

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
SAN FRANCISCO UNIFIED SCHOOL DISTRICT
SAN FRANCISCO COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PAUL Y. ROBERTSON,
A Permanent Certificated Employee,

Respondent.

OAH No. 2010090717

CORRECTED DECISION

A Commission on Professional Competence, chaired by Administrative Law Judge Diane Schneider, Office of Administrative Hearings, State of California, convened to hear this matter on January 10, 11, 12, 13, 18, 19, 20, 24, 25, 26, 27, May 9, 10, and 11, in Oakland, California. Other Commission members were April McNeil, appointed by the District, and Jack Foreman, appointed by Respondent, both of whom were qualified to serve as panel members.

William Michael Quinn, Jr., Senior Deputy General Counsel, represented Complainant Roger L. Buschmann, Chief Administrative Officer, San Francisco Unified School District.

Peder J. Thoreen, Altshuler Berzon, LLP, represented Respondent, who was present.

The record closed, and the matter was submitted for decision on May 11, 2011.

FACTUAL FINDINGS

Summary of the Case

1. The San Francisco Unified School District (District) seeks to dismiss certificated employee Paul Y. Robertson (Respondent). Cause for dismissal is alleged for immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service and persistent violation or refusal to obey school laws or District regulations. The District's allegations pertain to conduct over a four-year period beginning in the fall of 2006, in which Respondent was Dean of Students at Galileo Academy of Science and Technology. During this period, Respondent repeatedly violated District policies, statutes and the principal's directives pertaining to student discipline. On numerous occasions he was abrasive and abusive; and he showed poor judgment and a lack of impulse control in his

dealings with students, parents, colleagues and supervisors. He showed little regard for the privacy concerns of students, particularly female students. He also exhibited a pattern of unfair and disparate disciplinary treatment of African-American students. Many people, families and faculty alike, were intimidated by Respondent. He was repeatedly directed by his supervisors to remediate his conduct, but he failed to do so. In his dealings with his supervisors, he consistently denied engaging in any misconduct; at times, he reacted to their directions in a sarcastic and abrasive manner. Respondent demonstrated that he lacks knowledge of the basic concepts, guidelines, and ethical standards pertaining to school counselors. His misconduct over this four-year period had an extremely negative impact on the students and families involved. Members of the school administration and faculty were distressed and distracted by Respondent's ongoing misconduct. As set forth below, the conduct proven at the hearing establishes ample cause for Respondent's dismissal on all grounds alleged.

Procedural Background

2. Respondent has been a permanent certificated employee of the San Francisco Unified School District (District) since August 23, 2006, where he has served as Head Counselor and Dean at Galileo High School's Academy of Science and Technology (Galileo).¹

3. Roger L. Buschmann is the Chief Administrative Officer of the District. On March 25, 2010, Respondent was served with a Notice of Unprofessional Conduct pursuant to Education Code section 44938, signed by Buschmann. On September 7, 2010, Buschmann filed with the Board of Education (Board) a written Statement of Charges, alleging that cause existed for the dismissal of Respondent. On September 9, 2009, the Board adopted a Resolution of Intent to Dismiss. Respondent was served with a Statement of Charges and Notice of Intent to Dismiss on September 15, 2010. Respondent timely requested a hearing. On September 17, 2010, Buschmann filed an Accusation with the Board. Respondent filed a timely Notice of Defense, and an evidentiary hearing occurred in January and May 2011.

4. The Accusation seeks Respondent's dismissal based upon immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service and persistent violation of or refusal to obey school laws or Board rules and regulations.

5. The 110-page Accusation alleges conduct that can be loosely described as falling into the following categories: Failure to Comply with Board Policies, Education Code, and Directives of Supervisors regarding Suspensions, and Abusive and Abrasive Conduct in Imposing Discipline; Abusive and Abrasive Conduct Towards Faculty and Assistant Principals and Failure to Work with them Cooperatively; Inappropriate Conduct Towards Female Students; Unfair Disciplinary Treatment and/or Failure to Assist African-

¹ Respondent holds a Pupil Personnel Services (PPS) Credential.

