

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND A  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

MICHAEL FUOROLI (EN 586861),  
A Permanent Certificated Employee,

Respondent.

OAH No. 2015030017

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) on May 23-25, 2016, June 1-3, 2016, and September 8, 9, 12-15, 2016, in Los Angeles. The Commission consisted of Mark Frenn, Kristi Harabedian, and Administrative Law Judge (ALJ) Erlinda G. Shrenger, Office of Administrative Hearings, State of California, who presided.

Michele M. Goldsmith, Esq., Bergman Dacey Goldsmith, represented the Los Angeles Unified School District (District). Meredith Karasch, Assistant General Counsel for the District, was present for most days of the hearing. Daniel J. Kolodziej, Esq., Trygstad, Schwab & Trygstad, represented Michael Fuoroli (Respondent).

Pursuant to an Order issued on July 15, 2015, the ALJ granted Respondent's motion to exclude evidence regarding Charges 1-21 of the Accusation based on the limitations period of Education Code section 44944. The hearing proceeded only as to Charges 22-38 of the Accusation. Oral and documentary evidence was received, and argument was heard. The record was closed and the matter submitted for decision on September 15, 2016.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Respondent is a permanent certificated employee of the District.

2. By a letter dated February 11, 2015, Respondent was notified that written charges, duly signed and verified, were filed with the Governing Board of the District (Governing Board) charging that grounds for his dismissal existed, and that he was suspended without pay. The letter further notified Respondent that it was the Governing Board's intention to dismiss him within 30 days unless he demanded a hearing.

3. On February 25, 2015, Respondent filed a Request for Hearing and Notice of Defense in which he timely objected to the statement of charges and requested a hearing. On March 3, 2015, the District served Respondent with an Accusation and Statement of Charges, and other required documents. All jurisdictional requirements have been met.

4. The Accusation and Statement of Charges allege cause for dismissal pursuant to Education Code sections 44932 and 44939 for immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the State Board of Education or the governing board of the District.

#### *Respondent's Background*

5. Respondent is 57 years old. He graduated from California State University, Northridge, where he received his bachelor's degree in history in 1987 and his master's degree in education in 1994. Respondent holds a clear secondary teaching credential in history and social studies that he received in 1989, and an administrative services credential that he received in 1993.

6. Respondent has worked for the District for 29 years. He has not worked for any other school district. He has been assigned to Holmes Middle School since September 1987 as a history teacher. For the school years at issue in this case, which are the 2009-2010 through 2011-2012 school years, Respondent taught seventh grade world history.

#### *Holmes Middle School*

7. Holmes Middle School (Holmes) has approximately 1,500 students and 70 teachers. The school campus consists of a main office building and multiple other buildings where the classrooms are located. Respondent's classroom was on the second floor of Building A. The second floor has four classrooms on one side of the hallway and three classrooms on the other side of the hallway. Respondent occupied the same classroom for the 2009-2010 and 2010-2011 school years and moved to one of the classrooms across the hallway for the 2011-2012 school year.

8. Respondent's classroom for the 2009-2010 and 2010-2011 school years had two doors. There was a chalkboard and a pull down projector screen in the front of the classroom. The rows of student desks were placed close together such that Respondent could only walk vertically, and not horizontally, between the rows of student desks. There were no bookshelves in the classroom. Instead, a set of text books was stored at each student desk.

Respondent had a teacher's desk, other tables, and chairs in the back of the classroom. There was computer equipment on and around the teacher's desk. Filing cabinets were located behind the teacher's desk.

9. At all relevant times, there were six periods in the school day at Holmes. The teachers taught for five periods and had one conference period. The teachers at Holmes were organized into teams. History, science and math teachers worked on the same team and shared students. The teacher teams collaborated about lessons and discussed issues and attended parent conferences regarding their shared students.

10. The school day at Holmes ended at approximately 2:55 p.m. Intervention classes for math and English were held afterschool from approximately 3:15 p.m. to 4:15 p.m. The afterschool intervention classes were paid assignments for the teachers. Students were assigned to an intervention class and required to attend. Teachers were given a roster of students for taking attendance. The intervention classes had prescribed lessons that the teachers were required to present. Separate from the intervention classes for math and English, teachers at Holmes were allowed to provide afterschool tutoring on a voluntary, unpaid basis. Unlike the intervention classes, tutoring sessions did not have a formal student roster, no attendance was taken, and there were no prescribed lessons. Tutoring sessions were held during the same one-hour period after school as the intervention classes.

