

BEFORE A COMMISSION ON PROFESSIONAL COMPETENCE  
YUBA CITY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of:

TROY ALEXANDER,

A Permanent Certificated Employee,

Respondent.

OAH No. 2013050114

**DECISION**

This matter was heard before a Commission on Professional Competence (CPC) of the Yuba City Unified School District in Yuba City, California, on May 19, 20, and 21, 2014. The CPC members were Michael Allen, Ken Trapp, and Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings (OAH).

Kristin D. Lindgren, Attorney at Law, represented Yuba City Unified School District (District).

There was no appearance by or on behalf of Troy Alexander (respondent) at the hearing. The hearing proceeded as a default hearing under Government Code section 11520.<sup>1</sup>

This matter was submitted for decision when the CPC concluded its deliberations on May 27, 2014.

**SUMMARY**

Respondent is a high school teacher. At the hearing, the District established that respondent engaged in immoral and unprofessional conduct, persistently violated or refused to obey reasonable regulations prescribed by the District's Governing Board, willfully

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<sup>1</sup> At 12:51 a.m. on May 19, 2014, respondent emailed a letter to OAH, which stated that he would not attend or participate in the hearing. In his letter, he did not request a continuance or provide sufficient information to establish good cause for a continuance. Consequently, the hearing proceeded as a default hearing without him.

refused to perform regular assignments without reasonable cause, and is evidently unfit for service. Consequently, the District's dismissal of respondent is sustained.

### FACTUAL FINDINGS

1. Respondent holds a Clear Single Subject Teaching Credential in Social Science. He has been employed by the District since August 15, 2005. He is a permanent certificated employee. His most recent position with the District was as a high school teacher. He was assigned to teach World Geography and State Requirements at River Valley High School (RVHS) to high school freshman. State Requirements include a health component and Driver Education. Principal Thomas Ruesser and Vice Principal Kenneth Schaeffer were respondent's direct supervisors.

#### *Suspension of Credential for Criminal Convictions*

2. On August 31, 2011, in the Colusa County Superior Court, Case No. CR52966, respondent, upon a plea of guilty, was convicted of violating Penal Code section 602, subdivision (1), trespass by entering and occupying, a misdemeanor. Imposition of sentence was suspended and respondent was ordered to pay a fine of \$580.

3. On August 31, 2011, in the Colusa County Superior Court, Case No. CR53024, respondent, upon a plea of guilty, was convicted of violating Vehicle Code section 14601.1, subdivision (a), driving when privilege was suspended or revoked, a misdemeanor. Imposition of sentence was suspended, and respondent was ordered to pay a fine totaling \$1,384.

4. On March 28, 2012, in the Colusa County Superior Court, Case No. CR53372, respondent, upon a plea of no contest, was convicted on two counts of violating Penal Code section 459, burglary in the second degree, both misdemeanors. Imposition of sentence was suspended, and respondent was placed on summary probation for three years. He was ordered to serve 210 days in jail, which was stayed pending successful completion of probation. He was ordered to pay a fine and restitution. He was also ordered to complete 20 hours in the alternative work program.

5. Based upon the convictions described in Findings 2, 3, and 4, the Commission on Teacher Credentialing (CTC) suspended respondent's teaching credential for a period of seven days, effective January 13 through 19, 2013. As a result of the CTC suspension, respondent was not able to perform any services for the District during that period.

6. In reaching its determination to suspend respondent's teaching credential, the CTC reviewed a Confidential Investigation Report prepared for the CTC. The report described the facts underlying respondent's August 31, 2011 trespass conviction as follows:

According to the narrative report, an officer was dispatched on a call of possible thefts. The reporting party stated that he

observed Respondent gathering scrap-metal on a levee road. When Respondent was informed that the Sherriff was being called, he fled the scene. The reporting party was able to get Respondent's license plate before he fled the scene. The property owner of where Respondent was gathering scrap-metal was contacted. He verified that several metal items from his property had been taken with a value of approximately \$6,140.00.

The officer made contact with Respondent. Respondent admitted to being in the area of the thefts, but denied taking any items.

The report described the facts underlying respondent's March 28, 2012 burglary conviction as follows:

According to a narrative report, an officer was dispatched on a report of a suspicious vehicle parked behind a vacant residence. The officer discovered Respondent coming out of the residence when he approached the back door of the house. Respondent admitted that he was stealing copper from the residence. Respondent caused approximately \$710.35 in damage to the residence. Respondent admitted that he was involved in the theft of electrical wire from a prior burglary reported on September 21, 2011.

Information about respondent's burglary arrest was printed in the Sun-Herald newspaper.

7. Because they involved dishonesty and a breach of a duty owed to another and society, respondent's convictions for burglary involved crimes of moral turpitude. (See *Clerici v. Department of Motor Vehicles* (1990) 224 Cal.App.3d 1016, 1027.) Crimes involving dishonesty demonstrate a lack of moral character and fitness to practice a profession. (*Matanky v. Board of Medical Examiners* (1978) 79 Cal.App.3d 293, 305.)

