

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
CULVER CITY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of Dismissal of:

JEFF ROSE,  
A Permanent Certificated Employee,

Respondent.

OAH No.: 2018100560

**DECISION**

A Commission on Professional Competence (Commission) heard this matter in Los Angeles, California, on March 4-7, 2019. The Commission members were Jewel Desosa; Tanya Golden; and Administrative Law Judge Thomas Heller, Office of Administrative Hearings, State of California, who presided.

Aaron V. O'Donnell, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented the Culver City Unified School District (District).

Lawrence Rosenzweig, Esq., represented respondent Jeff Rose.

The matter was deemed submitted for decision at the end of the hearing on March 7, 2019. The Commission thereafter deliberated in executive session.

**SUMMARY**

The District seeks to dismiss respondent, a fourth-grade teacher, for allegedly engaging in inappropriate physical contact with students despite multiple warnings and directives to change his behavior. The physical contact included allowing students to give respondent shoulder massages, tickling students, placing his cheek against a student's cheek, picking up a student, flicking girls' pony tails and tousling boys' hair, hugging students, and similar conduct. Respondent admits most of the physical contact but denies it was inappropriate, and requests that he be allowed to return to teaching. Despite respondent's arguments, a preponderance of the evidence established causes for dismissal, and a majority

of the Commission concludes that respondent should be dismissed from his position as a permanent certificated employee of the District.

## FACTUAL FINDINGS

### *Respondent's Background*

1. Respondent is a permanent certificated employee of the District who was assigned as a fourth-grade teacher at Linwood E. Howe Elementary School in Culver City, California, until being placed on leave before this case began. He started working for the District in 1997. Before that, he was a teacher for the Los Angeles Unified School District for about two years. Respondent has a degree in psychology and holds a multi-subject teaching credential with an emphasis in cross-cultural language and academic development (CLAD).

### *Letter of Reprimand in 2014*

2. On September 11, 2014, the parents of one of respondent's students met with Principal Kim Indelicato and expressed concern about a report from their child that respondent had asked for a massage during class. Ms. Indelicato met with respondent about the report, and respondent acknowledged that the week prior, while reviewing a student's test, the student went behind him and gave him a short massage on the shoulders. Respondent told the student "that feels good" or words to that effect, and the next student did the same thing while respondent was reviewing that student's test. Altogether, respondent permitted up to 10 students to give him shoulder massages in this manner.

3. The incident was of particular concern because respondent had received two prior written directives to refrain from inappropriate physical contact with students. The first came from Ms. Indelicato's predecessor in a Conference Summary Memorandum dated February 24, 2012, and the second came from Ms. Indelicato in a Letter of Warning dated November 19, 2012. On respondent's motion, evidence about the matters underlying the two prior directives was excluded from the hearing because those underlying matters occurred more than four years before the filing of this case. (See Ed. Code, § 44944.1, subd. (d)(3).)<sup>1</sup> However, evidence of respondent's receipt of the prior directives was admitted to establish the circumstances under which respondent permitted the shoulder massages from students in September 2014.

4. The District placed respondent on paid administrative leave while it investigated the incident involving the massages. On September 30, 2014, then-Assistant Superintendent Leslie Lockhart sent respondent a "Letter of Reprimand; Notice of Unprofessional Conduct and Unsatisfactory Performance" (Letter of Reprimand) formally reprimanding him for inappropriate physical contact with students. The Letter of Reprimand

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<sup>1</sup> Undesignated statutory references are to the Education Code.

concerned the massages, the matters underlying the prior directives in 2012, and respondent's violation of those directives in permitting the massages.

5. The Letter of Reprimand advised respondent that his physical contact with students was unprofessional and unsatisfactory and violated District Governing Board (Board) Policy 4119.21 (Professional Standards), and Board Policy 5137 (Positive School Climate). The Letter of Reprimand also included specific directives to respondent with regard to future physical contact with students, and notified him that violations could result in further disciplinary proceedings up to and including dismissal. As relevant here, the directives included:

1. Refrain from physical contact with your students except when such physical contact is reasonable and necessary for one or more of the following purposes:
  - a. To maintain order, protect property, or protect the health and safety of pupils;
  - b. To quell a disturbance threatening physical injury to persons or damage to property;
  - c. For self-defense;
  - d. To obtain possession of weapons or other dangerous objects within the control of a student.
2. This directive specifically includes but is not limited to hugging, kissing, massages, and picking up students. You must not initiate such contact with any student, and you must not permit any student to engage in any such contact with you, if initiated by a student.
3. If there is ever an occasion in the future when you do find it necessary to engage in or permit physical contact with a student or students, you must, no later than the end of the school day on which the contact occurred, report it to me [i.e., Ms. Lockhart] and provide an explanation of the circumstances that led to the contact.
4. If you are seeking to give encouragement to a student or to celebrate learning, use an appropriate and professional technique that does not involve physical contact, such as positive recognition in the form of applause, sticker, or awarding of some classroom privilege.