11. For the 2009-2010 through 2011-2012 school years, Respondent held tutoring sessions in his classroom afterschool in order to provide students with assistance, encouragement, and a safe environment for completing their homework assignments. Students who came for the tutoring sessions could also complete make-up work for absences or use the classroom computer. During the tutoring sessions, Respondent generally had the students sit together in the front of the classroom because that made it easier to supervise the students and also encouraged them to collaborate and work together on their assignments. For the 2009-2010 school year, Respondent ended his tutoring sessions around 4:30 p.m. because he had to pick up his own son from school.

### *Investigation and Disciplinary Action*

12. On May 3, 2012, the District was notified by the Los Angeles Police Department (LAPD) that a former Holmes student, I [REDACTED] W.,<sup>1</sup> reported that he had been sexually abused by his teacher, Respondent, two years earlier when he was in the seventh grade. The LAPD conducted an investigation of the allegations, which included interviews of I [REDACTED] W., Respondent, and Respondent's current and former students at Holmes. The case was referred to the City Attorney's Office at the conclusion of the LAPD investigation. The City Attorney's Office declined to file criminal charges against respondent.

13. In 2013, after the LAPD investigation was concluded, the District commenced its own administrative investigation of the sexual abuse allegations against Respondent. The

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<sup>1</sup> Students are identified by first name and last initial to protect their privacy.

District interviewed a random sample of students who had Respondent as their teacher during the 2009-2010 school year. The District's investigation was initially focused on the sexual abuse allegations against Respondent. However, during the investigation, the students interviewed described other conduct and incidents involving Respondent. The students' verbal interview statements and written statements formed the basis for the other charges alleged in the Accusation.

14. The District removed Respondent from his classroom on May 3, 2012. He was placed on paid administrative leave on May 4, 2012. The District issued Respondent a Notice of Unsatisfactory Acts and Notice of Suspension on September 5, 2014. A *Skelly* hearing was held on October 7, 2014. Respondent denied the allegations made against him. By letter dated October 30, 2014, the *Skelly* officer notified Respondent of his recommendation that the District should move forward with its dismissal action. On February 11, 2015, a statement of written charges was filed with the Governing Board and Respondent was placed on immediate suspension without pay. Respondent demanded a hearing. This dismissal action ensued.

#### *Findings and Analysis Regarding Charges 27 and 28*

15. Student [REDACTED] W. ([REDACTED]) was a seventh grade student at Holmes Middle School for the 2009-2010 school year. Respondent was [REDACTED]'s history teacher for that school year. Charges 27 and 28 allege that Respondent engaged in sexual misconduct against [REDACTED]. Respondent denies the allegations.

16. [REDACTED] made no report of sexual abuse by respondent during the 2009-2010 school year. [REDACTED] did not report any alleged abuse by respondent until approximately two years later when, in May 2012, he told a counselor at Phoenix House (a drug and alcohol rehabilitation facility) that he had been sexually abused in the seventh grade by his teacher. [REDACTED] was in the ninth grade when he made this report to the counselor at Phoenix House. A report of suspected child abuse was subsequently made to the LAPD.

17. [REDACTED], who is now 18 years old, testified at the hearing. According to [REDACTED], the alleged incident with Respondent occurred on one occasion in the seventh grade. [REDACTED]'s grade in history had been slipping. Respondent suggested that he come by the classroom afterschool for tutoring. [REDACTED] was aware that students went to Respondent's classroom afterschool for tutoring. That same day, about 15 to 20 minutes after the school day ended, [REDACTED] went to Respondent's classroom for tutoring. When he arrived at the classroom, [REDACTED] saw Respondent sitting at the teacher's desk. There were no other students in the classroom. [REDACTED] sat in the chair next to Respondent.