8. All of respondent's convictions are for crimes that are substantially related to the qualifications, functions and duties of a teacher. A teacher has been described as an "exemplar whose words and actions are likely to be followed by the children coming under [his] care and protection." (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.) Because respondent taught Driver Education, his conviction for driving when his license was suspended or revoked bears a particular nexus to his employment.

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### *Taping Card on Student's Back and Displaying Altered Photographs of Students*

9. On or about March 6, 2013, S.F.,<sup>2</sup> a ninth-grade student, fell asleep in respondent's third period World Geography class. While S.F. was asleep, respondent taped a laminated card on S.F.'s back. The card had the word "penis" on it. After respondent taped this card to S.F.'s back, two students in the class placed handwritten notes on S.F.'s back. Written on these notes were "Meth Addict" and "Registered Child Molester." A student used a smartphone to take a picture of the card and notes on S.F.'s back.

10. Respondent's classroom was equipped with a SMART Board. Respondent could project images, data, text, and other items from his computer on to the SMART Board for all the students in his class to see.

11. In or about March 2013, during the third period World Geography class, respondent projected from his computer on to the SMART Board a school photograph of ninth-grade student I.R., which had been altered to include: (1) a swastika on I.R.'s forehead; (2) the numbers "88" on one cheek, "14" on his other cheek, and "666" on his chin; (3) what appeared to be a teardrop drawn under one eye; (4) the words "white trash" on his neck; (5) a speech bubble over his head with the words, "I love little boys"; and (6) the words, "Sutter Co Jail Inmate" under his face. I.R.'s shirt had been altered to look like the shirt of an inmate. Student I.R. was in respondent's third period class when respondent displayed the altered photograph. A student used her smartphone to take a picture of the altered photograph. Respondent also displayed this altered photograph on the SMART Board during his fourth period class.

12. On another occasion in or about March 2013, during the third period World Geography class, respondent projected from his computer on to the SMART Board a school photograph of ninth-grade student N.A., which had been altered to include: (1) a swastika on N.A.'s forehead; (2) the numbers "88" on his forehead, and "14" on his cheek; (3) what appeared to be two teardrops drawn under one eye; (4) a speech bubble above his head with the words, "I have growing pains"; and (6) the words, "Inmate #453895A" and "CA Dept of Corrections" under his face. N.A.'s shirt had been altered to look like the shirt of an inmate. Student N.A. was in respondent's third period class.

13. On a third occasion in or about March 2013, during the third period World Geography class, respondent projected from his computer on to the SMART Board a school photograph of student S.F., which had been altered to include: (1) a "W" written on each of his cheeks; and (2) the words "is my LIFE" under his face.

14. The District retained Richard Martin Strang of MK Forensics to analyze the contents of respondent's school computer. Mr. Strang found school photographs of students on respondent's computer. These photographs included the ones described in Findings 11, 12, and 13, as well as a fourth photograph of another student that had been similarly altered. There was no evidence that this fourth photograph was displayed to students during class.

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<sup>2</sup> Students are identified by their initials to protect their privacy.

### *Capsules in Respondent's Desk Drawer*

15. On March 8, 2013, Principal Ruesser searched a drawer of respondent's school desk. Inside that drawer, Principal Ruesser found: (1) capsules, some open and empty, and others full; (2) rolled-up RVHS business cards for respondent; and (3) a cotton ball with blood on it. Principal Ruesser was informed by a pharmacist that the capsules were Adderall<sup>3</sup> and an allergy pill. Poison Control confirmed that some of the capsules were Adderall. The capsules were readily accessible to students and substitute teachers who may have opened respondent's desk drawer.

### *Notice of Unprofessional Conduct*

16. On June 1, 2012, the District served a "Notice of Unprofessional Conduct and/or Conduct Demonstrating Evident Unfitness" (Notice of Unprofessional Conduct) on respondent pursuant to Education Code sections 44938, subdivision (a), and 44932, subdivision (a)(1). The Notice of Unprofessional Conduct stated that respondent was in "an extremely serious and job-threatening situation," and that his unprofessional conduct and evident unfitness for service were "cause for discipline up to and including dismissal." The Notice of Unprofessional Conduct stated further that respondent was being afforded an "opportunity to correct [his] faults and to overcome the grounds for this Notice of Unprofessional Conduct."

17. The Notice of Unprofessional Conduct set forth in detail the following specific instances of unprofessional conduct:

(a) Criminal Convictions. The Notice of Unprofessional Conduct described six convictions that respondent had suffered between August 9, 2010, and March 28, 2012, including the three convictions described in Findings 2, 3, and 4.

