

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

RONALD RUBINE,

Respondent.

OAH Case No. 2009040760

**DECISION**

This matter came on regularly for hearing before the Commission on Professional Competence (Commission) at Los Angeles, California on February 1, 2 and 3, 2010. The Commission consists of the following members: Karina Gerger, teacher, Manhattan Beach Unified School District; James Nadler, teacher, Lennox Middle School; and David B. Rosenman, Administrative Law Judge, Office of Administrative Hearings.

The Los Angeles Unified School District (District) was represented by Fagen Friedman & Fulfroft, by Howard A. Friedman and Angela Gordon, attorneys at law. Respondent Ronald Rubine was present and was represented by Trygstad, Schwab & Trygstad, by Lawrence B. Trygstad and Deborah Eshaghian, attorneys at law.

Oral and documentary evidence was received and the parties submitted argument. The Commission considered the matter in executive session. The matter was then submitted for decision. After due consideration of the entire record herein the Commission makes the following factual findings, conclusions of law, and order:

**FACTUAL FINDINGS**

1. The Accusation and Statement of Charges were brought by Vivian K. Ekchian in her official capacity as Interim Chief Human Resources Officer for the District.

2. Respondent Ronald Rubine (Respondent) has been employed by the District since 1986. He is a permanent certificated employee. Since 2006, he has been employed as a Program Coordinator for the District's Office of Human Relations Diversity and Equity. Although he is often assigned to particular school sites for specific or continuing assignments, his office is located on the 16th floor of the headquarters office of the District located at 333 S. Beaudry Avenue, Los Angeles, California.

3. The Statement of Charges is dated February 11, 2009, and recommends the dismissal of Respondent from the District for the following legal causes under Education

Code<sup>1</sup> sections 44932 and 44939: (1) immoral conduct; (2) evident unfitness for service; (3) unprofessional conduct; and (4) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing Respondent. An Accusation was signed April 27, 2009.

4. Respondent was given written notice of the District's intention to dismiss Respondent unless he demanded a hearing. On May 6, 2009, Respondent submitted a Notice of Defense including his demand for a hearing.

5. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

6. On April 17, 2008, at approximately 3:25 p.m., Respondent and another employee, Myrene M., who were dating each other, walked from the elevator area of the 16th floor at District headquarters back towards their office areas. They hugged and started kissing. Myrene M. took Respondent by the hand from the hallway into the lobby of the freight elevator. Respondent leaned up against a wall in the freight elevator lobby and they kissed. Thereafter, Respondent and Myrene M. engaged in oral sex in the freight elevator lobby. More specifically Myrene M. dropped to her knees in front of Respondent and placed his penis in her mouth. According to Respondent, they were in the elevator lobby for 35 to 40 seconds when Respondent decided to stop and return to their office areas. The episode of Respondent and Myrene M. engaging in oral sex was seen via a surveillance camera in the freight elevator lobby, and was witnessed in the surveillance office on the 2nd floor of District headquarters by a District School Security Officer and a contractor working on the surveillance system. The Security Officer estimated that Respondent and Myrene M. were in the elevator lobby for two to three minutes, and the contractor's estimate was five minutes.

7. Respondent believed that the freight elevator was not operating and was not aware of the surveillance camera. In fact, the freight elevator was operational.

8. The District reviewed Respondent's District-issued computers and determined that several inappropriate emails and images had been sent by Respondent.

9. Respondent sent an e-mail to his co-workers on Tuesday, December 11, 2007, at 11:45 a.m., which included a picture of a partially-clad female in a suggestive pose and inappropriate text.

10. Respondent sent the email to his team members because, when he received it from another person, he thought the subject line was funny ("A Playa and a Pimpstress has 4 different types").

---

<sup>1</sup> All statutory references are to the Education Code, unless otherwise noted.

11. Respondent sent an email to [REDACTED]@yahoo.com on Friday, November 30, 2007, at 4:22 p.m., which included a picture of three nude males, one of whom is Respondent.

12. Respondent had learned from Keicher, a former girlfriend of his, that she wanted a picture of a mutual friend. Respondent sent this picture, taken at a male retreat, in which he, his brother and the friend are all seen facing the camera, and are nude from head to toe.