18. According to [REDACTED], Respondent put his hand on [REDACTED]'s thigh and began rubbing it. [REDACTED]'s body reacted and he got an erection. Respondent saw the erection and touched [REDACTED]'s penis and private areas through his clothing. Respondent then unzipped [REDACTED]'s shorts and grabbed his penis and tugged it slightly. Respondent touched [REDACTED]'s penis and scooped up his testicles through the zipper. Respondent pulled the waistband of

██████'s briefs over his erect penis, and touched his penis and testicles. Respondent touched him skin-to-skin. When Respondent grabbed ██████'s private areas, ██████ did not say or do anything. ██████ was just slightly leaning back in his chair. Respondent touched ██████ for four to five minutes. ██████ sat in his chair with his arms at his side and he slightly opened his leg. Respondent asked ██████ how interested he was to raise his grade and asked ██████ to put his mouth on him for oral sex. ██████ scooted his chair back and ran out of the room crying. He hit his wrist on the door as he ran out of the classroom and was quickly shoving "his stuff" back through his zipper. ██████ was running and looking for a restroom. He was crying ("balling") the whole time. The first restroom he found was locked. He ran around the gym to another restroom near the cafeteria, which was open. ██████ was washing his face and still crying when his brother, ██████, found him in the restroom. ██████ testified he was in Respondent's classroom for 12-13 minutes before he ran out crying and looking for an open restroom. ██████ did not tell anyone about the incident. The following week, ██████ went back to Respondent's class only two times. ██████ testified that, during class, Respondent would whisper in his ear "I miss you" and "come back" as he passed by him.

19. Respondent denies the allegations made by ██████. He testified he did not do the acts claimed by ██████ and the incident described by ██████ never happened. Respondent was never alone with ██████ and never touched him.

20. Charge 27 of the Accusation alleges as follows:

During or about the period commencing January 2010 to March 2010, on not less than one occasion, [Respondent]:

- a. Was alone in the classroom with 7th grade student, ██████ W.;
- b. Sat next to him and asked him if he wanted to earn extra credit and how bad he wanted to improve his grade;
- c. Told ██████ W. that he could earn extra credit in other ways by doing things to get his grade up;
- d. Rubbed the student's leg;
- e. Unzipped ██████ W.'s pants, put his hand in the student's pants and fondled his penis and testicles, skin to skin, with his hand;
- f. Asked ██████ W. if he liked how it felt;
- g. Told him that he liked the student's mouth and that he wanted ██████ W. to perform oral sex on him[;]

h. Told the student to keep his mouth shut and not tell anybody when I [REDACTED] W. asked [Respondent] to stop, after which the student ran out of his class.

21. Charge 28 of the Accusation alleges as follows:

During the period commencing on or about January 2010 to June 2010, [Respondent] on multiple occasions during class, whispered in student I [REDACTED] W.'s ear, words to the effect of:

- a. "I miss you;"
- b. "I miss you and the times we hand;"
- c. "Comeback [*sic*], I miss you;"
- d. "Comeback [*sic*] so we can do it again[.]"

22. The Commission finds that the factual allegations of Charges 27 and 28 were not established by a preponderance of the evidence. The Commission finds that I [REDACTED]'s testimony was not supported by the evidence and/or not consistent with his prior statements, and therefore not credible.

23. (A) It was not established that I [REDACTED] was alone in Respondent's classroom after school. I [REDACTED] testified that he went to Respondent's classroom about 15-20 minutes after the school day ended at 2:55 p.m. He also testified he was in the classroom for 12 to 13 minutes. Based on I [REDACTED]'s testimony, he arrived at Respondent's classroom at approximately 3:15 p.m. and ran out of the classroom at approximately 3:28 p.m. Tutoring and intervention classes were held for one hour after school starting at 3:15 p.m. The incident with I [REDACTED], if true, would have occurred during the middle of the intervention and tutoring hour.

(B) The evidence established that Respondent regularly had students in his classroom after school working on their homework and other assignments. Students were aware that Respondent offered tutoring in his classroom after school. I [REDACTED] himself was aware that students went to Respondent's classroom after school for tutoring. Teachers also visited Respondent's classroom after school. Lauren Blackmon was an English teacher at Holmes during the 2009-2010 school year. Her classroom was next door to Respondent's classroom. Blackmon testified that she went to Respondent's classroom after school three to four times a week to get a snack (which Respondent kept in his classroom) or just to "shoot the breeze" with Respondent. Blackmon testified there was usually a "slew of students" in Respondent's classroom working on homework or other assignments. At around 4:30 p.m., Blackmon often heard Respondent tell the students it was time to leave. Blackmon testified that parents would wait and linger in the hallway to pick up their children. Blackmon never saw Respondent's classroom doors closed during tutoring. Ricky Avecilla is currently a teacher at Holmes. In the 2009-2010 school year, his classroom was in the same hallway as



Respondent's classroom, and he provided tutoring on the same days as Respondent. Avecilla testified that he had 10 or more students who came afterschool for tutoring. He further testified that, since there was no fixed schedule for tutoring, students could go from room to room to get tutoring from different teachers.