5. Follow BP 4119.21, Professional Standards, and BP 5137, Positive School Climate. Copies are attached hereto for your reference. You are directed to review and familiarize yourself with these policies.
6. Follow the California Standards for the Teaching Profession (CSTP). A copy is attached hereto for your reference. You are directed to review and familiarize yourself with these standards.

(Exhibit 10, pp. 3-4.)

*Incident in 2018*

6. Respondent initially complied with the directives in the Letter of Reprimand, but later resumed physical contact with students that did not comply. The incident that brought this to light occurred on or about March 16, 2018, when respondent came up behind female student K.C., tickled her sides with his hands, and then put his arm around her shoulder and his cheek to her cheek. K.C. described this conduct to her mother, who reported it to the District via email on March 17, 2018.

7. The District placed respondent on paid administrative leave, and respondent met with Assistant Superintendent of Human Resources Jennifer Slabbinck and respondent's union representative on April 18, 2018, to discuss the incident. Counsel for the District also interviewed respondent about the incident on June 29, 2018, with Ms. Slabbinck and respondent's counsel present. In the meeting on April 18, 2018, respondent described his cheek-to-cheek contact with K.C. as a "nuzzle." In the interview on June 29, 2018, respondent acknowledged that while K.C. was working on a science activity in his classroom, respondent approached K.C. from behind, placed his hands on or near the sides of K.C.'s ribcage, and tickled K.C. on her sides to gain her attention. Respondent also acknowledged that approximately five minutes later, when student K.C. completed the activity, respondent placed his left arm around K.C.'s shoulder, and then lifted his arm to the left side of K.C.'s head and pressed the side of K.C.'s head or face against his own.

8. Respondent's statements in the meeting and interview also revealed that his tickling of K.C. was not an isolated incident. By his own account in the meeting on April 18, 2018, respondent tickled other students on their rib cages as a way of saying "hello." In the interview on June 29, 2018, respondent further stated he tickled student N.A. during the 2016-2017 school year during a morning assembly. Respondent stated that, while standing behind student N.A., he tickled N.A.'s ribcage on both sides, under the arms. Respondent stated that his purpose in doing so was to get N.A.'s attention or greet N.A.

9. In the interview on June 29, 2018, respondent also stated he tickled student J.L. in or about January 2018. Respondent acknowledged that, while J.L. was sitting at a desk reading, he placed both hands high on the sides of J.L.'s rib cage and tickled J.L.

Respondent stated that he did so as an “opening” in order to “see how [J.L.] was doing,” and that respondent were ‘just trying to be funny,’ or words to that effect.

10. During the interview on June 29, 2018, respondent also acknowledged tickling student I.C. in or about November 2017. Respondent stated that, while I.C. was seated and reading, respondent approached I.C. from behind, and tickled I.C.’s lower-mid torso on the left and right side. Respondent stated he did so as a means of gaining I.C.’s attention.

11. In the meeting on April 18, 2018, respondent further acknowledged flicking girls’ pony tails, stating that it was a way of saying “hello,” and that he may have placed his hand on students’ shoulders as a way of saying “you are doing good.” When interviewed on June 29, 2018, respondent again acknowledged flicking girls’ pony tails and described it as “just a little boink,” “just checking in,” “a way to say what’s going on or how are you,” and “a way to get their attention or icebreak,” or words to that effect. Respondent also acknowledged tousling boys’ hair.

12. During the 2017-2018 school year, respondent also picked up student G.G. by her elbows and carried her for about five steps in a hallway before putting her down. Respondent was not G.G.’s teacher at the time, but knew G.G. from a prior science rotation in his classroom. G.G. was walking with another class in a hallway when respondent picked her up.