American Students in need, and Abusive and Abrasive Treatment of African-American Students and their Parents; Other Conduct Amounting to Poor Judgment and Lack of Self-Control; Lack of Knowledge of and Failure to Comply with Performance Standards and Ethical Duties.

6. The evidence presented was voluminous. With the exception of Respondent, the testimony of the witnesses was forthright and credible in all respects. The pertinent facts are summarized below.

Failure to Comply with Board Policies, Education Code, and Directives of Supervisors regarding Suspensions, and Abusive and Abrasive Conduct in Imposing Discipline

7. Vicki Pesek is the Principal at Galileo, and has held this position since the fall of 2005. Pesek received many complaints from teachers, parents and students, regarding the propriety of Respondent's disciplinary actions from the fall of 2006 forward. Beginning in November 2006, and for about four years thereafter, on numerous occasions, Pesek counseled Respondent, verbally and in writing, to comply with the required procedures for suspensions, to employ principles of progressive discipline, to treat all people with respect, to refrain from verbal abuse, and to enforce school rules equitably. Board Policy 4460 requires school employees to "follow the principal's instructions and cooperate with [her] in all matters necessary for the general welfare of the school."

8. At the hearing, Pesek outlined the rules and procedures regarding suspensions. Board Policy 6123 requires Respondent to maintain discipline conducive to the well-being of both individual students and the school. A student may not be suspended without Pesek's authorization.² Sending a student home for the day is not an authorized or acceptable type of discipline. Pesek emphasized this to Respondent.

According to the Education Code, suspension of students is the last resort, and must be justified by serious misconduct such as violence, a weapon or a drug sale.³ Board Policy 5114 provides that students shall not be suspended unless other lesser means of correcting behavior fail. Pesek explained that District policy mandates the use of progressive discipline and restorative justice. This means that disciplinary offenses must be addressed by means other than expulsion and suspension, unless expulsion or suspension is mandated by law.

In addition, absent an emergency, the law requires that prior to suspending a student, the student shall given a right to an informal conference in which the student is informed of the reason for the suspension and provided an opportunity to give his or her version of the events.⁴ The parent or the guardian of the student should be called and provided written

² See Education Code section 48900.

³ See Education Code section 48900.5.

⁴ See Education Code section 48911.

notice of the suspension.⁵ Board Policy 5114 also requires that students who face suspension be treated in a fair and equitable fashion, that they are provided with due process, and that teachers communicate with parents or guardians when behavior problems arise. Board Policy 4430 requires employees to treat all people equally and with respect.

Regarding the police, District policy is that police should not be called unless it is necessary to for the protection of students or staff, or required by law, or to address the criminal behavior of persons other than students.⁶ Additionally, absent emergencies, a school site administrator must be contacted to make the decision of whether to involve the police.

9. On numerous occasions, Respondent's suspensions of students lacked sufficient cause under the law and Board policies, were unauthorized by Pesek, and/or failed to comply with procedural requirements such as affording students an informal conference, calling a parent or guardian to notify him or her about the disciplinary action, and sending written notice of suspension to the parent or guardian. His decisions regarding discipline often lacked fundamental fairness and were carried out in an abusive and demeaning manner. Additionally, by failing to comply with mandated principles of progressive discipline, Respondent escalated minor infractions into major disciplinary actions, to the dismay of parents, students and the administration. Respondent also sent students home for the day, which is not an authorized type of discipline. These incidents include:

- (a) In October 2006, Respondent summarily suspended A. G.⁷ The suspension was unauthorized and did not follow proper procedures.
- (b) In November 2006, Respondent summarily suspended student C. S. for three days, for being disrespectful. The suspension was unauthorized and did not follow proper procedures.
- (c) On January 24, 2008, Respondent suspended student L. R. for five days for allegedly beating and robbing another student on January 17, 2008, at a nearby pizza parlor. Respondent did not adequately investigate the matter, and he did not afford L. R. an opportunity to provide her version of events. Respondent did not call L. R.'s mother to inform her of the suspension. When L. R.'s mother inquired into the reasons for the suspension, Respondent said "you'll get it in the mail." He was verbally abusive to L. R.'s mother. About two weeks later, she received the suspension papers in the mail. Respondent also had L. R. arrested

⁵ Education Code section 48911.