(C) Holmes had many afterschool activities on campus. Teacher Blackmon testified that the campus was not desolate afterschool because of those activities. Michal Jones-Long was an assistant principal at Holmes in the 2009-2010 school year. Her testimony established that administrators were assigned to walk the hallways and campus during the after school hours to provide supervision for afterschool activities, including intervention and tutoring classes. The Commission believes that [REDACTED] would have been noticed if, as he claims, he came running out of Respondent's classroom, disheveled and crying, which would have been at or around 3:30 p.m. No evidence was presented that such was the case.

24. The Commission reviewed the transcript and video recording of [REDACTED]'s interview on May 22, 2012, with the Center for Assault Treatment Services (CATS). The Commission noted inconsistencies between [REDACTED]'s statements during the CATS interview and his testimony in this hearing. For example, [REDACTED]'s demeanor reflected in the CATS interview differed from his hearing testimony. In the CATS interview, [REDACTED] repeatedly stated that he was begging Respondent to "please stop," he was telling Respondent "I don't like this," and he was pushing Respondent's hand away from him. However, in this hearing, [REDACTED] testified that he did not do or say anything while Respondent touched his private area for four to five minutes. He just sat leaning back in his chair with his arms at his side, and, at one point, he slightly opened his leg. Another example is that, during the CATS interview, [REDACTED] stated that he got an erection when Respondent was rubbing his leg. [REDACTED] stated that his erect penis poked through the front slit of his underwear and his penis was out and exposed when Respondent unzipped his shorts. At this hearing, [REDACTED] testified that his penis became erect when Respondent rubbed his leg, Respondent unzipped [REDACTED]'s shorts, and Respondent pulled the waistband of his briefs over his erect penis. Another example of inconsistency relates to how [REDACTED] encountered his brother [REDACTED] after running from Respondent's classroom. In the CATS interview, [REDACTED] stated that he ran to the gym, where his brother [REDACTED] was playing basketball. [REDACTED] asked [REDACTED] why he was crying, and [REDACTED] responded that tutoring did not go well. [REDACTED] then ran to the restroom. In this hearing, [REDACTED] testified that his brother [REDACTED] found him in the restroom washing his face. There was no mention of encountering [REDACTED] in the gym. [REDACTED] himself testified at this hearing he was at a park across the street from school while [REDACTED] was at tutoring. He went to look for [REDACTED] when their dad arrived to pick them up from school.

25. The Commission is persuaded by Respondent's contention that [REDACTED]'s description of the alleged incident during the CATS interview sounds scripted and insincere. [REDACTED] spoke of Respondent "boldly" touching him. (Exh. 102, p. 19.) He used the term "caressing" when describing how Respondent touched his penis with his hand. (Exh. 102, p. 23.) [REDACTED] also stated that he did not know how to react to Respondent's touching, but he had "heard of situations" where "you have to be compliant while at the same time expressing

your need to get away." (Exh. 102, p. 56.) I ██████ was in the ninth grade when he reported that Respondent sexually abused him in the seventh grade. I ██████ testified that, during the ninth grade, he regularly watched the television show "Law & Order: Special Victims Unit" (Law & Order SVU), which is a police show about sex crimes. Ishmael testified he could relate to the victims depicted in the show. I ██████'s allegations against Respondent appear to have been influenced by his interest in the Law & Order SVU television show.

26. The Commission notes that I ██████ reported he was sexually abused in the seventh grade by Respondent to a counselor at Phoenix House. The Commission finds that the evidence presented supports a reasonable inference that I ██████ reported being abused to garner sympathy from his mother, who could reasonably be expected to have been displeased with I ██████ since he was using drugs and/or alcohol to such an extent that she had to enroll him in the rehabilitation program at Phoenix House. There was no evidence that Respondent contacted I ██████ between seventh grade and ninth grade. In the CATS interview, I ██████ stated he saw Respondent's picture in a news article announcing his receipt of a teaching award. The evidence suggests to the Commission that I ██████ reported being abused by Respondent after seeing his picture in the news article, but he made sure to repeatedly insist in his reporting of the alleged abuse that he was not gay. I ██████ has expressed repeated concern about how others perceiving him, and was especially concerned that he not be perceived as being gay.

