their siblings to be let out from school. The students worked on their homework. Respondent walked around the room and helped students. When they finished their homework, the students were allowed to do a preferred activity, such as playing with the stick bugs in the insect zoo or playing with the Promethean Board, which is a touch screen device in Respondent's classroom. The Promethean Board has programs for presenting lessons, such as multiplication or vocabulary games. During homework club, the door to the classroom was always open. Parents waiting for their children either waited outside or sat and watched in the classroom. Respondent received grant money for the afterschool sessions. Principal Miramontes testified that Beechwood received grant money to hold afterschool tutoring sessions for each grade level.

### *Morning Intervention Program*

44. It was established that Respondent volunteered to teach an early morning intervention class for students living in a local women's shelter, that the shelter students were typically the neediest and most at-risk, and that Respondent was alone with the students for 30 minutes before school every day.

45. Julie Graham became the principal of Beechwood in January 2012. During a staff meeting in February 2012, Graham proposed having a morning intervention class for the students living at the shelter. Respondent told Graham he was interested in volunteering to teach the morning intervention class. During that conversation, Graham and Respondent talked generally that the class would be held 30 minutes before school. She did not give Respondent any directives about the class. Later, teacher Christine Gilstrap expressed concerns to Graham about having Respondent teach the morning intervention class. Graham testified that the morning intervention program was not implemented. She did not authorize

Respondent to teach the morning intervention class. She never saw Respondent teaching the intervention class. Graham testified she had no knowledge that Respondent was teaching the class. Graham, however, admitted she never had a conversation with Respondent that he should not do the intervention program. The evidence did not specify what the children from the shelter were doing in the 30 minutes before school if Respondent was not supposed to be teaching the intervention class.

46. On October 8, 2012, Respondent submitted a time sheet on which he claimed a total of 4.5 hours for the morning intervention classes for February 13-17 and 21-24, 2012. Respondent was paid for the 4.5 hours claimed on the time sheet. The time sheet was signed by assistant superintendent Mark Douglas and was not seen by principal Julie Graham.

#### *Inappropriate Comments About Students*

47. It was established that, between 2008 and 2012, Respondent made three inappropriate comments to other staff about students between 2008 and 2012, as described more fully in Findings 48-51, below.

48. (A) It was established that Respondent reviewed Christine Lee's class list and made an unsolicited comment about CB, a male student, calling him a "sociopath" and stating that he "hated" the child. It was alleged but not established that Respondent called student CB "psychotic."

(B) Respondent made the comments about CB to Christine Lee prior to the first day of the 2010-2011 school year. This was Lee's first interaction with Respondent at Beechwood. Lee felt Respondent's comment about CB was inappropriate, and that Respondent was trying to jade her perspective of the child, who was to be a student in her class. Respondent also told Blair Campbell that he knew student CB, and the child was badly behaved and a sociopath. Campbell felt that Respondent's comment was a harsh comment to be making about an eight-year-old child. Respondent stipulated that he called student CB a "sociopath." His justification for the comment was that he was just trying to give a fellow teacher a "heads-up" about a student he had in his classroom the previous year.

49. It was established that Respondent inappropriately stated that HM, an eight or nine year old female student, looked pregnant while she was within hearing distance of him.<sup>1</sup> Respondent made the comment to Blair Campbell while the teachers and students were lined up outside during a fire drill. Student HM was in the front of her line. According to Campbell, Respondent told her that it looked like HM was "expecting," referring to the child's belly. Student HM was within 10 feet of where Respondent and Campbell were standing. Campbell felt the comment was inappropriate. Teena Keverian was nearby and heard Respondent make the comment about student HM. Keverian found the comment to be inappropriate. No evidence was presented that student HM heard Respondent's comment.

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<sup>1</sup> The Statement of Charges incorrectly refers to HM as an "eighth grade" student. The evidence established that HM was an eight or nine year old student.

At this hearing, Respondent testified he does not recall making the comment about student HM.

50. It was established that Respondent referred to AW, a female student, as a "bitch." Respondent stipulated to this allegation. It was alleged but not established that he referred to AW as a bitch "repeatedly."

51. Respondent admitted that describing a child to a colleague as a "bitch" or a "sociopath" does not demonstrate respect for the student. He admitted that calling a child a "sociopath" was not the best choice of words. He was having a private conversation with a colleague. He contended he would never say such comments to a parent or student.