⁶ Resolution No. 92-23A6.

⁷ Students are not identified by name in order to protect their privacy.

for the incident, and did not inform her mother regarding her daughter's arrest. (Her mother learned that L. R. had been arrested from the Youth Guidance Center.) Criminal charges were initially filed against the student, but were later dropped.

- (d) In March 2010, Respondent sent student A. J. home for the day for taking a \$100 bill that his Advanced Placement History teacher had planted on A.'s seat as part of an experiment. A. J. had never been in trouble prior to this incident. Respondent knew of the History Teacher's experiment, and, in treating A. J. as a thief, Respondent continued to participate in the ruse.
- (e) In December 2008, Respondent directed student I. T. to go home after he overheard her using profanity during a conversation with a friend. I. T. apologized. She did not want to go home because she had a chemistry test. Respondent yelled at her to go home and threatened to suspend her for three days if she did not leave campus. He told her that he had spoken with her mother, and that her mother wanted her to go home. This was, in fact, untrue. I. T. called her mother, who left her job at the San Francisco Airport, in order to take I. T. home.
- (f) In January 2009, Respondent summarily suspended student T. G. for having a closed bag containing two donuts while she was working in the computer lab. (She was saving the donuts as a gift for another student.) T. G. was not eating and was not disrespectful to Respondent when he spoke to her. When she did not immediately leave, Respondent threatened to prevent her from walking the stage at graduation and from attending the senior prom.
- (g) In March 2007, Respondent summarily suspended B. B., for walking to a corner store to buy Tylenol during homeroom period.⁸ When Respondent called to her, Respondent was riding in a police car with Officer Nick, something he frequently did. B. B. turned around and went back to school and did not go to the store. Respondent went back to school and took her out of class and told her that he was suspending her for three days. He did not discuss any alternative to suspension, and he did not give B. B. a chance to explain her side of the story. B. B. had never been in trouble prior to this incident.
- (h) In October 2009, Respondent accused student J. B. of being involved in the theft of electronic items from the school gym. Although no evidence was found linking her to the theft and no criminal charges were filed against her, Respondent suspended her for five days. He also threatened her with expulsion and arrest.

⁸ Pesek acknowledged that many students "cut" homeroom period on a regular basis. The school is taking steps to eliminate this problem.

- (i) In May 2010, Respondent attempted to suspend student J. S. for three days for willful defiance, which is not grounds for suspension.
- (j) In May 2010, Pesek was concerned that Respondent had suspended student R. O. without cause and without providing him with due process. She asked Respondent to provide his version of events, but he failed to do so.
- (k) In August 2010, Respondent recommended suspension for student D. G. for allegedly smoking marijuana, which is not cause for suspension. Respondent also failed to investigate this matter and provide D. G. with due process.
- (l) In August 2010, Respondent sent student J. A. back to class after Assistant Principal Katie Pringle directed him to call J. A.'s parents and make a referral to the campus Wellness Office because J. A. smelled of marijuana.

10. Respondent's conduct, set forth above, constitutes unprofessional conduct and unsatisfactory performance. Additionally, Respondent's failure to comply with the suspension procedures contained in the Education Code and his repeated violation of the Board policies set forth above, constitutes a persistent violation of or refusal to obey the school laws of the state and reasonable regulations prescribed for the governance of the public schools by the governing board of the school district employing him.

Abusive and Abrasive Conduct Towards Faculty and Assistant Principals and Failure to Work with Them Cooperatively

11. California Standards for the School Counseling Profession (California Standards) call for school counselors to collaborate and coordinate with school staff to ensure student success in school and in life. Similarly, Board Policy 6000 requires school staff to work cooperatively with other staff members to promote student discipline and development and to model appropriate conduct for students.⁹ Board Policy 4430, referenced above, also requires school staff to treat people in a respectful and helpful fashion. Respondent violated these policies and standards on numerous occasions, including;

- (a) In October 2006, in the presence of students and staff, Respondent addressed teacher Lisa Franzen in a sarcastic, abusive and threatening manner after she questioned why he released an intoxicated student without supervision. Franzen felt intimidated by Respondent's conduct, and was afraid to report Respondent's conduct to the administration for fear of retaliation.