(b) Failure to Follow Policy and Procedure on Reporting Absences. School began at 8:00 a.m. Respondent was required to be on site no later than 7:30 a.m. The Notice of Unprofessional Conduct stated that, at 7:41 a.m. on October 5, 2009, respondent sent an email stating that he would not be at his first period assignment. Later that day, Principal Ruesser met with respondent to discuss, among other things, policy and procedure for reporting absences. Principal Ruesser directed respondent to do the following when he was going to be absent from work: (1) call Principal Ruesser on his cell phone before 7:00 a.m. on the day of the absence to provide notice of his impending absence; and (2) request a substitute no later than 7:00 a.m. on the day of the absence. On February 24, 2010, respondent was given an additional directive: not to call in absent for first period and then later call in with notice that he would be absent for the remainder of the day, without good cause.

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<sup>3</sup> Medline Plus, the National Institutes of Health's website, describes Adderall as containing amphetamine and dextroamphetamine. It is in a class of medications called central nervous system stimulants. It is used to treat attention deficit hyperactivity disorder and narcolepsy. (<http://www.nlm.nih.gov/medlineplus/druginfo/meds/a601234.html>)

The Notice of Unprofessional Conduct described with particularity 10 times during the 2009/2010 school year in addition to October 5, 2009, 17 times during the 2010/2011 school year, and nine times during the 2011/2012 school year when respondent was absent, but failed to comply with the directives he was given for reporting his impending absences.

The Notice of Unprofessional Conduct noted that on "at least" 45 different occasions during the 2010/2011 school year (including the ones described with particularity in the Notice of Unprofessional Conduct) respondent either failed or refused to report his absences and/or request a substitute before 7:00 a.m. on the date of the absence. The Notice of Unprofessional Conduct also noted that on "at least" eight different occasions during the 2010/2011 school year (including one specifically identified in the Notice of Unprofessional Conduct) respondent called in with notice that he would be absent from first period, and then midway through or just after second period, called in with notice that he would be out for the remainder of the day.

(c) Failure to Submit Appropriate Lesson Plans When Absent. The Notice of Unprofessional Conduct stated that on October 5, 2009, Principal Ruesser met with respondent to discuss, among other things, the policy and procedure for submitting lesson plans when he was absent. The Notice of Unprofessional Conduct noted that District Administrative Regulation 4161.2 provides:

Whenever possible, employees shall request personal leaves in advance and prepare suitable lesson plans or instructions for a substitute employee.

Principal Ruesser told respondent that he had been absent for one or more periods on 18 separate occasions since the beginning of the 2009/2010 school year. He further relayed that respondent had failed to provide lesson plans on a number of those occasions, and that when respondent did provide lesson plans, they were not suitable for the classes scheduled during his absence. Principal Ruesser directed respondent to do the following when he was absent: (1) provide suitable lesson plans for classes scheduled on the day of his absence; and (2) maintain three days of emergency substitute plans (appropriate to the classes/topics he was teaching) in writing and provide them to the office specialist.

The Notice of Unprofessional Conduct noted with particularity 13 occasions between October 2009 and May 2012 when respondent was absent but failed to provide sufficient lesson plans that substitutes could follow to teach his classes.

(d) Abuse of Leave. The Notice of Unprofessional Conduct noted that respondent was on a leave of absence from October 2011 until April 16, 2012. On April 27, 2012, respondent emailed Principal Ruesser that he was no longer disabled, and no longer required a reasonable accommodation to perform the essential functions of his position. In addition to the directives noted above with regard to

respondent's absences, the Notice of Unprofessional Conduct also noted that respondent had been directed to be on campus during his preparation period to plan, evaluate, prepare and obtain materials, and described with particularity five times in April and May 2012 when respondent arrived late. The Notice of Unprofessional Conduct stated that respondent "clearly" viewed his preparation period as "optional."

(e) Failure to Follow Policy and Procedure Regarding Timely Submission of Student Records, Grades, and Absences. Respondent was required to track and record the attendance, absences and tardiness of his students. The District has a computerized system called Aeries Browser Interface (ABI) for teachers to use to track and record this information. Teachers were required to submit ABI Reports weekly. Respondent was informed that he was required to report his students' attendance using the ABI system. The Notice of Unprofessional Conduct noted that respondent did not submit ABI Reports for six weeks in August and September 2009. Respondent was directed to: (1) enter student attendance data daily as he took roll; (2) submit signed reports weekly; and (3) contact the vice principal if he had any future problems entering data. Contrary to these directives, respondent failed to promptly enter and report attendance information into the ABI system for four separate weeks between September 2009 and March 2010.

Board Policy 5121, in relevant part, provides:

Parents/guardians and students have the right to receive course grades that represent an accurate evaluation of the student's achievement

The teacher of each course shall determine the student's grade.

In December 2009, respondent incorrectly assigned a grade of "D-" to a student, instead of "B-." In March 2011, he incorrectly assigned a grade of "B-" to a student with a 92.82 percent grade in his class.