52. It was alleged but not established that Respondent inappropriately stated that a female student needed to wear a bra.

#### *Inappropriate Comments to Students*

53. It was established that, between 2008 and 2012, Respondent singled out, picked on, and made inappropriate comments to children, as more fully described in Findings 54-57, below.

54. It was established that Respondent told some students he loved them, but it was not established that he did so "frequently." Teacher Blair Campbell heard Respondent say "I love you" to a female student while he was saying good-bye to the students at the end of the school day. Similarly, teacher Teena Keverian heard Respondent say "I love you" to students who were sitting at benches.

55. It was established that Respondent yelled at students "like a drill sergeant." Blair Campbell taught P.E. class with Respondent. She heard Respondent raise his voice at students and yell at students who did not stand in line or who misbehaved. Campbell felt that Respondent "screamed aggressively," which was different than a teacher raising his or her voice to get the attention of students on the playground. Teacher Christine Lee testified that Respondent yelled at students on the playground in a manner that she felt was more appropriate for a drill sergeant to use. Respondent testified that he addressed students in a military-like manner. He would say "Third-grade, ten-hut!" like a drill sergeant to get their attention. Respondent testified he used a loud and booming voice, but he was not angry or out of control. No students ever indicated they were intimidated by him.

56. It was established that Respondent screamed at former students attempting to greet him during a fire drill, but it was not established that he scared them and made them cry. Christine Gilstrap is a fourth grade teacher at Beechwood. Gilstrap "vividly remembers" a fire drill incident. She was walking her fourth grade students outside to line up for the fire drill. Her classroom was next to Respondent's classroom. Some of her students were in Respondent's class the previous year. When they saw Respondent, they yelled "hi" to him. Respondent screamed back at the students words to the effect, "We don't

scream at fire drills." According to Gilstrap, Respondent's face appeared tense, and he screamed in a booming voice that was enough to startle an adult.

57. It was established that Respondent inappropriately lifted a female student onto a bench during a P.E. class and used her inappropriately as an example of how not to dress for P.E. This incident occurred during the start of the 2010-2011 school year. As the third grade team, Respondent, Christine Lee, and Blair Campbell agreed to work together to teach P.E. The students in the three classes went out to the playground as a group to discuss P.E. class, including the appropriate clothing for P.E. At that point, Respondent lifted one of the female students onto a bench and table, and used the girl's clothing as an example of inappropriate clothing for P.E. The girl was wearing street clothes and not dressed for P.E. Respondent did this in front of all of the students from the three third grade classes. Respondent's action was not pre-planned with Lee and Campbell. The girl's reaction to the incident, whether positive or negative, was not established by the evidence. In any event, the girl's reaction, even if positive, would not mitigate Respondent's conduct of using the child as an example of something wrong, negative or inappropriate. Respondent does not dispute the incident.

58. It was alleged but not established that Respondent was "scary mean" and would belittle students in front of other people.

59. It was alleged but not established by sufficient evidence that Respondent, while on bus duty one day, asked all but one female student to exit a bus, and then screamed at the girl and made negative comments about her family and home life.

60. It was alleged but not established by sufficient evidence that Respondent frequently called on or made an example out of CB, a male student, even when other students engaged in similar behavior. However, it was established that Respondent previously admitted to staff that he disliked CB.

61. It was established that teacher Christine Lee removed one of her students from Respondent's Math Academy class, after the student's mother reported a sudden change in the student's attitude toward school. However, it was alleged but not established by sufficient evidence that, once removed, the parent reported the student's behavior returned to normal.

#### *Inappropriate Comments to Colleagues*

62. It was established that, between 2008 and 2012, Respondent made inappropriate comments to his teaching colleagues at Beechwood, as described more fully in Findings 65-70, below.

63. The District has adopted a policy and regulation against sexual harassment. (Exhs. 13 and 14.) Regulation 4080 defines prohibited sexual harassment as including unwanted verbal, visual or physical conduct of a sexual nature made against another person

of the same or opposite gender, in the work or educational setting, when the conduct has the purpose or effect of unreasonably interfering with the other individual's work performance, or creating an intimidating, hostile or offensive work environment. Regulation 4080 further provides that other examples that might constitute sexual harassment include unwelcome sexual flirtations or propositions, and sexual jokes or stories. The policy and regulation provide, in pertinent part, that "[a]ny District employee who engages or participates in sexual harassment . . . is in violation of this policy and is subject to disciplinary action, up to and including dismissal."