13. Respondent sent an email to a co-worker on Thursday, November 29, 2007, at 8:59 a.m., with a picture of a naked man on a golf cart.

14. Respondent had received this email, titled "Do you know what Santa looks like in summer?," thought it was funny, and forwarded it to a co-worker.

15. The District alleged that Respondent used his computer on Monday, March 3, 2008, at 5:59 p.m., to access and/or view a picture of a partially-clad female and another picture of a nude female. However, Respondent was not using his office computer at that time; he was at a social function away from the office. As Respondent usually left his computer on after he left the office, it is likely that someone else used his computer to access these pictures.

16. The District reviewed Respondent's District-issued cell phone and determined that several inappropriate text messages and images had been sent or received by Respondent. Respondent admitted that the messages had been sent or received by him. They are set forth below, with some phone numbers deleted and with additional evidence interpreting the substance as necessary.

17. a. February 2, 2007, 2:54 p.m. (Friday); sent by Rubine:

213-663-[REDACTED]  
U my first client?  
CB 213-505-[XXXX]

b. April 1, 2007, 6:02 p.m. (Sunday); received by Rubine from Kysalin Michael, a District employee with whom Respondent had a personal relationship:

(Photograph, female, bare breasts)

The photograph was of Kysalyn.

c. April 1, 2007, 7:33 p.m. (Sunday); sent by Rubine to Kysalyn:

Ay caramba.  
Is it too Soon to say I love you?  
Those r beautiful breasts.

U r a wonderful  
Spirit. I miss u already.

d. April 2, 2007, 7:13 p.m. (Monday); received by Rubine from Kisalyn:

[Photograph, female)  
Hey you!

The photograph was of Kisalyn.

e. April 2, 2007, 8:20 p.m. (Monday); sent by Rubine to Kisalyn, in response to the message in paragraph 17.d.:

U r one adorable mutha  
Fucka Miss Michael

f. April 11, 2007, 6:36 p.m. (Wednesday); received by Rubine from Kisalyn:

I will be  
Leaving my client house in  
30 min.

g. April 25, 2007, 12:09 p.m. (Thursday); sent by Rubine to Kisalyn:

Thank you.  
U looked  
Unfreakinbelievable! The  
Twins were in wonderful  
Form.

h. April 28, 2007, 2:49 p.m. (Saturday); received by Rubine from Kisalyn:

RE Thanks for the Encouragement...Also I really  
Appreciate the use of  
Your laptop...Smooches  
Cheating is ALWAYS an option.

i. April 29, 2007, 8:27 p.m. (Sunday); received by Rubine from Kisalyn:

Yeah, I got  
Ur cash. Make it rain.

The reference to “make it rain” is to throwing cash in the air.

j. May 15, 2007, 1:38 p.m. (Tuesday); received by Rubine from Kisalyn:

I want to kiss you.

k. May 16, 2007, 8:35 p.m. (Wednesday); received by Rubine from Kisalyn:

May not be able to show too much affection  
In the presence of friend...She is not in the  
Loop...Yet...Can't wait to see you.

l. May 29, 2007, 8:47 p.m. (Tuesday); sent by Rubine to Kisalyn:

Loving text message  
Bandwagon or Bust  
Another pic of yours  
Award-winning bosoms. Capiche?

m.(1)<sup>2</sup> May 30, 2007, 7:50 p.m. (Wednesday); received by Rubine from  
Keicher:

I'm looking forward to you tonight, cutie!

m.(2) June 2, 2007, 10:15 p.m. (Saturday); received by Rubine from Keicher:

What the fuck is da?

n. June 6, 2007, 8:19 a.m. (Wednesday); received by Rubine from Kisalyn:

(photograph, female waist down in thong)

o. July 7, 2007, 8:19 am (Saturday); received by Rubine from Crod, which  
refers to Cynthia Rodriguez, a District employee:

(Photograph, female from neck up)  
Eat my pussy

p. August 5, 2007, 2:36 p.m. (Saturday); sent by Rubine to Crod:

(Animation of naked man outdoors-no text)

---

<sup>2</sup> The Accusation contains two separate messages in its paragraph 3.m. Both are listed here, as paragraph 17.m.(1) and 17.m.(2). The same order and numbering have generally been used for ease in tracking the allegations and the related Findings.