⁹ This policy is also reflected in Galileo Academy Principal's Expectations ("support colleagues in promoting the general welfare of students, faculty and staff").

- (b) In November 2006, in the presence of another dean, Respondent addressed teacher Marti Bush in a loud, disrespectful and angry tone when she asked him about a student's suspension.
- (c) In March 2007, Respondent addressed teacher Jennifer Gordon in a sarcastic and abusive tone of voice in which he accused her of "wanting to know every little thing I do."
- (d) In 2008, after teacher Kyra Rice had complained about Respondent's unfair and unequal treatment towards African-American students, Respondent harassed her in several ways. He sent students to her class late, without a tardy pass, forcing her to contact Respondent for a pass. He then responded that he "did not have time" to write the passes. He interrupted her class with numerous phone calls, asking to speak to students. When Rice asked Respondent to wait until the end of class to talk to the student he threatened to send the student home if she did not let him speak to the student. He also came into her class numerous times and removed students. His interruptions interfered with her teaching and her students' learning.
- (e) Respondent failed to attend meetings he was required to attend, such as Student Assistance Meetings with his colleagues. These meetings enable faculty to plan and coordinate interventions for students, many of whom had regular dealings with Respondent. Respondent also failed to attend faculty meetings. He commented to Assistant Principal Nancy Lambert that no one had succeeded at getting him to attend meetings since he was hired at Galileo.
- (f) In 2010, Respondent did attend some meetings, but he was disrespectful while doing so. During a March 2010 meeting, Respondent sang a song under his breath about being tortured. In another meeting he mumbled that he needed a shot of tequila when Lambert was speaking.
- (g) Respondent repeatedly failed to respond to radio calls for assistance. In November 2009, after Assistant Principal Katie Pringle had questioned Respondent's judgment, he failed to respond to her radio calls for help. Yet, when another staff member called for help a few moments later, Respondent responded immediately. Pringle believed, and the Panel finds, that Respondent was retaliating against Pringle for questioning his disciplinary decisions. In spite of directives from his supervisors, Respondent continued his pattern of not responding to radio calls through May 2010.

12. Respondent's conduct, set forth above, constitutes unprofessional conduct, unsatisfactory performance, and a persistent violation of Board policies.

Inappropriate Conduct Towards Female Students

13. Respondent coached the girls' softball team. In 2007, Respondent asked the girls on the team to tell him when they were menstruating. He told the girls that he was going to write down the timing of their periods so that if they skipped practice due to menstrual cramps, he would know if they were lying to him. If a girl missed a practice, Respondent was heard to ask if it was "that time of the month."

14. In October 2009, student A. W. was walking down the hall in her cheerleading uniform. Respondent asked A. W.'s male friend if he thought that A. W. looked good in her uniform. A. W. was embarrassed and uncomfortable with this comment, which she perceived as sexual in nature. Other female students complained that Respondent made inappropriate remarks about their physical appearance.

15. Respondent's inappropriate conduct towards female students, set forth above, constitutes unprofessional conduct and unsatisfactory performance.

Unfair Disciplinary Treatment and/or Failure to Assist African-American Students in need, and Abusive and Abrasive Treatment of African-American Students and their parents

16. Pesek received numerous complaints from students, parents and Galileo staff regarding Respondent's discriminatory treatment towards African-American students and their parents. Parents reported that their children were unfairly singled out for differential treatment. Parents also reported that their children were suspended by Respondent for minor infractions, or for conduct that they did not commit. They also reported that Respondent was rude and demeaning in response to their calls and queries. These instances included:

- (a) In March 2007, student D. S. was hospitalized following a severe beating by a group of Asian youth. D. S. was scared for his safety and relayed these concerns to teacher Kyra Rice. She approached Respondent to talk about the incident. He commented that D. S. "provokes kids all of the time" and "maybe he'll learn his lesson from this." He also commented that "Asian kids don't have gangs."
- (b) During the 2006-2007 and 2007-2008 school years, Rice observed that Respondent acted in a harsh and abrasive manner towards African-American students and disciplined them for behaviors such as cutting classes. She also observed that he did not discipline students of other ethnic backgrounds who engaged in the same behaviors. She also saw Respondent harass African-American students by threatening suspension.
- (c) B. B., the student who was suspended for walking to the corner store during homeroom period to buy Tylenol during homeroom period, is African-American. At the time that Respondent called to B. B., there were about seven other students, who were not African-American, who were also cutting homeroom and wandering around in the vicinity. She felt that she was singled out because she is African-American.