#### *Findings and Analysis Regarding Charges 22-26 and 29*

27. The factual allegations of Charges 22-26 and 29 relate to matters from the 2009-2010 and 2010-2011 school years. Since Respondent was given notice of intent to dismiss on February 11, 2015, pursuant to Education Code section 44944, subdivision (b)(2), the Commission is barred from making a decision regarding Respondent's dismissal (or non-dismissal) based on charges and evidence relating to matters occurring prior to February 11, 2011, unless an exception applies.<sup>2</sup>

28. Referring to Charge 22, it was established that on one occasion in the 2009-2010 school year, Respondent stated aloud in the presence of other students that student K ██████ G. had a "big booty," which caused another student to say "Eww." This incident occurred during class time. Respondent and student K ██████ G. were working at the chalkboard in the front of the class. Respondent was teaching a "Legacies of Rome" lesson involving a large domed cathedral. Respondent drew a large M-shaped symbol on the chalkboard. Student M ██████ R. was present in the class. She testified credibly that she heard Respondent say that K ██████ had a "big booty" and another student say "Eww." Student A ██████ R. was present in the class. She testified credibly that she heard Respondent compare K ██████'s behind to something when he said words to the effect, "Just like your big butt." Student I ██████ W. testified that he heard Respondent say K ██████ had a "big booty." Respondent's testimony that he told K ██████ "you're big" and that he was not referencing her behind was not credible. K ██████ did not testify at the hearing. The District presented documentary evidence of her statements

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<sup>2</sup> See Legal Conclusion 3, below.



made during the police and District investigations, in which she reported making a complaint about Respondent's statement to the main office. The District's investigator, Steven Munoz, asked school administrators for a copy of a complaint by K■■■■ but he was told there was none. K■■■■'s statements are hearsay and insufficient to establish that any complaints were made against Respondent about this incident.

29. (A) Referring to Charge 23, it was established that during the 2009-2010 school year, Respondent stared at student M■■■■ R., which caused her to feel uncomfortable. Student M■■■■ R. testified credibly that on one occasion when she was in the main office, she caught Respondent staring at her as if he were "checking her out" (her words). Respondent's staring made her feel uncomfortable. M■■■■ R. did not make any report or complaint contemporaneous to the incident.

(B)(1) However, the Commission finds it was not established that during the 2009-2010 and 2010-2011 school years, Respondent stared at female students, including at their buttocks, on multiple occasions, which was observed by several students and caused the students to feel uncomfortable. Student M■■■■ R. testified that she "heard" that Respondent stared at other girls but she did not speak with the other girls about that. M■■■■ R.'s testimony is hearsay and not sufficient to establish allegations of Respondent staring at other female students. The District also presented the testimony of student K■■■■.A., who was in Respondent's history class in the 2010-2011 school year. Student K■■■■.A. testified that he saw Respondent staring at girls during the entire school year, that Respondent stared at girls with a look of being aroused, and Respondent stared at girls' behinds. Student K■■■■.A. testified he caught Respondent staring at girls during class when he had questions and looked for Respondent in the classroom to get help. The Commission did not find student K■■■■.A. to be a credible witness. Student K■■■■.A.'s demeanor and testimony appeared hostile and biased against Respondent, as he repeatedly mentioned being treated unfairly because Respondent did not give him full credit for make-up work he submitted after a lengthy absence.

(B)(2) The Commission finds the more persuasive explanation for Respondent's conduct is that students are misconstruing his use of the behavior management technique known as the "teacher stare." The teacher witnesses and Respondent acknowledged that they use this technique to manage behaviors in their classroom. When a student is off-task or misbehaving, the teacher will stare at the student to get the student's attention and indicate displeasure at the misbehavior and the student needs to stop. The Commission believes that the teacher stare is what Respondent's former students, two to three years later, are now recalling as Respondent staring at students.