q. August 13, 2007, 12:53 p.m. (Monday); sent by Rubine to Crod:

Fwd w/Attachment  
(Animation of caterpillar on a French fry)  
Knock it off asshole; I'm a French fry!

r. September 24, 2007, 4:57 p.m. (Monday); received by Rubine from  
COOIER.KID.KWEEN (not identified):

Hey, Mr. Naughty, maybe we could hook  
Today, if ur not busy after work, and  
Want to play. Ha Ha! It's cool 2 hit  
This number if anything

s. October 31, 2007, 3:32 p.m. (Wednesday); sent by Rubine to Miishe Addy,  
a former District employee whom Respondent had dated:

Why couldn't the great pumpkin have children?  
Because he had a HOLLOW-WEENIE! Have a delightful Halloween.  
Miishe aka legally brown.

t. November 6, 2007, 1:02 p.m. (Thursday); sent by Rubine to Miishe:

Pagan idolatry. That is  
What my relationship with  
Your derriere is. I call it  
Bootyus perfectus.  
213-505-[XXXX]

u. November 14, 2007, 8:17 a.m. (Wednesday); received by Rubine from  
Crod:

Got 2 agree had a very  
Good night sleep. Gotta do it  
Again  
Cynthia

v. November 21, 2007 (Wednesday); received by Rubine from Keicher:

[Photograph of 2 females and male)  
Ron, Keicher, and Negriz

No reach around on  
Turkey day Van.  
Otherwise I give you big  
Drumstick!

w. November 22, 2007, 1:37 p.m. (Thursday); sent by Rubine to Crod:

Gobble my Knobble  
Happy Tgiving  
CB: 213-505-[XXXX]

According to Respondent, he was “just being silly” in this message, which includes a reference to oral sex.

x. November. 25, 2007, 8:18 a.m. (Sunday); received by Rubine from Crod:

My ass is sore. Didn't make  
It with the running group.  
I will probably go back 2 the trail later.  
Cynthia

y. November 29, 2007, 8:51 p.m. (Thursday); received by Rubine from Crod:

Hello just getting home  
From Happy Hour. Wont be  
Able 2 make it my lov 2  
Chloe[dog]car.  
CynthiaXX

z. December 1, 2007, 10:10 a.m. (Saturday); received by Rubine from Elaine Willis, who is not a District employee:

Hi, Ron. How r u? Good  
Talking w/you last wk.hope  
U had good wk and hvg grt  
Wknd. I am trying to find  
Your brothers business  
Online Unable to. Is it  
CCF.Com? Elaine:)

aa. December 2, 2007 (Sunday); received by Rubine from Myren, a former District employee:

(Photograph)  
What do you think?

bb. December 6, 2007, 8:16 a.m. (Thursday); received by Rubine from Crod:

Christmas is CANCELLED! Apparently  
You told Santa you were  
Good in bed and he died  
Laughing. Thanks a lot. So  
CB: 323-243-[XXXX]

cc. December 6, 2007, 8:47 p.m. (Thursday); received by Rubine from Crod:

Hey DICK! Couldn't make it  
Cynthia  
CB: 323-243-[XXXX]

dd. December 7, 2007, 10:04 a.m. (Friday); sent by Rubine to Crod:

Ur a vagina  
CB[callback] 1-213-505-[XXXX]

According to Respondent, he was making a playful response to the message in paragraph 17.cc., where Cynthia Rodriguez referred to him as a "dick."

ee. December. 13, 2007, 12:35 p.m. (Thursday); received by Rubine from Patty Mendoza, a District employee:

■@yahoo.com  
XOXO  
CB: 323-496-[XXXX]

18. The District has written policies concerning personal use of District-issued computers and cell phones and an Employee Code of Ethics. Included in those policies are warnings that, although personal use is permitted, the computers and phones are primarily for District purposes; there is no expectation of privacy in the use of District resources and email; personal use may be monitored and stored; and personal use should not create an appearance of impropriety and can not include offensive, pornographic or obscene content. Employees are made aware of these policies by written handout, training sessions, and notices sent to their computers.

19. Respondent was given three Notices of Unsatisfactory Conduct by the District. The first related to the incident in the elevator lobby, and included a recommendation for a 15-day suspension and dismissal. The second related to Respondent's improper use of his computer because of the emails. The third was due to the messages found on the cell phone. The second and third notices included recommendations for five-day suspensions and dismissal.