- (d) The following day, B. B. and her mother met with Respondent to discuss his suspension of B. B.¹⁰ They expressed their view that he disciplined African-American students more harshly than students of other ethnicities. During this meeting, Respondent turned to B. B. and said, in a sarcastic tone of voice, “Are you Black? I didn’t know you were Black.” B. B. and her mother felt insulted, demeaned and upset by Respondent’s comments. Respondent claimed that at the time he asked this question, he genuinely did not know that B. B. was African-American. Respondent’s testimony was not credible.¹¹
- (e) In March 2007, a group of African-American parents complained to the school about Respondent’s discriminatory treatment towards African-American students. Respondent did not take their concerns seriously. A number of African-American families reportedly left Galileo because of Respondent’s conduct.
- (f) In 2008, Respondent used a harsh and abusive tone of voice on a number of occasions towards Michelle B., parent of student L. R. He also hung up on Michelle B. on more than one occasion. When Michelle B. questioned his authority to prevent her daughter from going off campus for lunch, he stated that he can do whatever he wanted to do. Michelle B. thought that Respondent was racist: He referred to African-American students as “those kids.” He did not give African-American students a chance to “say anything.” L. R. was very upset by the way Respondent treated her, to the point that she did not want to attend school. Michelle B. would not let her younger daughter attend Galileo for fear that Respondent would have a similar negative impact on her. As much as Michelle B. liked Galileo, she thought that Respondent gave it a “bad name.” The concerns of Michelle B. and her daughter were echoed by many other African-American families.
- (g) School Security Aide Rebecca Shortridge-Simpson complained to Pesek in April 2008 regarding Respondent’s unfair and discriminatory treatment towards African-American students. Her testimony at the hearing regarding her observations established that Respondent targeted African-American students for disciplinary action; was verbally abusive towards African-American students; imposed harsher punishment on African-American students than others for the

¹⁰ For reasons that were not clear, B. B. was not required to actually serve her suspension time.

¹¹ Respondent’s testimony that he did not know B. B. was African-American was not credible for a number of reasons: B. B. testified at the hearing, and there was no question from her appearance that she was African-American. She appeared in the school’s annual celebration of African-American history month, which Respondent attended; she was a member of the Black Student Union during the four years she attended Galileo, and president for the last two years of high school.

same or similar misconduct; assumed that African-American students were guilty without investigating the facts of cases; and taunted African-American students for their past mistakes.

- (h) Student I. T. had a number of very negative interactions with Respondent. She felt picked on by Respondent, who would “find a weak spot” and pick on it. One such incident is described above, in December 2008, wherein Respondent yelled at her and ordered her to go home for the day for using profanity during school. On another occasion, Respondent threatened to suspend her for five days, and prevent her from participating in graduation ceremonies after she was observed using marijuana during lunch.
- (i) In January 2009, as described earlier, Respondent suspended student T. G. for possessing a closed bag containing two donuts while working in a computer lab. Another student, B. B., thought that the discipline imposed was excessive and due to a “vendetta” that Respondent had against T. G. Respondent maintained that he went to the computer lab because a staff person, Mr. Carter, came to his office and asked him for help. According to Respondent, Mr. Carter told him that students were eating and drinking in the computer lab, and did not listen to him when he asked them to leave. Respondent’s testimony was not credible.
- (j) As described earlier, Respondent suspended student J. B. for being involved in a theft from the girls’ locker room. She felt hurt and disrespected that Respondent had suspended her when there was no evidence linking her to the theft. As a result of the suspension, she missed school and failed chemistry because her teacher would not allow her to makeup the work. This was not the first time that Respondent had falsely accused J. B. of committing a crime that she did not commit.
- (k) In January 2010, teacher Bill Hoffland was having difficulty with student A. B., and called Respondent for assistance. Respondent told Hoffland that he did not want to intervene because of the pending allegations regarding his treatment of African-American students. The conflict between Hoffland and A. B. escalated to a physical and verbal altercation. During the same month, another teacher, Madonna Green, reported that Respondent refused to intervene in a disciplinary situation involving two African-American students.
- (l) D. G. had a number of contacts with Respondent during the 2009 school year and the beginning of the 2010 school year. He believed that Respondent singled him out because he is African-American. Respondent accused him of being a thief. He also disciplined D. G. and another African-American student for cutting homeroom, when there was about 12 other non African-American students right there who were also cutting homeroom. In August 2010, Respondent falsely accused student D. G. of smoking marijuana with two other male students. Respondent assumed that D. G. had been involved, when he was not. D. G.