64. On December 8, 2010, Respondent signed a Proof of Receipt and Acknowledgement agreeing to follow District Board Policy 4080, which is the District's policy regarding sexual harassment.

65. Christine Lee and Blair Campbell are teachers at Beechwood. Lee has been a teacher for the District for 14 years. She has taught grades 3, 5, 6, and 7, and is currently teaching kindergarten. Campbell has been a teacher for the District for nine years and currently teaches third grade. She has worked in public education since 2005. Katie Allen is currently a third grade teacher at Beechwood. She has worked for the District since 2010. Teena Keverian is currently a fourth grade teacher at Beechwood.

66. The teachers at Beechwood work in grade-level teams in which they meet regularly to go over lesson plans, analyze student achievement and interventions, and plan activities for the students. During the 2010-2011 school year, Respondent was on the third grade team along with Christine Lee and Blair Campbell. During the 2011-2012 school year, Respondent was on the third grade team with Campbell and Katie Allen.

67. (A) In the 2011 spring semester, Respondent approached Lee when she was alone in her classroom, working at her desk, and stated that he wanted to chat. Respondent told Lee that he wanted to get off his chest that he had been "crushing" on her and found it hard to look her in the eyes because of her beauty and intelligence. Lee was shocked and taken aback by Respondent's comments, as she did not expect to hear such comments in a school setting from a teaching colleague. She did not know how to react, so she tried to laugh it off and told Respondent, "Shut up!" There was an awkward silence, as if Respondent was waiting for Lee to give some type of positive response. Lee was very uncomfortable and just sat silently. Respondent left Lee's classroom. Lee was upset and shaken by the incident, and reported it to principal Miramontes. After the incident, Lee became worried about having to go to work with someone she reported to the principal. At the hearing, Lee was visibly upset about the incident. Lee stated that she would quit her job at Beechwood if Respondent was retained.

(B) Respondent admitted that he told Lee that he had been "crushing" on her. At the hearing, Respondent explained that he suffered a heart attack in December 2010 and experienced a spiritual awakening that made him realize he should tell people in his life how important they are to him. He wanted Lee to know that he admired her professionally and thought she was "an excellent, beautiful, and fantastic person." Respondent's explanation

was not credible and did not justify or excuse his "crushing" comment to Lee. Respondent did not mention his spiritual awakening to Lee before telling her he had been "crushing" on her. During his administrative interview with the District's investigator on August 14, 2012, when asked about the incident with Lee, Respondent did not mention his spiritual awakening, and stated, "I made a throw-away comment that, yeah, I was really glad to be working with her but when I first got to the school, I was a little intimidated by her because I had a crush on her. Well, take that back, I was crushing on you was my words."

68. (A) In October 2010, Lee, Campbell, and Respondent met as the third grade team to plan the Thanksgiving activities for all three of the third grade classes. The team had agreed they would plan an authentic Thanksgiving celebration for the children. During the meeting, Respondent made a comment to the effect that orgies should be included for an authentic Thanksgiving celebration. Both Lee and Campbell found the comment to be unprofessional. Lee felt the comment was offensive. Campbell was surprised and confused by the comment. The team found it hard to continue planning the activity. Lee and Campbell separately reported the incident to principal Miramontes. Miramontes spoke to Respondent about his comment. Miramontes testified that Respondent was "receptive" to his feedback.

(B) Respondent admitted that he mentioned orgies during the meeting. At the hearing, he testified that the team was planning an authentic fall or Thanksgiving activity, although he recalls it being a "fall harvest." According to Respondent, he told Lee and Campbell that they could not have an authentic fall harvest without having an orgy. He claims his comment was facetious and he was just trying to be funny. He recalls that Lee and Campbell chuckled and Campbell said, "Oh, Tom." Respondent testified that one of them asked if he was serious and he replied, "Of course not." He later learned that Lee had reported his orgy comment to principal Miramontes in January 2011, at the same time she reported the "crushing" comment. Respondent's claim that he was just trying to be funny does not excuse or justify his conduct.