20. Respondent's job with the District included providing crisis intervention, training and ongoing programs relating to tolerance and respect for diversity and differences. He was part of a four person team often sent to respond to volatile situations, such as conflict between ethnic student groups in high schools. He also performed preventive work in this and related subjects, such as a transition program for ninth grade students who were entering high school.

21. The program in which Respondent worked was under the supervision of Sharon Curry, who was at the relevant time, the District's Assistant Superintendent of Student Integration Services. Ms. Curry met with Respondent after the elevator incident. Respondent was embarrassed and contrite. He admitted his actions. Ms. Curry advised Respondent of the District's policies, including respectful treatment of others and sexual harassment. She ordered him to turn in his computers and cell phone. She issued at least one of the Notices of Unsatisfactory Conduct, and was aware of all three. Among the concerns she stated at the hearing was that the 16th floor at District headquarters has visitors present on District business, including other District employees, parents and students. Also, the emails and messages seemed contrary to the goals of Respondent's teamwork and program, which included helping students develop respect for others. Ms. Curry believed that the materials at issue were racist, sexist and insensitive. In her opinion, they demonstrated Respondent's lack of good judgment, impulsivity and disrespect.

22. Respondent was billed, and paid, for his personal use of the District-issued cell phone. He believed that personal emails and messages on District-issued equipment were private. Respondent also had a personal cell phone; however, he would use whichever phone was most available and did not distinguish between the use he made and the phone he was using, whether personal or District-related, when using his cell phones.

23. When the incident with Myrene M. began, she hugged Respondent in the hallway and Respondent said that they should not do that in the hallway. Myrene M. led him to the elevator lobby, which they believed could be locked. After beginning to engage in oral sex, Respondent stated that they should stop and go back to their work cubicles. The totality of the evidence did not support the District's contention that they only stopped when the freight elevator arrived at the 16th floor lobby. (A patrolling Security Officer had been contacted from the surveillance room and took the freight elevator to the 16th floor.) Respondent testified credibly that he was embarrassed by the episode, hoped it would not place his career in jeopardy, and would never engage in such conduct again.

24. Respondent was born in 1959. He received his Bachelor's Degree in communications in 1984, a Master's Degree in counseling in 1991 and a Masters Degree in administration in 1996. He holds a multiple subject teaching credential and credentials in pupil personnel services and educational administrative services, tier one and two. He began employment with the District in 1986 as an elementary school teacher, continuing until 1994 when he began as a human resources advisor in the Student to Student Program, training students from the 4th to 12th grades. From 2001 to 2004, he was an administrator with duties including Small Learning Committee Coordinator, Human Resources Specialist and

Professional Development Coordinator. From 2004 to 2006, he was assigned to a high school as the PHBAO (Predominantly Black, Hispanic, Asian and Others) Counselor. Respondent has received positive evaluations of his work for the District. Respondent also founded an organization, Standing on Common Ground, designed to assist middle and high school students, and which has operated in conjunction with California State University, Dominguez Hills, where Respondent has been a professor in an attempt to stress the importance of higher education and increase the potential for students to be successful while in college. Respondent is active in other community organizations and causes, and there are numerous letters of reference, as well as character reference testimony, attesting to his skills, experience and energy in such activities.

25. Respondent contends, among other things, that he and Mylene M. had an expectation of privacy in the freight elevator lobby; that he was the subject of an unreasonable search of his emails and cell phone messages; that his activities with Mylene M. and the emails and messages were among consenting adults; that the emails and messages were ribald and risqué humor, but not a basis for dismissal; that the District did not search the computers or cell phones of any other employees involved in the emails and messages; and that other District employees were not disciplined even though they may have violated District policies or engaged in consensual sexual acts while on school property.

26. Respondent's attorneys served the District with Requests for Admissions (Exhibit BB) and received responses from the District's attorneys (Exhibit CC). Some of the requests were admitted by the District. As set forth more specifically on the record, as a result of the District's failure to properly respond, some of the Requests were deemed to be admitted. As a result, the District admitted, among other things, that in the last five years, other District employees have violated District policy for use of computers, the internet, email and cell phones, and that in that same five-year period, not every such employee has been disciplined by the District. Further, the District was deemed to have admitted that, in the past five years, not every District employee who had a consensual sexual relationship on District property has been disciplined or terminated.