13. On multiple occasions since September 30, 2014, respondent also hugged students despite the directive specifically prohibiting him from doing so. Respondent acknowledged doing so when interviewed on June 29, 2018.

14. When interviewed on June 29, 2018, respondent stated he kept the Letter of Reprimand in a file drawer in his classroom where he saw it every day. Respondent also stated he thought to himself after tickling student N.A. that he should not have done so, and thought to himself after tickling student I.C. that it was unnecessary and that he could have caught the student’s attention in another way.

15. Respondent did not report any of the physical contact described above to Ms. Lockhart, despite the directive in the Letter of Reprimand to do so. He also did not report any of it to Ms. Indelicato. Since the Letter of Reprimand, the only physical contact respondent reported was that a student once hit him on the rear end.

#### *Procedural History*

16. On August 24, 2018, Ms. Lockhart – who by then was District Superintendent – filed a Statement of Charges for respondent’s dismissal with the Board and served it on respondent. The alleged causes for dismissal included immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, and persistent violation of or refusal to obey school laws or regulations. On August 28, 2018, the Board directed Ms. Lockhart to give notice to respondent of the Board’s intent to dismiss him. On the same day,

respondent was served with a Notice of Intent to Dismiss based on the Statement of Charges, but excluding the immoral conduct charges. The District filed the Notice of Intent to Dismiss with the Office of Administrative Hearings on August 31, 2018. Respondent submitted a Request for Hearing dated August 31, 2018, which the District received on September 5, 2018. On November 7, 2018, the District served a Notice of Hearing on respondent, through his counsel.

### *Hearing*

#### DISTRICT'S EVIDENCE

17. The District called two students (G.L. and G.G.) to testify about respondent's behavior, and four parents to testify about student accounts of his behavior. The District also called Ms. Indelicato, Ms. Slabbinck, and Ms. Lockhart to testify about their actions and respondent's statements regarding his physical contact with students. These witnesses, the documentary evidence, and respondent's admissions established the facts described above, which are almost all of the specific acts and omissions alleged in the Statement of Charges. The only specific alleged acts that the evidence did not establish were: (1) respondent squeezed the knees of students (Statement of Charges, p. 6, ¶ 11); and (2) respondent hit G.L.'s hips with his open hands to make them move back and forth from side to side (*id.* at p. 6, ¶ 12). Regarding the former allegation, G.L. testified respondent squeezed her knees while she was seated at her desk, but that seemed unlikely since G.L.'s knees would have been under her desk while she was seated. Respondent denied squeezing any student's knees, and the District presented insufficient evidence to prove otherwise. Regarding the latter allegation, G.L. testified respondent touched her hips on one occasion while she was seated, not that he hit them to make them move back and forth from side to side. Furthermore, other evidence suggested the allegation pertained to a different student who was dancing, not G.L. Respondent denied the allegation as to any student, and the evidence did not establish it.

18. The District's evidence also included Board Policy 4119.21 (Professional Standards) and Board Policy 5137 (Positive School Climate). Board Policy 4119.21 provides in relevant part, "The . . . Board expects District employees to maintain the highest ethical standards, to follow [D]istrict policies and regulations, and to abide by state and federal laws. Employee conduct should enhance the integrity of the [D]istrict and advance the goals of the educational programs. . . ." (Exhibit 10.) Board Policy 5137 provides in relevant part, "All staff, volunteers, visitors and parents/guardians are expected to serve as role models for students by demonstrating positive, professional attitudes and respect toward each student, parent/guardian, volunteer and staff member . . ." (*Ibid.*)

#### RESPONDENT'S EVIDENCE

19. Respondent testified he was designated a master teacher several times, and was a member of the school's leadership team and an administrative designee on multiple occasions. He has also served on curriculum committees and organized the school's science

fair. His overall performance ratings have met or exceeded District standards, even during the school year when he received the Letter of Reprimand. At the end of that year, he received an overall rating of “Meets Expectations,” with a “Needs Improvement” rating in just one subcategory regarding ethical standards and conduct that enhances the integrity of the District. Despite the incident, Ms. Indelicato placed him on a five-year performance review schedule, not on a more frequent schedule. Respondent has also won two Honorary Service Awards for his service to the school above and beyond his job duties.

