

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

DEAN VENANZI,

Respondent.

OAH No. 2009120039

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Santa Ana, California, on October 19-20, 2010. The Commission consists of Karen Schuett, Panama Buena Vista Union School District; Shanti Gallegos, Bellflower Unified School District; and Administrative Law Judge Eric Sawyer, Office of Administrative Hearings, State of California, who presided.

Eric Bathen, Esq., and Jordan Meyer, Esq., Law Offices of Eric Bathen, represented the Santa Ana Unified School District.

Joshua Adams, Esq., Rothner, Segall & Greenstone, represented Dean Venanzi (Respondent), who was present each day of the hearing.

The parties presented opening statements, oral and documentary evidence, and closing arguments. The case was deemed submitted for decision at the conclusion of the hearing on October 20, 2010. The Commission thereafter deliberated in executive session on October 21, 2010.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Governing Board (Board) of the Santa Ana Unified School District (District) is the duly elected, qualified and acting governing board of the District, organized, existing and operating pursuant to the provisions of the California Education Code and other laws of the State of California.

2. Respondent was, at all times relevant, a permanent certificated employee of the District assigned to Wilson Elementary School (Wilson) where he taught third grade.

3. On October 6, 2009, Respondent was advised in writing that he had been placed on paid administrative leave while the District conducted an investigation regarding allegations made against him, the details of which are described below.

4. On or about October 23, 2009, the District's Superintendent caused to be served on Respondent notice of the Board's intention to dismiss him, as well as notice that he would be suspended without pay immediately upon action of the Board. Respondent requested a hearing to contest the Board's proposed actions.

5. On or before November 23, 2009, the Board requested the District's administration to prepare charges alleging that cause existed for the dismissal of Respondent as a permanent certificated employee of the District, and for his immediate suspension without pay, to serve said charges upon Respondent after filing them with the Board, and to initiate dismissal procedures should he request a hearing.

6. On or after November 23, 2009, the Accusation was filed and served on Respondent. On or after November 30, 2009, the District received a Notice of Defense from Respondent, which contained a request for a hearing to contest the Accusation.

Respondent's Background Information

7. Credential. Respondent has a clear single subject teaching credential, a clear multiple subject teaching credential, and a clear bilingual certificate of competence from the California Commission on Teacher Credentialing.

8. Employment with the District. Respondent became employed with the District in August of 1988. He worked as an English language development (ELD) teacher at three different campuses from 1988 through 2001. From 2001 through 2009, Respondent performed various duties on different campuses, including as an outreach consultant, third grade teacher and high school Spanish instructor. He was teaching a self-contained third grade elementary class at Wilson at the beginning of the 2009-1010 school year.

The Events of September 21, 2009

9. At least 80 percent of Wilson's students are from poor families and/or are learning English as a second language.

10. On September 21, 2009, while teaching in his third grade classroom at Wilson, Respondent put his hands on the shoulders of student J [REDACTED] R.¹ and pushed him down into his seat. The reasons for this conduct were not established, although Respondent concedes his actions on that occasion were inappropriate. J [REDACTED]'s mother discovered the incident occurred after she picked her son up from school and he cried in the car on the way home.

¹ The identities of the involved students and their parents are omitted to protect their privacy.

11. J■■■■'s father complained about the incident the following morning to Norris Perez, who is the principal at Wilson. Principal Perez interviewed J■■■■ and felt his story was credible. He thereafter investigated the complaint in an attempt to corroborate J■■■■'s version of events. He interviewed three other trustworthy students present in the classroom on the day in question, none of whom saw anything. Instead of confronting Respondent about J■■■■'s complaint, Principal Perez instead questioned him in a general way, by asking questions about how that day went. Respondent did not mention any incident with J■■■■. Principal Perez observed Respondent teach in his classroom on a few occasions, but saw nothing unusual. Under these circumstances, Principal Perez was unable to corroborate J■■■■'s complaint. No action was taken against Respondent.