27. All other allegations and contentions raised by both parties were not established by the evidence or legal authority.

### CONCLUSIONS OF LAW AND DISCUSSION

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1 through 5.

2. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. The Accusation and Statement of Charges does not set forth specifically which of the District's factual allegations relate to each of the four alleged bases for dismissal (that is, immoral conduct, evident unfitness for service, unprofessional conduct, or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district). Rather, the District alleges that all four bases for discipline exist "by reason of the following charges" (Accusation, page 2, line 3) and that the charges "separately and, in any combination," support the recommendation for dismissal (Accusation, page 11, lines 11-13). The Commission has examined each charge to determine whether it was proven, and for those proven has determined, as set forth below, whether such charges were a violation of one or more of the four statutory bases for dismissal as alleged.

4. "Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is 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 Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

5. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445 (*Woodland*).) Evident unfitness for services requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444.)

6. "Unprofessional conduct," as used in section 44932, subdivision (a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) However, the conduct in question, to amount to unprofessional conduct, must indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

7. Under section 44932, subdivision (a)(7), the violation of school rules must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

8. Even where immoral conduct, unprofessional conduct, or evident unfitness for service are established, it must also be established that such immoral conduct, unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at 1444-1445.)

In general, the determination of fitness requires an analysis based on the criteria set forth in *Morrison*, to determine whether, as a threshold matter, the questioned conduct indicates unfitness for service. In the *Morrison* case, the Supreme Court of California held that the determination whether a person is fit to teach must be based on an objective and analytical approach. Under the facts of that case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

Application of the *Morrison* standards indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal.3d at 220.)

9. In its review of the allegations and the evidence, the Commission determined that some allegations were not proven (see Factual Finding 15). In the opinion of the Commission, other facts, although proven, may have amounted to poor taste but did not amount to cause for dismissal (see Factual Finding 17, subparagraphs a, d, e, f, g, h, i, j, m(1), m(2), q, r, u, x, y, z, aa and ee).

10. The Commission determined that some emails and cell phone messages were improper, and assigned a level of impropriety to them as follows:

a. The following messages were considered to be at a low level of impropriety: Factual Findings 9, 10, 13, 14, and 17, subparagraphs k, l, n, s, v, w, bb, cc and dd.

b. The following messages were considered to be at a moderate level of impropriety: Factual Finding 17, subparagraphs o and t.

c. The following messages were considered to be at a high level of impropriety: Factual Findings 11, 12, and 17, subparagraphs b, c and p.

11. In reaching its conclusions, the Commission was mindful of the totality of the evidence related to Respondent's use of emails and cell phone messages, including that some of the messages were sent to Respondent by others and that in some instances he forwarded messages he received to others. Respondent actively participated in the exchange of such messages and there was no evidence he dissuaded others from sending such messages. Rather, his participation in the exchange may have encouraged others to send him such messages. Also, Respondent would use whatever cell phone was available for use, sometimes his personal phone and other times his District-issued phone, without considering the effects of his use of the District-issued phone or email for personal messages.

12. Further, in its review of Respondent's messages and actions, the Commission looked at the proven conduct in the aggregate. This applied also to its determination of whether Respondent's conduct showed unfitness for service. This approach was approved in *Woodland*, where the court found that it was not necessary to determine if each and every act demonstrated unfitness for service. Rather, it was proper to examine the totality of the offensive conduct. "When the camel's back is broken we need not weigh each straw in its load to see which one could have done the deed." (*Woodland, supra*, 2 Cal.App.4th at 1457.)

13. The Commission concludes that Respondent's actions as set forth in Conclusion 10, and the Factual Findings listed therein, constitute misuse of District equipment and subject him to dismissal.

14. The nexus between Respondent's actions and the type of immoral conduct, unprofessional conduct and/or evident unfitness to teach necessary to conclude that respondent should be dismissed are found herein. The factors identified in *Morrison* (see Conclusion 8) have been considered. Some of those factors do not apply to these scenarios. Some of the factors of significance to the Commission were that the actions were relatively recent; some occurred on District property during business hours; the potential for involvement of the public or other employees did not deter Respondent; the potential for publicity and notoriety may affect Respondent's ability to function effectively in his position, and may affect the District's ability to control its workforce and workplace; and in total depict a lack of judgment that is particularly troublesome considering the types of sensitive subjects that Respondent is responsible for in discharging his job duties.