20. Regarding the massage incident in September 2014, respondent testified the first shoulder massage from a female student lasted about 10 seconds. The second student performed a similar massage, after which respondent tapped his own shoulders to indicate another student could perform a third massage. While respondent originally said he received massages from 10 students, he now believes it was only five or six students. Eventually he told the students to stop. The last student to give him a massage was R.B., who did so at other students’ urging. Respondent testified R.B. appeared uncomfortable and hesitant about the massage, so respondent called it off. Respondent also testified he stated, “I want to bite you” to R.B. on two or three other occasions, which respondent characterized as a term of endearment.

21. Regarding the incident with K.C. in March 2018, respondent testified he gave her just a short “poke” on the ribs to get her attention that lasted a split second. He then kneeled down next to her, put his arm around her, moved his head toward her head until they touched temple to temple, and told K.C. she did very well on the test. Regarding picking up G.G. in the hallway, respondent testified he did it just to be funny. With respect to tickling students, respondent testified his contacts with students were short “jolts” or “pokes” to the ribs rather than tickles. He does not recall using the word “tickle” in the meeting in April 2018 or the interview in June 2018.

22. With respect to hugging students, respondent testified he did not hug students in the 2014-2015 or 2015-2016 school years after receiving the Letter of Reprimand, but resumed the practice in the 2016-2017 school year. After that, he hugged students about two or three times per day. Respondent testified that other teachers hugged students, and he was not doing anything that other teachers were not. Respondent also believes the Letter of Reprimand was an overreaction and displayed a lack of confidence in his judgment. Nonetheless, he is willing to change his behavior if allowed to return to teaching, even if the restrictions may be inconsistent with his personal philosophy.

23. Respondent also called fellow teachers, an instructional aide, and several parents of former students, who all testified they never observed any inappropriate physical contact between respondent and a student. In addition, respondent offered excerpts from the deposition of another parent to the same effect. These witnesses described respondent as an excellent teacher who was well liked and fostered a positive learning environment. One of the parents, Amy F., was volunteering in the classroom during the massage incident in September 2014. She testified respondent did nothing wrong during that incident, and that the students initiated the contact, which respondent did nothing to reciprocate. Amy F. did

observe respondent playfully pick up a student in the classroom that day, but that also did not concern her.

#### DISCUSSION OF EVIDENCE

24. The evidence established that respondent's physical contact with students was inappropriate on several levels. First, respondent's receipt of shoulder massages, "nuzzl[ing]" a student, picking up a student, and tickling students (or poking or jolting them) displayed an overly familiar attitude of respondent toward his students. Second, this conduct and respondent's habit of regularly hugging students violated the express directives in the Letter of Reprimand to refrain from any unnecessary physical contact with students. Third, respondent's failure to refrain from such contact despite the directives in the Letter of Reprimand and prior directives demonstrated an unwillingness or inability to comply with District directives and policies. Fourth, respondent did not report any of the physical contact to Ms. Lockhart, even though she expressly instructed him to do so.

25. Respondent considered the Letter of Reprimand to be an overreaction to the massage incident, and suggested the District should have had more confidence in his judgment. But the massage incident was not entirely student-initiated; respondent himself stated he tapped his own shoulders to encourage one of the students to give him a massage, something that Amy F. apparently did not see. Encouraging that behavior reflected poor judgment, and respondent's behavior since then casts even more doubt on his judgment. Despite the warnings and directives to change his behavior, respondent has initiated unnecessary physical contact with students again and again. This pattern of behavior undermines his assertion that he will change his future behavior toward students, and supports the District's Statement of Charges as set forth below.

#### LEGAL CONCLUSIONS

##### *Legal Standards*

1. As a permanent employee, the Board may not dismiss respondent except for one or more of the causes enumerated in sections 44932, subdivision (a), and/or section 44933. The causes for dismissal include unprofessional conduct (§§ 44932, subd. (a)(2), 44933), unsatisfactory performance (§ 44932, subd. (a)(5)), evident unfitness for service (§ 44932, subd. (a)(6)), and persistent violation of or refusal to obey the state's school laws or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him (§ 44932, subd. (a)(8)).

2. The District has the burden of proving cause for dismissal by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1040.) A preponderance of the evidence means "'evidence that has more convincing force than that opposed to it.' [Citation.]" (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

## *Causes for Dismissal*

### UNPROFESSIONAL CONDUCT

3. “Unprofessional conduct” has been described as “‘that which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing.’” (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553, quoting 66 Corpus Juris, p. 55, overruled in part on another ground in *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575, 587, fn. 7.)