69. (A) It was established that Respondent volunteered to other staff members that his relative was caught with child pornography. It was established that he told colleagues that he helped the police catch his relative by pretending to look at child pornography to get his relative to reveal the websites he accessed. The evidence was insufficient to establish that Respondent made multiple colleagues uncomfortable by announcing, unsolicited facts about the incident, including graphic details of a video showing a child being gang raped.

(B) For example, when Campbell stopped by Respondent's classroom at the start of the 2010-2011 school year to say "hi" and see how his summer was, Respondent volunteered that he was helping a Florida police department with a criminal case against his brother-in-law. Respondent claimed the case involved child pornography, and he described in detail seeing photos of children with sexual content. Campbell was uncomfortable with the information Respondent volunteered. On another occasion, Campbell walked into the teacher's lounge where Respondent was having an on-going conversation with another person discussing the criminal case involving child pornography. Respondent's conversation



was in progress when Campbell entered the teacher's lounge. The conversation made Campbell feel uncomfortable. She saw that other teachers in the lounge looked "disgusted" at Respondent's conversation.

70. (A) On October 15, 2011, during Saturday school, Respondent and teacher Teena Keverian were supervising students on the playground during the nutrition break. Respondent began telling Keverian that his students were doing internet research about chemically enhancing chickens to make them all chicken breasts for chicken nuggets. According to Keverian, Respondent kept repeating the word "breasts" to her. Respondent then stated that, while the students were searching the internet, he saw a link about Altoids and oral sex. According to Keverian, Respondent's comment made her feel uncomfortable and she told him, "I don't want to go there." Respondent replied, "Oh, I do" and then walked away. Keverian testified that Respondent's comment about Altoids and oral sex, and the way he said, "Oh, I do," made her feel uncomfortable. Keverian reported the incident to principal Ramon Miramontes on Monday, October 17. She does not know what Miramontes did to address the matter. Miramontes testified that he discussed the incident with Respondent and gave him a directive not to discuss Altoids in that manner.

(B) According to Respondent, he was merely sharing with a colleague his experience with a planned lesson that went awry. Respondent was teaching a lesson about urban legends. The urban legend he was using for the lesson was that KFC was growing chickens without legs because of the high demand for white meat. Respondent testified that the night before the lesson, he did internet research and found an article. He used the same internet search with the students the next day, and had the students read the article. When he saw the students' internet search results included a link to an article about Altoids and oral sex, he immediately shut down the lesson. The conversation with Keverian on the playground was his attempt to tell her about how his planned lesson had almost gone wrong, and that he had "dodged a bullet." When Keverian said "I don't want to go there," Respondent felt frustrated that she was dismissing the point of the conversation, which was the unexpected appearance of the link to Altoids and oral sex. He wanted to talk to her about the lesson. That's why he replied "Oh, I do." Respondent's explanation was not credible. If Respondent wanted a conversation with Keverian about the problems with the lesson, one would not have expected him to walk away after saying, "Oh, I do." It would have been expected that Respondent would stay and continue the conversation with Keverian and explain his comment.

71. Ramone Miramontes was the principal of Beechwood from approximately 2007 to 2011. It was established that Miramontes, as principal, verbally counseled Respondent four times since 2009 and warned him against picking up and carrying an injured child, allowing students to sit on his lap, the comment about Altoids and oral sex, and the comment about orgies at the first Thanksgiving. It was established that Miramontes directed Respondent to refrain from inappropriately touching students or allowing them to sit on his lap. During his administrative interview with the District's investigation in August 2012, Respondent admitted that Miramontes counseled him about picking up children and limiting his physical contact with children to "high fives" and "fist bumps."

72. It was established that, at the end of the 2011-2012 school year, teacher Katie Allen and the long-term substitute who took over Respondent's classroom when he was placed on administrative leave, discovered a pair of boys' underwear in Respondent's classroom. The underwear was discovered by the teachers on the last day of the school year. According to Allen, the long-term substitute was organizing the cabinets when she found the boys' underwear. The other teacher was caught off-guard and uncomfortable by her finding. Allen was likewise uncomfortable.