30. Referring to Charge 24, it was not established that during the 2010-2011 school year, Respondent called student G■■■■ B. "gay G■■■■" in the presence of other students. The District presented the testimony of student N■■■■ L., who testified that Respondent called some of his friends by nicknames, but he could not recall which friends or what nicknames were used by Respondent, and he specifically could not recall if one of the nicknames used by Respondent was "gay G■■■■." The District also presented student K■■■■.A.'s testimony

that he heard Respondent call student G■■■ B. by the name "gay G■■■" on multiple occasions. The Commission did not find student K■■■■.A. to be a credible witness, given his hostile and biased demeanor against Respondent.

31. Referring to Charge 25, it was not established that during the 2010-2011 school year, Respondent, in view of students, unbuttoned his pants to tuck in his shirt, which caused the students to look away. Respondent denied this allegation. Respondent testified credibly that he had been losing weight since the previous school year and his clothes were not fitting properly. As he moved around the classroom, Respondent's shirt would become untucked. He would tuck in his shirt without unbuttoning his pants. Respondent tucked in his shirt to keep a professional appearance. He might also adjust his belt to make it tighter but he never unbuttoned his pants or unbuckled his belt. Student K■■■■.A.'s testimony that he saw Respondent have an erection when he unbuttoned his pants and tucked in his shirt was not credible.

32. Referring to Charge 26, it was not established that, during the 2010-2011 school year, Respondent put his hand on the back and shoulder area of student N■■■ L. and rubbed up and down in a circular motion. At this hearing, student N■■■ L. initially testified that Respondent did not touch him. However, after reading his written statement from 2013, student N■■■ L. testified that Respondent must have touched him because he wrote it down in his statement. Student N■■■ L. admitted that, before reading his statement during the hearing, he had no recollection of Respondent touching his back and shoulder area and rubbing up and down in a circular motion. The Commission finds student N■■■ L.'s testimony to be insufficient to establish this charge.

33. Referring to Charge 29, it was established that in the spring of 2010, Respondent patted and rubbed student M■■■ R.'s back with his hand. But the Commission also finds that Respondent's patting and rubbing student M■■■ R.'s back was a form of encouragement or congratulations. Respondent testified that, as he moved through the classroom during class, he would pat his students on their back to encourage their work or congratulate them for giving a good answer or doing a good job. Student M■■■ R. testified that Respondent said, "atta girl" when he touched her back.

34. After finding that Charges 22, 23, and 29 were established by the evidence, the Commission next considered whether the factual allegations of these charges met any of the statutory exceptions to the four-year rule enumerated in Education Code section 44944, subdivision (b)(2). The Commission finds that the factual allegations for these three charges do not involve acts described by Education Code section 44010 (sex offenses) or Penal Code sections 11165.2 (child neglect), 11165.3 (willful harming or endangering a child), 11165.4 (unlawful corporal punishment or injury), 11165.5 (willful harming or endangering a child), or 11165.6 (child abuse or neglect). The Commission finds that Respondent's conduct established by these charges demonstrates poor judgment and poor taste, but does not rise to the level of the criminal offenses that qualify for a statutory exception to the four-year limitations period.

35. The Commission next considered whether, as alleged in Charge 38, Respondent "concealed" his conduct established by Charges 22, 23 and 29, such that the District had no way to know that Respondent was engaging in such conduct until May 2012. No evidence was presented by the District to establish that Respondent took action to "conceal" his conduct. Notably, these charges involved conduct that occurred during class in front of other students or in public view (e.g., in the main office).

36. Because no exception and no "concealment" was established, the Commission is not permitted to make a decision regarding Respondent's dismissal (or non-dismissal) based on those charges and evidence because they relate to matters barred by the four-year limitations period. The Commission disregarded Charges 22, 23, and 29.

#### *Findings Regarding Charges 30-34*

37. It was established, as alleged in Charge 30, that during the 2011-2012 school year, Respondent banged a hammer on student M■■■■'s desk, but it was not established that Respondent did so because he became angry at M■■■■. Respondent testified credibly regarding this incident. Respondent had tools he kept in his classroom over the years, such as a screwdriver and hammer. Respondent had strung up wire on the wall to hold up puppets made by the students. The wire came down during the middle of class. Respondent used a hammer to tap the wire back into the wall. As he was doing that, Respondent noticed that student M■■■■ appeared to be asleep at his desk. M■■■■ did not respond when Respondent called to him. Respondent walked over and banged the hammer on M■■■■'s desk. M■■■■ woke up, took out his book, and applied himself during the rest of the class. M■■■■ did not have an angry or fearful reaction. Respondent was not angry at M■■■■ when he banged the hammer on the desk but was merely trying to get the student's attention. Respondent had not used a hammer in class in that manner before or since, and during the hearing he expressed regret for using a hammer in that manner. Respondent was unaware of any complaint made against him for this incident.