Respondent failed to timely submit the second quarter grade report that was due on January 14, 2010, until February 25, 2010. In addition, the Notice of Unprofessional Conduct noted three occasions when respondent failed to record assignments received from a student.

In the second quarter of the 2010/2011 school year, respondent taught two classes of Driver Education. Part of his responsibility was to complete the necessary logs for submission to the Department of Motor Vehicles (DMV). The DMV logs were due in January 2011. He did not submit them timely, notwithstanding multiple reminders. As of November 2011, the District had not received the logs. As a result of respondent's failure to submit the logs timely, 72 students did not have their forms logged with the DMV.

The deadline for the first quarter grades for the 2011/2012 school year was October 14, 2011, at 8:00 a.m. Respondent did not meet this deadline. RVHS issued report cards to students without respondent's grades in them. On October 17, 2011, at 12:06 p.m., respondent turned in all his grades except for one. Because respondent turned in handwritten grades, instead of utilizing the District's computer system, RVHS's Records Specialist had to work for two hours manually inputting them and manually adjusting student grade point averages (GPAs). The District office then had to mail an additional set of report cards to the affected students. As a result of respondent's failure to post his grades timely, three students were deemed ineligible to participate in freshman football.

The Notice of Unprofessional Conduct also noted that respondent failed to post grades due by 8:00 a.m. on May 4, 2012. He gave inconsistent reasons for failing to meet this deadline.

(f) Failure to Meet Professional Responsibilities. The Notice of Unprofessional Conduct noted that respondent: (1) failed to update his tuberculosis test timely; (2) engaged in inappropriate discussions in his third period class, including discussing his medical condition and medical marijuana; and (3) engaged in inappropriate communications with parents.

18. Improvement Plan. Set forth in the Notice of Unprofessional Conduct was an Improvement Plan designed to assist respondent in correcting his unprofessional conduct. The directives in the Improvement Plan included the following:

1. Comply with all directives from your supervisors and/or District administration. This includes immediate compliance with all past directives with which you have failed to comply.

2. Attend work in a predictable and reliable fashion. This includes, but is not limited to, being present on-site at least one-half hour before school begins.

[¶] ... [¶]

4. Use instructional time for instructional activities. Do not use instructional time to complete personal or administrative tasks: Including, but not limited to, email correspondence.

[¶] ... [¶]

7. Record and enter student attendance, absences, and tardiness into the ABI system on a daily basis. Submit ABI Reports weekly.

[¶] ... [¶]



10. Check in with the office secretary no later than 7:30 a.m. each work day.

11. Provide weekly, suitable lesson plans to Principal Ruesser each Friday for the following week.

12. Refrain from discussing inappropriate topics in the classroom including, by way of illustration and not limitation, drug use and the status of your health and/or use of prescription medication.

19. The Notice of Unprofessional Conduct was served on respondent on June 1, 2012, the last day of the 2011/2012 school year. The Improvement Plan went into effect on August 14, 2012, the first day of the 2012/2013 school year.

*Failure to Meet Requirements of Improvement Plan in the 2012/2013 School Year*

20. During the 2012/2013 school year, respondent failed to comply with the first directive set forth in the Improvement Plan, to comply with all his supervisors' directives, in the following ways: (1) on September 26, 2012, respondent failed to report for a social science department meeting; (2) on September 21, 2012, he failed to submit his lesson plans for the following week by 4:00 p.m., as directed by Principal Ruesser (he submitted them at 8:38 p.m. that evening); (3) he consistently failed to use the format for lesson plans that Vice Principal Schaeffer directed him to use; and (4) on January 18, 2013, he failed to submit his lesson plans by 4:00 p.m. (he submitted them at 9:30 p.m. on January 19, 2013).

21. Respondent failed to comply with the second directive set forth in the Improvement Plan to attend work in a predictable and reliable fashion. He was absent either for the entire day or for a portion of a day nine times between August 29 and November 5, 2012. This is greater than the typical number of absences for teachers in the District over a similar period of time. As of January 2013, respondent had already exhausted his sick leave total for the entire school year.

22. Respondent failed to comply with the fourth directive set forth in the Improvement Plan to use instructional time for instructional activities when he sent emails to Vice Principal Schaeffer during instructional time on August 14, October 5, and October 29, 2012.

23. Respondent failed to comply with the seventh directive of the Improvement Plan to submit ABI Reports weekly by failing to submit timely reports for the weeks of August 21 through 24, September 3 through 7, September 24 through 28, and October 1 through 5, 2012.

24. Respondent failed to comply with the tenth directive set forth in the Improvement Plan to check in with the office secretary no later than 7:30 a.m. each work day. Between August 15 and October 4, 2012, he checked in late eight times.