#### *Character Evidence*

73. M■■■■ B■■■■, S■■■■ R■■■■, W■■■■ L■■■, and C■■■■ M■■■■ are parents of Beechwood students who had Respondent as their first grade and/or third grade teacher. Each of these parents testified favorably regarding Respondent's teaching style and his effectiveness as a teacher for their children. Each testified to how much their child or children enjoyed having Respondent as their teacher, and that Respondent was generally well-liked and respected among his students and Beechwood parents. These parents testified they had no concerns about Respondent's conduct towards their child or children or having Respondent as their child's teacher in the future.

74. The parents' testimony expressing approval of Respondent's interaction with their own children is of little probative value regarding whether Respondent's conduct was in accordance with the standards and professional boundaries of the teaching profession, with the exception of parent W■■■■ L■■■'s testimony. L■■■ is a former teacher. She holds a single-subject credential in math and taught math in junior high and high school for six years. Like the other parents, L■■■ testified favorably about Respondent's performance as her son's teacher. But unlike the other parents, she was familiar with the standards of the teaching profession. She was candid in her testimony. For example, she acknowledged that it is not appropriate for a teacher to use a student as a negative example (i.e., inappropriate clothing for P.E.), and it is not appropriate and demonstrates a serious lapse in judgment for a teacher to access adult materials on a school-issued computer. In reference to the District's policy on Professional Standards (Exh. 16), L■■■ explained that teachers are held to very high standards in terms of personal standards and educational goals, and those standards are laid out fairly well in the District's policy. L■■■ stated that teachers are expected to follow those standards and understand professional boundaries.

75. Respondent provided private tutoring for Beechwood children. B■■■■ testified that Respondent tutored her children at their home. Respondent also tutored R■■■■'s daughter at her home. Respondent tutored children who were not, at the time, enrolled as students in his third grade class at Beechwood. The District's policy prohibits a teacher from tutoring a child for personal remuneration while that child is enrolled as a student in the teacher's class.

76. Ramone Miramontes, as the former principal of Beechwood, testified to his opinion that Respondent was a good teacher. As principal, Miramontes observed Respondent in his classroom and on the playground. Based on his observations of

Respondent, Miramontes' opinion is that Respondent was a good teacher. Respondent related well to his students. He was an effective communicator. He was able to deliver a lesson plan to a classroom of students with different ability levels. He was able to reach students at their developmental level. Miramontes described Respondent's teaching style as energetic and engaging. Respondent was an over-achiever, he liked to be on stage, and he liked to put on a show. Some of the teachers at Beechwood did not appreciate his performances. During his testimony, Miramontes recounted a time when the first grade classes were doing lessons related to Dr. Seuss stories. The first grade teachers all agreed to wear Dr. Seuss T-shirts. Respondent showed up dressed up in a full Dr. Seuss costume. Miramontes saw the other teachers were frowning and had facial expressions of disapproval. Miramontes testified it is not appropriate for a teacher to act contrary to a planned lesson or activity.

### *Credibility Findings*

77. The District's witnesses, who are currently teachers at Beechwood, were credible in their testimony regarding the incidents involving Respondent. They appeared sincere in their demeanor, and their testimony, for the most part, was straightforward and forthcoming. They used their best efforts to answer questions put to them.

78. Respondent's testimony at times was not credible. For example, Respondent testified that, at the time he was placed on paid administrative leave on February 24, 2012, he was not told that he could not contact Beechwood parents or students or could not continue his private tutoring business. Yet, Respondent wrote emails in March and April 2012, in which he wrote that he was "forbidden" or "contractually prevented" from contacting Beechwood students, parents, and staff. (Exhs. 145, 146.) Respondent admitted that the statement in the March 2012 email, that he was "forbidden" to contact Beechwood students, parents, and staff was false, and that he made the false statement for the sole purpose of getting back the \$35 he paid to attend the school's fundraising dinner. Another example is his explanation that the "crushing" comment he made to his fellow teacher Christine Lee was motivated by a spiritual awakening. There was no evidence Respondent mentioned the spiritual awakening to anyone prior to his testimony at this hearing. He described the statement to the District's investigator as a "throw away" comment.

### *Morrison Factors*

79. Where there is conduct that might justify termination of a teacher, an examination must be made of whether or not that conduct indicates that the Respondent in question is unfit to teach. This requirement was first set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229. There the Supreme Court held that factors that may be examined to determine fitness include the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; and, the proximity or remoteness in time of the conduct. Other factors may include the type of certificate held by the teacher; extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives

resulting in the conduct; the likelihood that the conduct in question will recur; and, the extent that discipline will cause an adverse or chilling impact on the constitutional rights of the teacher involved, or other teachers.