38. It was not established, as alleged in Charge 31, that during the 2011-2012 school year, Respondent stated toward a student, "I can't believe you are in our class, you are not going . . . ," thereby indicating that the student did not belong and would not be there long. The District's evidence was insufficient to establish this charge.

39. It was not established, as alleged in Charge 32, that during the 2011-2012 school year, Respondent called student I■■■■ a "jackass." Respondent denies this allegation. Student I■■■■ W. attended seventh grade at Holmes but he did not have Respondent as a teacher. The District's evidence was insufficient to establish this charge.

40. It was not established, as alleged in Charge 33, that during the 2011-2012 school year, Respondent called students names such as "fool." Respondent denied this allegation. Respondent testified credibly that he has told students they are "acting like a fool" or "acting foolishly," but he denied calling a student a "fool." Student G■■■■ O. testified that Respondent called student M■■■■ names, such as jackass, stupid, and dumbass.

Again, Respondent denied ever calling a student "jackass" or telling a student they are "acting like a jackass," as those names and phrases are too harsh and inappropriate for students. The District offered the testimony of student K█████.A., who testified that Respondent called him names. However, K█████.A. was in Respondent's class for the 2010-2011 school year, not 2011-2012, so the District's reliance on K█████'s testimony for Charge 33 is misplaced.

41. It was not established, as alleged in Charge 34, that during the 2011-2012 school year, Respondent touched student C█████ A. on her shoulder and held it there for two to three seconds while whispering in her ear about her behavior, which student G█████ O. observed. Student G█████ O. sat behind C█████ A. in Respondent's class. G█████ O. saw Respondent place his hand on Caprice's shoulder, but she did not hear Respondent say anything to C█████. G█████ testified she felt awkward by seeing Respondent touch C█████'s shoulder. However, G█████ testified that, after the incident, she and C█████ "brushed off" the incident and did not discuss it. It was not until two years later, in April 2013, that the girls mentioned the incident in their interviews and written statements to the District's investigators who were investigating the allegations of student I█████ W. Respondent does not recall touching C█████ A., but he admitted it was possible he may have tapped or patted C█████ on her shoulder, as a form of congratulations or encouragement in her work. The incident has not adversely affected C█████ A. In 2014, Respondent and another Holmes teacher, Brant Armbruster, were attending a union rally when C█████ A. recognized and approached the two teachers. She greeted both teachers, gave them each a hug, and chatted with them. Armbruster testified that C█████ A. appeared enthusiastic to see him and Respondent.

### *Credibility*

42. Respondent and the teachers who testified on his behalf (Kevin Waitley, Chau Cao, Brant Armbruster, and Lauren Blackmon) were credible in their testimony. They appeared sincere in their demeanor, and their testimony, for the most part, was straightforward and forthcoming, using their best efforts to answer questions put to them. Respondent's testimony was credible and amply supported by the evidence.

43. Similarly, the witnesses who were Respondent's former students were, for the most part, credible in their testimony, and appeared to use their best efforts to answer questions put to them. As for student K█████.A., the Commission did not find his testimony credible as it demonstrated hostility and bias against Respondent due to K█████'s feeling of being treated unfairly by him. Student I█████'s testimony regarding alleged sexual abuse by Respondent was found not credible for the reasons stated above.

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## LEGAL CONCLUSIONS

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

2. Pursuant to Education Code section 44932, the grounds for dismissal alleged against Respondent in this case are: immoral conduct [subd. (a)(1)]; unprofessional conduct [subd. (a)(2)]; unsatisfactory performance [subd. (a)(5)]; evident unfitness for service [subd. (a)(6)]; and persistent violation of or refusal to obey school laws or reasonable regulations prescribed by the employing school district [subd. (a)(8)]. The District also relies on the ground for immediate suspension in section 44939 of willful refusal to perform regular assignment without reasonable cause.