25. Respondent failed to comply with the eleventh directive of the Improvement Plan to provide to Principal Ruesser lesson plans each Friday for the following week. Respondent was required to submit the lesson plans by 4:00 p.m. On August 10, 2012, he submitted his lesson plans at 8:07 p.m. On August 24, 2012, he submitted them one hour late. On August 14 and 24, and September 7, 2012, he submitted lesson plans that did not follow the format Vice Principal Schaeffer had directed him to use.

26. The actions that respondent took during his third period World Geography class in taping a laminated card on a student's back with the word "penis," and in projecting altered photographs of three students on the SMART Board demonstrate that respondent also failed to comply with the twelfth directive in the Improvement Plan to refrain from discussing inappropriate topics in the classroom. In addition, students who were in respondent's third period World Geography class testified that respondent discussed drug use and selling drugs in class, and sometimes used curse words such as "damn" and "shit." Respondent's actions in taping the laminated card to the student's back, projecting altered photographs, discussing drug use and sale, and using curse words also show that respondent failed to comply with the fourth directive in the Improvement Plan to use instructional time for instructional activities.

#### *District Policies*

27. In addition to District Administrative Regulation 4161.2 cited in Finding 17(c) and Board Policy 5121 cited in Finding 17(e), the Governing Board has also adopted Board Policy 4119.21, which provides:

The Governing Board expects district employees to maintain the highest ethical standards, follow district policies and regulations and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

28. The District has entered into a Collective Bargaining Agreement (CBA) with its teachers. The CBA includes Appendix A, entitled "Teacher Duties and Responsibilities." In relevant part, Appendix A provides:

...Yuba City Unified School District has defined competent instruction as follows:

The teacher:

[¶] ... [¶]

3. Prepares current lesson plans which include objectives, activities, resources, and has them available;

[¶] ... [¶]

11. Develops an atmosphere that encourages students' learning by:

- a. treating all students in a positive manner;
- b. showing interest/enthusiasm in the unit/course study;
- c. helping students develop a positive self-image by:
  - i) striving for success in every student,
  - ii) emphasizing what students have learned rather than what they have not learned.

#### *Respondent's Fitness To Teach*

29. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235 (*Morrison*), the California Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." The court listed the following factors as relevant when determining whether a teacher's conduct indicates that he or she is fit to teach: "[1] the likelihood that 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 party involved, [5] the extenuating or aggravating circumstances, if any, surrounding the conduct, [6] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [7] the likelihood of the recurrence of the questioned conduct, and [8] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers." (*Id.* at pp. 229-230.)

30. As set forth below, when respondent's conduct is considered in light of the *Morrison* factors, the District established that respondent is unfit to teach.

31. Adverse Effect of Respondent's Conduct. Sixteen students between the ages of 15 and 16 testified at the hearing. They generally described seeing the laminated card with the word "penis" that respondent taped on S.F.'s back and/or one or more of the altered photographs respondent put up on the SMART Board in class. In addition, the District submitted 22 handwritten student statements, including those from the students who testified, about the card respondent placed on S.F.'s back and the altered photographs he put up on the

SMART Board. In their testimony and statements, some of the students noted that many in the class laughed when respondent engaged in these actions. Some stated that the students who respondent targeted were the biggest "trouble makers" in the class. Some described respondent's behavior as "joking." They noted that he permitted students to place other signs on S.F.'s back and to take pictures with their smartphones of the signs and the altered photographs. Few could remember any remarks respondent made when he engaged in these actions, other than to ask whether the students wanted to see "something funny." A few of the students stated that they thought respondent's actions were "inappropriate," and they felt that his intent was to "humiliate" the targeted students to keep them "quiet."

32. During their testimony, some of the students noted that students generally talked more in respondent's class than in other classes. Some also noted that respondent spent "a lot" of time during class working on his computer, while they worked independently on worksheets. Many noted the significant amount of time respondent was absent. Some remarked that he sometimes used "curse words" such as "damn" and "shit." One remembered that he talked in class about smoking marijuana and being part of a drug cartel. Others remembered him telling the students whose photographs were altered that they would end up in jail. Some of the students believed that they did not learn as much in respondent's class as they should have. One of the students had asked for a transfer from respondent's class because respondent was "never there," and he tested them on material that he did not teach them.

33. Thomas Walters, Assistant Superintendent for Human Resources, Principal Ruesser, and Assistant Principal Schaeffer testified about the effect respondent's conduct had on students, administrators, fellow teachers, and District staff. According to Assistant Superintendent Walters, teachers are allowed 10 days each school year for sick and personal leave, and most teachers do not utilize all this leave time. The amount of time respondent was absent was significantly above the average. Respondent was granted a leave for a period of time during the 2011/2012 school year as a reasonable accommodation for medical issues. On May 9, 2012, respondent's counsel notified the District that respondent no longer required "any workplace accommodations in order to perform his teaching duties," and that he did not require further accommodation at that time because his "medical condition [had] improved dramatically."