15. In examining the required nexus, the Commission was also mindful of Respondent's position and job duties and the expectation that he would have an increased sensitivity to inappropriate acts and a greater appreciation of how acts between people can have adverse affects on others. Although Respondent depicted the sexual encounter with Myrene M. as an isolated act, the emails and messages show a longstanding, permissive attitude of use and acceptance by Respondent of material that is sexually charged, indicative of the type of temperamental defect relied upon in determining that he lacks the necessary fitness to teach.

16. Respondent's contentions of his expectation of privacy in the elevator lobby and the messages sent and received are rejected. For such an expectation of privacy to be recognized, it must be reasonable under the circumstances. Every employee and visitor to the 16th floor of District headquarters had potential access to the location of Respondent's sex act with Myrene M. Indeed, anyone using the freight elevator could have seen them. The fact that a District Security Officer and a contractor actually viewed the sex act by security camera disproves any notion that there was a reasonable expectation of privacy there. Similarly, the District's policies concerning use and monitoring of emails and messages clearly notifies employees such that it was not unreasonable, or a violation of any rights, for the emails and messages to be retained and reviewed by the District.

17. That the District did not discipline or terminate other employees who may have engaged in inappropriate emails and messaging, or consensual sexual acts on District property, offers no safe haven for Respondent. The specific circumstances of other incidents were not in evidence. Nor is it necessary to compare Respondent's acts to the acts of others. Rather, the Commission must determine whether Respondent's acts were proven, whether there is a basis for termination, and whether Respondent's employment should be terminated based on the evidence in this case.

18. Cause exists to dismiss Respondent for immoral conduct, pursuant to sections 44932, subdivision (a)(1), and 44939, for the reasons set forth in Factual Findings 9, 10, 13, 14, and 17, subparagraphs b, c, k, l, n, o, p, s, t, v, w, bb, cc and dd, and Conclusions 3, 4, 8, 10, 11, 12 and 14.

19. Cause exists to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 9, 10, 13, 14, and 17, subparagraphs b, c, k, l, n, o, p, s, t, v, w, bb, cc and dd, and Conclusions 3, 5, 8, 10, 11, 12 and 14.

20. Cause exists to dismiss Respondent for unprofessional conduct, pursuant to section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 9, 10, 13, 14, and 17, subparagraphs b, c, k, l, n, o, p, s, t, v, w, bb, cc and dd, and Conclusions 3, 6, 8, 10, 11, 12, 13 and 14.

21. Cause exists to dismiss Respondent for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him, pursuant to section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 9, 10, 13, 14, and 17, subparagraphs b, c, k, l, n, o, p, s, t, v, w, bb, cc and dd, and Conclusions 3, 7, 8, 10, 11, 12, 13 and 14.

22. Cause does not exist to dismiss Respondent for the reasons set forth in Factual Findings 15 and 17, subparagraphs a, d, e, f, g, h, i, j, m(1), m(2), q, r, u, x, y, z, aa and ee, and Conclusion 9. These Findings do not establish any basis for dismissal as contended by the District.

23. Respondent should be terminated from his position as a certificated employee of the District, based on Legal Conclusions 1 through 10, 14 and 18 through 21, and their factual predicates.

24. In reaching these Conclusions, the determinations that there is cause to dismiss Respondent and that Respondent should be terminated from employment were made by votes of two Commissioners, constituting a majority of the Commission, except with respect to Conclusion 20, where the vote was unanimous.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

Respondent Ronald Rubine is dismissed from his employment as a permanent certificated employee of the Los Angeles Unified School District.

DATED: July \_\_\_, 2010.

\_\_\_\_\_  
KARINA GERGER, Member  
Commission on Professional Competence

DATED: July \_\_\_, 2010.

\_\_\_\_\_  
JAMES NADLER, Member  
Commission on Professional Competence

DATED: July \_\_\_, 2010.

\_\_\_\_\_  
DAVID B. ROSENMAN  
Administrative Law Judge  
Member  
Commission on Professional Competence