80. (A) *Adverse consequences on students and teachers, and the degree thereof:* Respondent's inappropriate comments adversely affected other Beechwood teachers. For example, teacher Christine Lee was visibly upset during her testimony recounting the effect of Respondent's "crushing" comment that occurred two years ago. Respondent's inappropriate comments made teachers feel uncomfortable to be around him and they purposely avoided having contact with him at school. His comments disrupted the collaborative process of the grade-level teams. Teachers were likewise uncomfortable with his inappropriate physical contact with students. The evidence was insufficient to establish that any students were adversely affected by Respondent's comments or conduct. No evidence was presented that any teachers or students were exposed to the adult materials Respondent accessed on his District-issued laptop or classroom computers.

(B) *Proximity in time:* Respondent's conduct is recent. He accessed the adult materials on his District-issued laptop computer in May and July 2011. His inappropriate comments to teachers, and inappropriate physical contact and interactions with students occurred during the period 2008 to 2012.

(C) *Type of teaching certificate:* Respondent holds a multiple subject elementary credential that he received in 2006.

(D) *Extenuating or aggravating circumstances:* There is an aggravating circumstance in that student AR was a vulnerable child living at a women's shelter due to a history of domestic violence in his family. Respondent had an interaction with student AR that caused the child to make a complaint about Respondent to other Beechwood staff, and resulted in his removal from Respondent's classroom. The evidence was insufficient to establish the underlying facts of the interaction. However, the evidence was sufficient to establish that Respondent inappropriately contacted student AR alone on the playground, after the child was removed from his classroom.

(E) *Likelihood the conduct in question will recur:* There is a likelihood that Respondent will engage in similar conduct. His conduct demonstrates that he lacks the judgment and temperament to regulate his conduct to ensure he acts appropriately and within the professional standards and boundaries that teachers must maintain with students and with other teachers. Teaching is a second career for Respondent. According to his resume, Respondent spent 20 years in restaurant management, with an area of expertise in "[e]mployee and management training and development." (Exh. 8.) He should know what is appropriate conduct in a professional workplace. Yet he made comments to colleagues that were clearly inappropriate in a professional workplace. He used his work-issued laptop computer to access adult sexual materials on the internet, clearly something he knew was wrong. He interacted with students in a manner that was more appropriate for a parent or family relative rather than a teacher.

81. Respondent's misconduct, established by the evidence, is directly related to his employment by the District as public school teacher. He misused his District-issued laptop computer to access adult sexual material. He made inappropriate comments of a romantic and/or sexual nature, at school, to three female teaching colleagues. While at school, he also made disrespectful and inappropriate comments about students in conversations with teaching colleagues about the students. His interactions and physical contact with students failed to maintain appropriate professional boundaries. His lack of appropriate judgment and temperament makes it likely that he will engage in similar conduct if retained as a teacher by the District. Under all of the circumstances, Respondent's conduct establishes that he is unfit to teach in the District, within the meaning of the *Morrison* decision, and he should be terminated as a teacher.

### LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1-4.

2. The District has the burden of proof in this matter, and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. It is settled that the trier of fact—in this case the three members of the Commission—may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) And, the testimony of “one credible witness may constitute substantial evidence,” including a single expert witness. (*Kearl v. Board of Medical Quality Assurance, supra*, 189 Cal.App.3d at 1052.)

4. Education Code section 44932, subdivision (a), sets forth the grounds for which a permanent employee may be dismissed by a school district. The grounds alleged in this case are: immoral conduct (subd. (a)(1)); dishonesty (subd. (a)(3)); evident unfitness for service (subd. (a)(5)); and persistent violation of or refusal to obey school laws or reasonable regulations prescribed by the employing school district (subd. (a)(7)).