34. Respondent was warned on numerous occasions about his excessive absenteeism, his failure to call the substitute system in a timely manner, and his failure to have appropriate lesson plans for his substitutes when he was absent. Before the Notice of Unprofessional Conduct was issued, respondent was given written warnings about these concerns, including: (1) a Letter of Reprimand dated March 26, 2010; (2) a Summary of Meeting on March 17, 2011; and (3) a Letter of Warning dated March 25, 2011. In addition, Principal Ruesser had numerous communications with respondent about these issues.

35. Principal Ruesser testified that respondent's failure to timely notify RVHS of his absences made it very difficult for the school to obtain substitutes. Because respondent did not leave adequate lesson plans, Principal Ruesser sometimes asked Ashlee Kaye, a teacher who was the "content lead" in respondent's subject area, to prepare lesson plans for

respondent's substitutes. Ms. Kaye would have to prepare these lesson plans at a time when she was trying to teach her own classes. When respondent called in absent for just the first period, and then later called in absent for the remainder of the day, the District would sometimes have to pay for two substitutes.

36. When respondent failed to timely and accurately turn in his grades, Principal Ruesser received multiple complaints from parents. Some students were not able to participate in athletic programs because their GPAs were too low when they were calculated without respondent's missing grades. When respondent failed to turn in the class records for the students in his Driver Education class, those students were not able to get their drivers' permits.

37. Vice Principal Schaeffer testified about the significant time he spent trying to help respondent prepare appropriate lesson plans that were "clear and congruent." Vice Principal Schaeffer provided a lesson plan template for respondent to follow, and met with respondent at least 10 times to help him with his lesson plans. Vice Principal Schaeffer worked with respondent "extensively" and "in detail" to ensure that respondent knew what the District required with regard to lesson plans. After working with Vice Principal Schaeffer, respondent initially created lesson plans that complied with the District's requirements. But over time, respondent's lesson plans became less and less compliant. When respondent's lesson plans were not in compliance with the District's template, they did not provide sufficient information for a substitute to follow to teach respondent's classes effectively.

38. Vice Principal Schaeffer conducted two formal observations of respondent's classroom. He observed that "lots" of students were "off task." Many of the students were talking and respondent did not appear to have much control. When he did attempt to redirect a student, he made "idle threats." Vice Principal Schaeffer concluded that respondent did not have a "positive professional relationship" with the students in his class. He spoke to respondent about the proper ways to redirect students who were off task. He advised respondent to create clear and consistent routines and procedures. He also advised respondent about instructional strategies to maximize student engagement. According to Vice Principal Schaeffer, because the classes at RVHS were 90 minutes long, he informed respondent that he needed to prepare lessons that were very structured and had sufficient work for the students to perform to keep them on task.

39. Vice Principal Schaeffer conducted the investigation into respondent's taping of the card with the word "penis" on S.F.'s back and his displaying the altered photographs of students. S.F. told Vice Principal Schaeffer about the card taped on his back and asked if respondent could get into trouble for it. S.F.'s parents were "shocked" at respondent's treatment of their child. Vice Principal Schaeffer collected written statements from students about the card and the altered photographs. He described respondent's conduct as "highly inappropriate." He believed that respondent improperly used humiliation as a disciplinary tactic, and that students were "unsafe emotionally" in respondent's class. Vice Principal Schaeffer's testimony was persuasive.

40. Kim Altorfer is a Records Specialist employed by the District at RVHS. She testified about the adverse impact respondent's failure to timely turn in the DMV forms and his grades had upon RVHS staff and students. According to Ms. Altorfer, RVHS cannot order new documents for the following year's Driver Education class until the current year's Driver Education documents are completed and submitted. Although she reminded respondent on numerous occasions to turn in completed DMV documents for the 72 students in his two Driver Education classes, instead of submitting them by January 2011 when they were due, respondent did not submit them until November 2011. Without the completed documents, the DMV would not recognize that the students had completed the Driver Education class.

41. At RVHS, teachers have four full days after a grading period ends to turn in their grades. For the first quarter of 2011, teachers were required to turn in their grades by 8:00 a.m. on October 14, 2011. Principal Ruesser extended this deadline to midnight for respondent. By October 17, 2011, respondent still had not turned in his grades. RVHS issued report cards without respondent's grades for the students in his classes. Ms. Altorfer received "lots" of calls from the students' parents about the missing grades. As set forth above, some students were unable to compete in athletics because their GPAs were not high enough without the missing grades. In addition, the overall GPAs and class credits could not be finally determined for any of the affected students. When respondent finally turned in his grades, instead of inputting them into the school's computer system, he handwrote them. Ms. Altorfer spent two hours manually inputting respondent's grades. Respondent gave different, inconsistent excuses to Principal Ruesser and Ms. Altorfer about why he did not get his grades in on time.