played on the school's football team. Respondent told D. G.'s coach that D.G. had been smoking marijuana, and he recommended that D. G. be kicked off of the football team and suspended. The football coach told D. G. not to worry. (Several days after the incident with D. G., Pringle sent student J. A. to Respondent for smoking marijuana. Pringle instructed Respondent to call the student's parents and refer him to the campus Wellness Center. Respondent disregarded Pringle's instructions and sent J. A. back to class. J. A. is not African-American.)

- (m) D. G.'s mother was extremely distressed by Respondent's unfair and disrespectful treatment of her son. She recounted that Respondent called D. G. a "thug." Respondent never called her following the incident where he accused Respondent of smoking marijuana. She has worked hard to instill a positive self-image in her son, but Respondent kept "tear[ing]" him down. D. G. has worked hard to maintain his eligibility to play on the football team, but Respondent continued to stereotype him as a problem student. She advised her son to avoid Respondent. Her son relayed to her that Respondent kept following him around.

17. Respondent's conduct undermined the trust of the students and families involved, and created a perception that African-American families would not be treated fairly at school. When asked about his conduct, both at the hearing, and by his supervisors, Respondent denied that he engaged in the conduct set forth above. His testimony lacked credibility and candor. Respondent's disparate treatment of African-American students and their families, set forth above, constitutes unprofessional and immoral conduct, unsatisfactory performance, and violates the non-discrimination policy adopted by the Board (Board Policy 5163).¹²

Other Conduct Amounting to Poor Judgment and Lack of Self-Control

18. In November 2006, Respondent was asked by Pesek to supervise a student, E. G., who was intoxicated. Respondent did not supervise E. G.; instead he let her leave the school unattended. Respondent's conduct violated Board Policy 4460, which provides that certificated employees are "responsible for all students in their charge and shall not leave students unsupervised."

19. In March 2007, Respondent was called for assistance after student K. S., became depressed and disruptive after having received a bad grade, and attempted to jump out of a classroom window on the third floor. It is school policy to refer a student who may be a danger to himself or others to the campus Wellness Center for an assessment. Respondent talked to K. S. and did not think that K. S. was suicidal; therefore, he sent K. S. back to class and did not refer him to the Wellness Center.

¹² Respondent's conduct also violates Board policies 5114, 6000 and 4430, set forth above.

20. Respondent had nicknames for certain students. Some of the nicknames were embarrassing and demeaning to students.

21. In November 2009, Respondent pressed student and cheerleader A. W. away from the entrance gate to a football game with his hand. The force of the weight of his hand on A. W.'s shoulder caused her to lose her balance and fall back onto another student. Respondent denied that he pushed or touched A. W. in any way. His recitation of the events to his supervisor and at the hearing lacked credibility.

22. In February 2010, Respondent made a police report alleging sexual abuse of a female student, L. N., by Linh Lam, a female former assistant volleyball coach. Respondent resided with L. N. and her mother, who is his girlfriend. The alleged abuse occurred at Respondent's residence. He did not inform the school regarding the incident. Two days after the incident, Respondent gathered the student locator cards for the volleyball team and told Pringle he was taking them to the police. Pringle told Respondent that she wanted to check with the District to see if this was permissible. Respondent did not listen to Pringle, and instead, took the student locator cards and gave them to the police. At the hearing, he asserted that Pringle gave him permission to take the cards. His testimony was not credible.