The Events of October 5, 2009

12. On October 5, 2009, Respondent was teaching his third grade class at Wilson. Toward the end of the school day, at approximately 2:00 p.m., student E■■■■ F. was standing up and talking. Respondent told E■■■■ to sit down and be quiet. Respondent then grabbed E■■■■'s upper right arm and pulled E■■■■ toward his desk. It is not clear whether E■■■■ fell down and hurt his hip, although E■■■■ later reported that he had to Principal Perez. In any event, Respondent pulled E■■■■ by his upper arm, put his hands on E■■■■'s shoulders, and pushed E■■■■ down into his seat. E■■■■ later reported this incident to Principal Perez that afternoon when school was out, and he completed a written statement. E■■■■ also commented that Respondent "used a bad word" in front of the class, i.e., that Respondent had told the class to "shut up." District Police Department Officer Chambers conducted an investigation. Officer Chambers asked Respondent, "Did you grab a hold of [E■■■■]?" Respondent said, "Yes, [E■■■■] was standing up at his seat, I had asked the students to sit down. I put my hands on [E■■■■'s] shoulders and I pushed him down forcefully. I lost my temper and I was mad. I grabbed E■■■■'s upper right arm with my right hand and with my left hand I grabbed his desk and pulled E■■■■ and his desk about five or ten feet. I relocated him away from other students. I lost it and that's my fault." Officer Chambers asked Respondent if this was the first time he had grabbed students and forcefully pushed them down into their seats, and Respondent responded, "No, I did the same thing to another student about two weeks ago." Respondent said he could not remember who the student was.

13. Just moments after the incident with E■■■■, at approximately 2:05 p.m., Respondent told student J■■■■ F. to sit down in his seat. Respondent then grabbed J■■■■ by his shoulders and pushed him down into his seat. J■■■■ later reported this incident to Principal Perez that afternoon when school was out and he completed a written statement. As part of his investigation, Officer Chambers also interviewed Respondent about this occurrence. Officer Chambers' asked, "Did you grab a hold of [J■■■■] today during class?" Respondent said, "Yes, [J■■■■] kept talking, I got frustrated and I pushed him down into his desk seat. I told [J■■■■], 'I'm done, come here.'"

14. Shortly after the incident with J■■■■, at approximately 2:10 p.m., student J■■■■ R. was standing at his desk seat and talking to other students. This is the same student with whom Respondent had an encounter on September 21st. Respondent told J■■■■ to sit down. J■■■■ sat down and attempted to put away his book. Respondent approached J■■■■ and pushed the back of his head forward, causing J■■■■'s forehead to strike the edge of his desk. J■■■■ felt pain and tears welled in his eyes, but he tried not to cry so he would not get in further trouble. Respondent did not say or do anything further to him. J■■■■ reported this incident to Principal Perez that afternoon when school was out and completed a written statement. Officer Chambers interviewed J■■■■ and Respondent regarding this occurrence as well. J■■■■ told Officer Chambers that his forehead hurt during his interview, and Officer Chambers observed that J■■■■ had a two-inch red line on his forehead just above his nose and his left eye. During his interview with Officer Chambers, Respondent admitted to pushing J■■■■'s chair, saying, "Yes I did, I was frustrated, I tried to get him to sit down." Respondent further admitted he did not check to see whether J■■■■ sustained any injuries after he pushed his head down into the desk. Respondent told Officer Chambers, "When I pushed [J■■■■'s] seat forward, I immediately turned around and walked to the front of the classroom and addressed the students about their homework and moved on."

Other Relevant Facts

15. The next morning, i.e., October 6, 2009, Respondent, on his own initiative, telephoned the mother of E■■■■ and J■■■■ and apologized to her for his conduct, saying they were good boys and they deserved better teaching. Respondent did not contact the parents of J■■■■ for reasons not established.

16. Respondent's last formal evaluation from the District was done in the spring of 2007. His performance met expected standards in most categories, although his performance in other categories had not been observed. However, in the comments section his evaluator noted that Respondent's transition from an outreach consultant to a third grade teacher "has been challenging for you." She recommended that Respondent watch other third grade teachers and that he work with the school's literacy coach.

17. Although the events of October 5th were investigated by the District's Police Department, no criminal charges were brought against Respondent.

18. After his suspension went into effect, Respondent completed a one-day Rick Morris seminar, which included classroom management strategies.

19. Respondent did not appear particularly remorseful of his conduct while testifying. At times he admitted that his conduct was inappropriate, and at other times he attempted to minimize his misconduct or deflect responsibility for it by intimating that the three students involved posed behavior problems for him. However, it was not established that those students posed any particular behavior challenge out of the ordinary.

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.) (Factual Findings 1-6.)

2A. It was not established by a preponderance of the evidence that cause exists for the immediate suspension and dismissal of Respondent pursuant to Education Code section 44939² for willful refusal to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the District.

2B. There are no cases that interpret the meaning of this part of section 44939. However, cases interpreting section 44932, subdivision (a)(7), which provides cause for discipline for insubordination, require a “showing of intentional and continual refusal to cooperate.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) The charge of insubordination is viewed as analogous to the charge of willful refusal to perform regular assignments. In this case, Respondent did not intentionally or willfully refuse to perform a regular assignment. His misconduct was the byproduct of abusing three students, not of intentionally deciding to alter or ignore a regular assignment. (Factual Findings 1-14.)

3A. It was established by a preponderance of the evidence that cause exists for the immediate suspension and dismissal of Respondent pursuant to section 44939 for immoral conduct.