4. Dismissal on grounds of unprofessional conduct requires that the employee must have first received notice of the respect in which his conduct has been unprofessional, and provided an opportunity to overcome his deficiencies. More specifically, as provided by section 44938, subdivision (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 notice requirement was met in this case, and a majority of the Commission concludes that respondent’s conduct was unprofessional. In the Letter of Reprimand dated September 30, 2014, respondent was specifically notified that his physical contact with students was inappropriate and unprofessional. But respondent continued to engage in such physical contact with students, even after being warned that he could be dismissed for doing so. This reflected poor judgment and an overly familiar attitude toward his students. (Factual Findings 24-25.) To a majority of the Commission, this conduct was unbecoming of a member of the teaching profession in good standing (*Board of Education of the City of Los Angeles v. Swan, supra*, 41 Cal.2d at p. 553), and indicates unfitness to teach according to the factors described in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*), which are analyzed below. Therefore, a majority of the Commission finds cause to dismiss respondent for unprofessional conduct.

### UNSATISFACTORY PERFORMANCE

6. Unsatisfactory performance is grounds for dismissal separate and apart from unprofessional conduct. (§ 44932, subd. (a)(5).) Like unprofessional conduct, dismissal for unsatisfactory performance requires that the employee must have first received notice of the

respect in which his performance has been unsatisfactory, and been provided an opportunity to overcome his deficiencies. More specifically, section 44938, subdivision (b)(1) requires:

At least 90 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 unsatisfactory performance, 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.

7. The notice requirement was met in this case, and the Commission unanimously concludes that respondent's conduct amounted to unsatisfactory performance. In the Letter of Reprimand, respondent was specifically informed that his inappropriate physical contact with students was unsatisfactory, and specifically warned that failure to change his behavior could result in his dismissal. (Factual Finding 5.) The same deficiency was also specifically noted in respondent's next performance evaluation. (Factual Finding 19.) Respondent, however, subsequently engaged in unnecessary and prohibited physical contact with students on multiple occasions. (Factual Findings 6-13, 24-25.) This was unsatisfactory performance and constitutes cause for dismissal.

#### EVIDENT UNFITNESS FOR SERVICE

8. Evident unfitness for service means “‘clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.’ [Fn. omitted.]” (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) This cause for discipline “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.*) “‘Unprofessional conduct’ is, as it were, often a lesser included form of proscribed behavior within ‘evident unfitness for service.’ Thus, conduct constituting ‘evident unfitness for service’ will often constitute ‘unprofessional conduct.’ But the converse is not true. ‘Evident unfitness for service’ requires that unfitness for service be attributable to a defect in temperament – a requirement not necessary for a finding of ‘unprofessional conduct.’” (*Id.* at p. 1445.)

9. A majority of the Commission concludes that respondent's conduct demonstrated a fixed character trait or defect in temperament. Respondent's actions cannot be dismissed as a momentary lapse in judgment that was out of character with any otherwise redeeming qualities that he may have. Considering the multiple warnings and directives against such actions over several years, it is apparent from respondent's conduct that he is either unwilling or incapable of refraining from unnecessary physical contact with students.

10. A person acting with common sense and self-control would take directives and warnings against such behavior to heart and abide by them. Respondent did not, and a majority of the Commission concludes his conduct indicates unfitness to teach according to the factors described in *Morrison, supra*, 1 Cal.3d 214, which are analyzed below. That respondent did not do so on many occasions also leads a majority of the Commission to conclude that his character and temperament are clearly not fit, not adapted to or unsuitable for teaching. Therefore, a majority of the Commission finds cause to dismiss respondent based on evident unfitness for service.

#### PERSISTENT VIOLATION OR REFUSAL TO OBEY BOARD REGULATIONS

11. Persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed by the governing board of one's employing school district is another independent basis for dismissal. (§ 44932, subd. (a)(8).) Persistent refusal requires a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196, italics omitted.) The term "persistent" in this context can be defined as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated. [Citation.]" (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 82.)