42. Given the facts set forth in Findings 29 through 41, the likelihood that respondent's conduct may have adversely affected students, fellow teachers, school administrators, and school staff is extremely high.

43. Degree of Adversity Anticipated. By taping a card with the word "penis" on a sleeping student's back, permitting other students to put similarly inappropriate notes on that student, drawing a swastika and unacceptable phrases and numbers on the photographs of students, and allowing other students to take pictures of all this, respondent displayed an extraordinary insensitivity to the feelings of the targeted students and the sensibilities of the teenagers in his class. Respondent's conduct was far worse than just joking, adolescent behavior. He subjected the targeted students to ridicule and humiliation. He gave tacit approval to the other students that such disgraceful conduct was acceptable. Slurring students as "white trash" and liking "little boys," and using a symbol as highly inflammatory as a swastika sent a signal to the teenagers in his class that engaging in similar disrespectful conduct was okay. He brought disgrace on the profession of teaching. His conduct was immoral. Thus, the District established that there was a substantial likelihood that respondent's conduct had a significant adverse effect on his students.

44. Respondent's criminal conduct, his leaving capsules of a prescription drug in his desk drawer, and his discussing inappropriate topics in his classroom such as drug use were similarly reprehensible and had a substantial likelihood of having a significant adverse

effect on his students. Teachers are expected to be upright, law-abiding adults and to model appropriate mature behavior. Respondent woefully failed to conform his conduct to this expectation. In addition, respondent's excessive absenteeism, failure to timely notify RVHS of his absences, failure to provide suitable lesson plans, failure to record student attendance, absences and tardiness into the ABI system, failure to timely complete DMV forms, failure to timely issue grades, and use of instructional time for noninstructional activities all had a strong likelihood of having a significant adverse effect on his students, fellow teachers, District administrators and school staff.

45. Proximity in Time of Respondent's Conduct. Respondent's most egregious conduct - taping a card with the word "penis" on a sleeping student's back, and altering student photographs - occurred in or about March 2013. The District served the Notice of Immediate Suspension and Intention to Dismiss on respondent on April 24, 2013, approximately six weeks after learning of respondent's wrongdoing. The remaining allegations in this matter were based primarily on misconduct that was ongoing, up to and including a few months before the District moved to dismiss respondent.

46. Respondent's Teaching Certificate. Respondent is a high school teacher. The teen years are an impressionable time. High school students are often faced with issues relating to discrimination and harassment. Respondent's actions are of serious concern given the nature of his credential and the age of his students. Respondent, as a high school teacher, is expected to be a role model, and to display appropriate adult behavior for his students to emulate. Instead of acting as an exemplar, respondent engaged in reprehensible unprofessional conduct.

47. Extenuating or Aggravating Circumstances. Although respondent asserted that he had a disability and was given time off work as a reasonable accommodation, there was no evidence to establish that his medical or personal issues should be considered to be extenuating circumstances to justify his wrongful conduct. Respondent's conduct in ridiculing and humiliating students in his class, engaging in criminal conduct, leaving prescription drug capsules in his desk drawer, using instructional time for noninstructional purposes, discussing inappropriate topics in his classroom, and failing to comply with District policies and procedures cannot be excused by any claims of disability or failure to accommodate.

48. In addition, although the students who were targeted with the altered photographs and the laminated card may have misbehaved in respondent's class, their misbehavior did not justify or excuse respondent's misconduct. Clearly, there were much better and more effective ways to discipline those students and redirect their behavior.

49. Praiseworthiness or Blameworthiness of Respondent's Motives. There was no evidence to suggest that respondent had any praiseworthy motives when engaging in the conduct alleged in the Statement of Charges.

50. Likelihood of Recurrence. It is likely that respondent's conduct will be repeated if he is allowed to remain as a teacher for the District. Respondent was given

sufficient training and guidance on the District's expectations regarding the quality of his instruction, the preparation of lesson plans, and the requirements of the District's policies and procedures. Respondent was repeatedly warned about his excessive absenteeism, his failure to call the substitute system in a timely manner, and his failure to have appropriate lesson plans for substitutes when he was absent. He was issued numerous written warnings. He was given a Notice of Unprofessional Conduct. None of this training, guidance, or warnings appeared to have a positive effect on improving respondent's conduct. Moreover, there was no evidence that respondent had adequate insight into his shortcomings or made sufficient effort to remedy his inadequacies. Consequently, the likelihood that his wrongdoing would be repeated if he is retained as a teacher is exceedingly high.

51. Chilling Effect of Discipline. There was no evidence to show that dismissing respondent would inflict an adverse or chilling effect upon his constitutional rights or the constitutional rights of any other teachers.