3B. The term “immoral conduct” has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.) In this case, Respondent physically abused three students in his classroom, inflicting pain and a visible injury on one whose head he pushed onto a desk-top. Respondent compromised the health and safety of his students on that occasion. There is no respectable person in this community who would not be offended by such behavior under these circumstances. Such misconduct is viewed as equating to willful, flagrant and shameless conduct showing moral indifference to the opinions of respectable people in the community. (Factual Findings 1-14.)

4A. It was established by a preponderance of the evidence that cause exists for the dismissal of Respondent pursuant to section 44932, subdivision (a) (5), for evident unfitness for service as a teacher.

² All further statutory references are to the Education Code unless noted otherwise.

4B. “Evident unfitness for service” means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) “‘Evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Id.*) In this case, it was demonstrated that Respondent is apt to lose his temper when his students engage in minor misbehavior. He manifested his anger by manhandling students in his classroom, in one case by causing a visible physical injury on the student’s forehead. He reacted angrily on two occasions within a few weeks of each other. On October 5th he abused three students within just minutes of each other, seemingly getting angrier as time went on. As a former outreach teacher, Respondent should have known better than to lose his temper as he did. It is also concerning to the Commission that it took a small level of misconduct by his students to cause Respondent to lose his composure as he did. Thus, it was demonstrated that Respondent has a temperamental defect, literally. (Factual Findings 1-14.)

5. In reaching the above, we also conclude that Respondent’s misconduct relates to his fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. The Commission considered all the factors suggested by *Morrison* and compared them to the facts established above. However, it is settled that not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

(A) The likelihood the conduct may adversely affect students or fellow teachers. This factor applies against Respondent, in that he improperly used physical force against three students, injuring one, and undoubtedly scaring all three. Moreover, these events occurred inside the classroom, and were undoubtedly unsettling to other students who observed them. Respondent broke the trust his students had in him, and compromised the health and safety of those in his classroom at the time.

(B) The degree of such adversity. The adversity under these circumstances was serious, in that it impacted not only those students in the classroom, but the parents of the involved children. Such misconduct would cause the parents to lose confidence in the District and seriously compromises the public’s trust in Respondent and the District.

(C) The proximity or remoteness in time of the conduct. The misconduct is proximate.

(D) The type of teaching certificate held by the party involved. This factor has neutral application to this case.

(E) The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. Neither aggravating nor extenuating circumstances were proven.

(F) The praiseworthiness or blameworthiness of the motives resulting in the conduct. This factor applies against Respondent, because we find that there are only blameworthy reasons for Respondent engaging in his misconduct.

(G) The likelihood of recurrence of the questioned conduct. This factor applies against Respondent. He engaged in similar misconduct on two different occasions within a short time frame. He has not done much to remediate his inability to control his classroom so as to avoid the student behaviors that caused him to lose his temper, nor has he demonstrated any awareness of or attempt to control his temper problem. If put back in the classroom under these circumstances, we foresee similar events occurring.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. This factor is not relevant to this dispute, because no constitutional rights or issues were involved in this case.

6. As discussed above, the District established that it had good cause to immediately suspend Respondent for immoral conduct pursuant to section 44939.

7A. It is the decision of the Commission that, based on the above Factual Findings and Legal Conclusions, cause exists to dismiss Respondent from employment with the District, for immoral conduct and evident unfitness to teach, pursuant to Education Code sections 44932 and 44939.

7B. “The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction.” (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.) In this case, the District is responsible for guaranteeing the safety and protection of its students at all times. The District’s teachers are expected to deliver educational services to students entrusted to their care, and to provide a safe and constructive learning environment. Teachers are expected to demonstrate good and admirable behavior and to provide a positive example for their students. Respondent violated the District’s trust when he engaged in physical violence toward three elementary students in his classroom. Respondent’s abusive actions on October 5, 2009, negatively impacted the District’s ability to guarantee the safety and protection of its students, and his outbursts significantly threatened the physical safety of vulnerable elementary students. That was not the first time that Respondent had engaged in similar misconduct. Respondent did not appear remorseful when he testified about the events in question. If anything, he appeared rather casual about his use of force. He has taken very few rehabilitative measures to help him cope with his poor classroom management skills and his temper. Under these circumstances, similar misconduct would be likely should Respondent be placed back in the classroom. Termination is therefore warranted. (Factual Findings 1-19.)

ORDER

Respondent Dean Venanzi is hereby dismissed from employment with the Santa Ana Unified School District.

DATED: _____

Eric Sawyer, Commission Member,
Administrative Law Judge

I concur.

DATED: _____

Karen Schuett, Commission Member

I concur.

DATED: _____

Shanti Gallegos, Commission Member