12. The Commission unanimously concludes that respondent persistently violated and refused to obey the reasonable regulations of the Board. Respondent was advised in the Letter of Reprimand that his physical contact with students violated Board policies, specifically, Board Policy 4119.21 (Professional Standards) and Board Policy 5137 (Positive School Climate). (Factual Finding 5.) That physical contact failed to "enhance the integrity of the [D]istrict and advance the goals of the educational programs," and did not "demonstrat[e] positive, professional attitudes and respect toward each student" as required by those policies. (Factual Finding 18.) Respondent was directed in no uncertain terms that such behavior must stop, but he subsequently engaged in similar behavior in violation of those policies. The violations were repeated and occurred despite respondent's knowledge of what was expected of him, evidencing intentional misconduct. The evidence thus established cause for dismissal on grounds of persistent violation of or refusal to obey the reasonable regulations of the Board.

#### MORRISON FACTORS

13. In *Morrison, supra*, 1 Cal.3d 214, the California Supreme Court described the factors to consider when determining whether a credentialed employee's conduct and overall impact on students and the school community renders the employee unfit to teach. The *Morrison* analysis applies to causes for discipline involving unprofessional conduct as well as evident unfitness to teach. (*Id.* at p. 227-230; *Woodland, supra*, 2 Cal.App.4th at p. 1445.) In this case, the Commission considered all the factors suggested by *Morrison*, concluding as follows:

a. The likelihood that the conduct may have adversely affected students or fellow teachers. Respondent testified that RB was uncomfortable and hesitant about giving him a shoulder massage. (Factual Finding 20.) Beyond that testimony, the District did not present evidence of an adverse effect on individual students or teachers. But collectively, the incidents had the likelihood of creating an overly familiar environment between respondent and his students, which was undesirable in an educational setting.

b. The degree of such adversity anticipated. The massage incident made RB uncomfortable, which was a mild adverse effect. The degree of adversity from the overly familiar classroom environment created by respondent's misconduct was also mild.

c. The proximity or remoteness in time of the conduct. Respondent's last misconduct occurred in March 2018, just a few months before this case began.

d. The type of credential held or applied for by the person involved. Respondent's teaching credentials allow him to teach young, suggestible students for whom he must serve as an appropriate role model.

e. The extenuating or aggravating circumstances surrounding the conduct. Respondent's repeated misconduct despite prior warnings and directives is an aggravating circumstance.

f. The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent described his motives in initiating some of the physical contact in terms of lightening the mood or "just checking in." (Factual Finding 11.) But there are other ways to accomplish these goals, and the Commission is skeptical of those stated motives given the pervasiveness of the misconduct. Overall, it is unclear to the Commission what respondent's motives were in engaging in the misconduct.

g. The likelihood of the recurrence of the questioned conduct. The likelihood of recurrence of at least some of the questioned conduct is high, given respondent's conduct since his receipt of the Letter of Reprimand. The persuasive force of respondent's promise to change his conduct in the future is undermined by his previous failure to do so despite clear warnings and directives. (Factual Finding 25.)

h. 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. The Commission does not foresee any disciplinary action will inflict an adverse impact or chilling effect upon respondent's constitutional rights or the constitutional rights of any other teacher.

14. Based on this analysis, a majority of the Commission concludes that respondent's misconduct indicates unfitness to teach. The most concerning aspect of respondent's misconduct is its repetition despite multiple warnings and directives, which suggests a high likelihood of recurrence if respondent is allowed to return to the classroom.

Respondent is apparently unwilling or unable to comply with the reasonable expectation of the District that he cease inappropriate physical contact with students. This is persuasive evidence to a majority of the Commission of respondent's unfitness to teach.

*Disposition*

15. “The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citation.]” (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 222.)

16. A majority of the Commission concludes that dismissal is warranted. The evidence established multiple causes for dismissal and a high likelihood that respondent will engage in inappropriate physical contact with students in the future. Respondent’s behavior spanning several years indicates to a majority of the Commission that he is unfit to teach, and should not be allowed to return to the classroom. His technical proficiency as a teacher and recommendations from colleagues and parents do not change these conclusions. Teaching involves more than technical proficiency, and respondent’s behavior with respect to physical contact with students was inappropriate and violated clear directives and Board policies. Given these considerations, respondent should not be allowed to return to the classroom.

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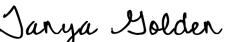
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## ORDER

Respondent Jeff Rose is terminated from employment with the Culver City Unified School District.

DATED: June 14, 2019

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TANYA GOLDEN  
Commission Member

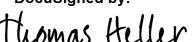
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JEWEL DESOSA  
Commission Member

DATED: June 14, 2019

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THOMAS HELLER  
Administrative Law Judge  
Office of Administrative Hearings