5. (A) Cause does not exist for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(1), for immoral conduct. The term “immoral conduct” has been defined to include 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. (*Board of Ed. of San*

*Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

(B) In this case, the Commission was split on whether Respondent's conduct of accessing adult pornography on his District-issued laptop computer, his romantic/sexual-type comments to three female teachers at school, his disrespectful and inappropriate comments about students, and his inappropriate interactions with students at school (e.g., hugging, sitting on his lap, etc.), constituted immoral conduct. One Commission member felt Respondent engaged in immoral conduct. The other two Commission members felt that, although Respondent's conduct was inappropriate conduct for a public school teacher, and demonstrated poor judgment and an inability to recognize and maintain professional boundaries, the conduct did not rise to the level of "immoral conduct" to establish grounds for Respondent's dismissal under Education Code section 44932, subdivision (a)(1). No students or other teachers were exposed to the adult materials that Respondent accessed on his District-issued laptop computer. Respondent accessed the adult materials while at home, which, by itself, was not illegal. No evidence was presented that Respondent engaged in any sexual contact with any of his students or any of his teaching colleagues.

6. (A) Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(3), for dishonesty. "Dishonesty" has been defined as conduct that "connotes a disposition to deceive" and "necessarily includes the element of bad faith." It means "fraud, deception, betrayal, faithlessness," and "denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Midway School District v. Griffith* (1946) 29 Cal.2d 13.)

(B) In this case, Respondent was dishonest during his interview with Graham and Bertsch regarding his conversation with student AR on the playground. He was dishonest when he stayed home on May 2, 2011, under the false pretext of having to testify by phone in a criminal case. Respondent was at home accessing adult materials on his work computer. He failed to report his absence and received his full salary for the day. He was dishonest when he used a certain private browsing feature when accessing adult materials on his District-issued laptop so that his browsing history would be deleted and go undetected. Finally, he was dishonest when, on the one hand, he testified that no one told him he could not contact Beechwood students, parents and staff, yet in emails from the same time period, he acknowledged being under such a prohibition.

7. (A) Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. Unlike unprofessional conduct, evident unfitness for service 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 Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

(B) In this case, the evidence established that Respondent lacks the judgment and temperament to abide by professional standards and to follow the protocols of his employer and workplace. Respondent engaged in conduct that made his fellow teachers uncomfortable and disrupted the collaborative process of his grade-level team. He was verbally counseled about some of his conduct by principal Miramontes. He was counseled about the Thanksgiving/ orgy comment in October 2010. Yet, three months later, in January 2011, he made the inappropriate "crushing" comment to teacher Christine Lee. Several months after that, in October 2011, Respondent made the Altoids and oral sex comment to teacher Teena Keverian. Respondent lacks the judgment and temperament to "filter" his comments and conduct to comply with professional standards of the teaching profession. The inappropriate conduct established by evidence in this case demonstrates Respondent's evident unfitness for teaching.

8. (A) Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(7), for persistent violation of law or school rules. Under Education Code section 44932, subdivision (a)(7), the violation of the school district's regulations or rules must be either "persistent" or "motivated by an attitude of continuous insubordination." (*Governing Bd. of Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81.) "The word 'persistent' is defined by lexicographers as 'refusing to relent; continuing, especially in the face of opposition ... stubborn; persevering ... constantly repeated.' And in the judicial decisions of this, as well as other states, the word has been interpreted to mean 'continuing or constant.'" (*Seaman, supra*, 28 Cal.App.3d at p. 82.)

(B) In this case, Respondent engaged in conduct that violated the District's policies governing employee use of computer technology (Findings 18-29), sexual harassment (Findings 62-70), and the professional standards for teacher interaction with students (Findings 30-39). By his signed acknowledgment and receipt dated December 8, 2010, he was aware of and agreed to abide by the District's computer technology and sexual harassment policies, yet engaged in conduct that violated those policies. He engaged in conduct violating the District's professional standards for teacher-student interactions, even though the professional standards were reviewed with all teachers, including Respondent, at the start of each school year during orientation. Respondent's pattern of conduct demonstrates an attitude of insubordination.

9. Applying the *Morrison* factors, it must be concluded that Respondent's conduct and temperament render him unfit to teach in the District, based on the matters discussed in Factual Findings 79-81 and Legal Conclusions 6-8.

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ORDER

Respondent Thomas Sullivan is hereby dismissed from employment as a permanent certificated employee of the Fullerton School District.

DATED: January \_\_\_, 2014

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TAMARA McELROY  
Member  
Commission on Professional Competence

DATED: January \_\_\_, 2014

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LUCIANO ORTIZ  
Member  
Commission on Professional Competence

DATED: January \_\_\_, 2014

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ERLINDA G. SHRENGER  
Administrative Law Judge, Member  
Commission on Professional Competence