52. When all the *Morrison* factors are considered, the District established that respondent is unfit to teach children.

## LEGAL CONCLUSIONS

1. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for "immoral" conduct. In *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, the court explained that:

A teacher may ... be dismissed for "[i]mmoral or unprofessional conduct." (§ 44932, subd. (a)(1).) "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 wilful, 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 Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, 4 Cal.Rptr. 286.) Moreover, the definition of immoral or unprofessional 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." (*Board of Trustees v. Stubblefield, supra*, 16 Cal.App.3d at p. 824, 94 Cal.Rptr. 318.)



2. As set forth in Finding 43, respondent's taping a card with the word "penis" on a sleeping student's back, permitting other students to place similarly inappropriate notes on that student, drawing a swastika and unacceptable phrases and numbers on the photographs of students, and allowing other students to take pictures of all of this constituted immoral conduct. (Findings 9 through 14.) Respondent showed a moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare. His conduct was inconsistent with the reasonable expectations society places upon teachers to act as exemplars who model proper adult conduct to the students they teach. This conduct therefore establishes cause to dismiss respondent for immoral conduct under Education Code section 44932, subdivision (a)(1).

3. In addition, respondent's burglary convictions were for crimes that involved moral turpitude. (Findings 4, 6 and 7.) Consequently, those convictions also constitute cause to dismiss respondent for immoral conduct under Education Code section 44932, subdivision (a)(1).

4. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for "unprofessional conduct." Before a school district may discipline a teacher for unprofessional conduct, it must first comply with the requirements of Education Code section 44938, which, in relevant part, provides:

(a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

5. The District established that it complied with the requirements of Education Code section 44938, subdivision (a), when it issued the Notice of Unprofessional Conduct in June 2012. The District adequately described the unprofessional conduct in which respondent engaged to furnish him with an opportunity to correct his behavior. Respondent failed to correct his behavior. Consequently, respondent's: (1) criminal convictions (Findings 2 through 8); (2) taping the card with the word "penis" on a student's back and displaying altered pictures of students on the SMART Board (Findings 9 through 14); and (3) excessive absenteeism, failure to submit adequate lesson plans, failure to comply with District policies and procedures and supervisors' directives, and failure to comply with the Improvement Plan (Findings 16 through 26) all establish cause to dismiss him for unprofessional conduct under Education Code section 44932, subdivision (a)(1).

6. Pursuant to Education Code section 44932, subdivision (a)(5), a school district may discipline a permanent certificated employee for "evident unfitness for service." In *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*), the Third District Court of Appeal defined the term "evident unfitness for service," as used in Education Code section 44932, subdivision (a)(5), to mean "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." The court found that the term "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." (*Ibid.*) The court held that the *Morrison* factors "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service." (*Id.* p. 1445.) As the court in *Woodland* explained, "[i]f the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

7. Respondent's: (1) criminal convictions (Findings 2 through 8); (2) placing the card with the word "penis" on a student's back and displaying altered pictures of students on the SMART Board (Findings 9 through 14); and (3) leaving prescription drug capsules in his desk drawer (Finding 15) constitute conduct that demonstrates that respondent is unsuitable for teaching due to a defect in temperament. Consequently, this conduct establishes cause to dismiss respondent for evident unfitness for service under Education Code section 44932, subdivision (a)(5).

8. Pursuant to Education Code section 44932, subdivision (a)(7), a school district may discipline a permanent certificated employee for persistent violation of or refusal to obey reasonable regulations prescribed by a school district's governing board. As set forth in Findings 16 through 28, and 33 through 41, respondent persistently violated or refused to obey reasonable regulations prescribed by the District's Governing Board. Consequently, the District established cause to dismiss respondent under Education Code section 44932, subdivision (a)(7).

9. Pursuant to Education Code section 44939, a school district may suspend a permanent certificated employee for "willful refusal to perform regular assignments without reasonable cause." As set forth in Findings 16 through 26, and 33 through 41, respondent willfully refused to perform assignments without reasonable cause. Consequently, the District established cause to suspend respondent under Education Code section 44939.

10. As set forth in Findings 29 through 51, when all the *Morrison* factors are considered, the District established that respondent is unfit to teach children. Consequently, the District's dismissal of respondent under Education Code section 44932, subdivisions (a)(1), (a)(5), and (a)(7), must be upheld.


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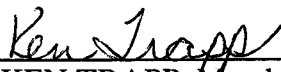
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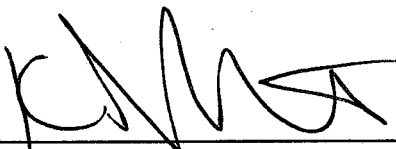
ORDER

Respondent Troy Alexander is DISMISSED as a permanent certificated employee of the Yuba City Unified School District pursuant to Legal Conclusions 1 through 10, jointly and individually.

DATED: June 17, 2014

  
MICHAEL ALLEN, Member  
Commission on Professional Competence

  
KEN TRAPP, Member  
Commission on Professional Competence

  
KAREN J. BRANDT, Chairperson  
Commission on Professional Competence