3. (A) Cause for dismissal was not established based on the factual allegations of Charges 22-26 and 29 of the Accusation, in conjunction with Charge 38 of the Accusation, on the grounds that those charges involve evidence relating to matters occurring more than four years before the filing of the notice of intent to dismiss, and no exception applies, or the charges were not established by the evidence. (Factual Findings 27-36.)

(B) Education Code section 44944, subdivision (b)(2)(A), provides in part: "Testimony shall not be given or evidence shall not be introduced relating to matters that occurred more than four years before the date of the filing of the notice, except allegations of an act described in Section 44010 of this code or Sections 11165.2 to 11165.6, inclusive of the Penal Code." Subdivision (b)(2)(B) provides in part: "[N]o decision relating to the dismissal or suspension of an employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years before the filing of the notice, except allegations of an act described in Section 44010 of this code or Sections 11165.2 to 11165.6, inclusive, of the Penal Code."

(C) The District's contention, as alleged in Charge 38 of the Accusation, that Respondent concealed his misconduct such that the misconduct was not discovered by the District until May 2012, was not established by the evidence. The District's contention is based on the holding of *Atwater Elementary School District v. California Department of General Services* (2007) 41 Cal.4th 227, which held that a school district may introduce evidence older than four years if it can establish it was prevented by the teacher from discovering the acts such that the teacher should be equitably estopped from using the four-year limitations period. (*Id.* at pp. 233-235.) The District presented no evidence establishing that Respondent "concealed" his conduct to prevent discovery by the District. The conduct established (Charges 22, 23, and 29) occurred in the presence of students, during class, or in a public place (i.e., the main office).

4. Cause for dismissal was not established as alleged in Charges 27, 28, and 31-34 of the Accusation, based on the Commission's findings that those allegations were not established by the evidence. (Factual Findings 15-26 and 38-41.)



5. However, cause for dismissal was established based on Charge 30 of the Accusation that Respondent banged a hammer on the desk of student M[REDACTED]. (Factual Finding 37.) The Commission concludes that the only statutory ground for dismissal supported by that factual allegation is for unprofessional conduct pursuant to Education Code section 44932, subdivision (a)(2). Unprofessional conduct as used in section 44932 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." (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

6. The Commission finds that the other statutory grounds alleged in the Accusation – immoral conduct, unsatisfactory performance, evident unfitness for service, and persistent violation of school rules -- are not supported by the factual allegation that Respondent banged a hammer on a student's desk. The Commission finds that Respondent's conduct does not constitute immoral conduct. The Commission finds that the conduct, which was a one-time isolated incident, does not constitute unsatisfactory performance or persistent violation of school rules sufficient to warrant dismissal. Finally, the Commission finds that the conduct does not demonstrate evident unfitness for service. Respondent does not dispute the conduct, and credibly explained the motivation for his action. He was not motivated by anger towards the student, and there was no evidence of any adverse effect caused to the student, M[REDACTED]. Student G[REDACTED] O. expressed shock at the conduct, but she made no contemporaneous report or complaint to the main office. She did not make any statement about the incident until 2013 when she was interviewed as part of the District's investigation of I[REDACTED]'s allegations. Respondent had not previously used a hammer in class in that manner, and has not done so since. This was a one-time isolated incident and is not likely to recur. Respondent has expressed regret and recognizes his conduct displayed poor judgment.

7. The Commission considered the factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 to determine whether Respondent's unprofessional conduct in banging the hammer on the student's desk demonstrates he is unfit to teach. For the reasons stated in Legal Conclusion 6 above, Respondent's conduct does not demonstrate he is unfit to teach and he should not be dismissed from employment with the District. (Factual Findings 1-43 and Legal Conclusions 1-6.)

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ORDER

The Accusation against Respondent Michael Fuoroli is hereby dismissed and he shall remain employed with the Los Angeles Unified School District.

DATED: December 17, 2016 \_\_\_\_\_

DocuSigned by:  
*Mark Frenn*  
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MARK FRENN  
Member  
Commission on Professional Competence

DATED: December 17, 2016 \_\_\_\_\_

DocuSigned by:  
*Kristi Harabedian*  
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KRISTI HARABEDIAN  
Member  
Commission on Professional Competence

DATED: December 19, 2016 \_\_\_\_\_

DocuSigned by:  
*Erlinda G. Shrenger*  
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ERLINDA G. SHRENGER  
Administrative Law Judge  
Office of Administrative Hearings