The same day that he took the locator cards, Respondent contacted the District's athletic office and obtained a personnel list of middle and high school coaches. The list indicated whether or not the coach had received District approval to coach. Respondent was not authorized to investigate this matter on behalf of the school, and he did not disclose his personal interest in the matter to the District office when he obtained the list. The list indicated that Lam was not authorized to coach until she obtained CPR, First Aid, and another certification. In August 2010, Respondent's girlfriend and her daughter L. N. each filed claims against the District for \$150,000 and \$450,000, respectively. Both claims alleged a failure on the part of Pesek to protect the student from Lam, because Lam had not been cleared to coach. The District's list of coaches obtained by Respondent was attached to their respective claims. At the hearing, Respondent denied that he had any personal interest in obtaining the coaches list from the District. He maintained that it was "just a coincidence" that Lam's name was on the list. His testimony was not credible.

23. In April 2010, School Nurse Deborah Bryant submitted a school injury report regarding student M. D., who had injured his shoulder while playing football during the lunch hour. The report listed Respondent as the person in charge. Respondent went to Nurse Bryant and pressured her into filing an amended school injury report, stating that he was not informed of the injury.

24. In May 2010, during a conversation with Lambert, Respondent characterized a fight between a female and a male student who is openly gay, as "girl fight."

25. In May 2010, Respondent called the mother of student M. B. and disclosed that M. B. was dating a girl.

26. Respondent's conduct, set forth above, constitutes unprofessional conduct, unsatisfactory performance, and a persistent violation of Board policies 6000 and 4430.

Respondent's Lack of Knowledge of and Failure to Comply with Performance and Ethical Standards

27. Lack of Knowledge of Performance and Ethical Standards: Respondent lacked knowledge regarding his ethical obligations and the basic competencies required of school counselors. The Notice of Unprofessional Conduct required Respondent to familiarize himself with the Ethical Standards for School Counselors contained in the American School Counselor Association (ASCA) and conduct himself accordingly. Respondent, however, acknowledged that he had "never heard" of the ASCA until this proceeding. He did not know if there was a California School Counselor Association, and he did not know anything about the ethical standards for school counselors.

Respondent remembers little to nothing from his education and training at the University of San Francisco (USF), where he attended graduate school and obtained his Master's Degree in counseling. Respondent did not know or could not remember anything about his education or training in cross-cultural counseling, except that he passed the class and got a job. He could not say how socio-economic factors play a role in counseling, nor could he explain what is meant by the term developmental theory. As to his education in law and ethics, he remembers that he received an "A" in the class, but could not remember any specifics of the class, such as reporting requirements for child abuse or self-injurious behavior, or ethical duties relating to confidentiality. He also could not remember anything about his training regarding the need for collaboration with colleagues. Respondent stated that in performing his duties as Dean and Head Counselor, he "just goes by common sense" and attempts to treat people fairly and ethically. He added, that "if you go by this, you don't need to know the standards."

Respondent's lack of familiarity with the ethical and performance standards that govern his profession, establishes unprofessional conduct and unsatisfactory performance.

28. Failure to Comply with Performance or Ethical Standards: Nancy Rosenbledt, Psy.D, holds a doctorate degree in counseling psychology from USF and is an expert in the professional standards and competencies applicable to counselors in California. She also holds Master's Degrees in Administrative Education and Counselor Education, and a PPS credential. She has worked as a school counselor for almost 20 years. Dr. Rosenbledt is a part-time faculty member in the Master's Program in Counselor Education at USF. She was Respondent's fieldwork supervisor from fall 2004 to spring 2005, when he was in the Counselor Education graduate program at USF and worked as an intern at Galileo.

Dr. Rosenbledt reviewed, among other things, the Statement of Charges and exhibits, the performance standards contained in the California Standards, and the ASCA's Ethical Standards for School Counselors.

School counselors are expected to be familiar with, and act in conformity with, the principles set forth in California Standards and the ASCA. These standards require counselors to treat all students with dignity and respect, which she described as the “underpinning” of a relationship between the counselor and student. Dr. Rosenbledt also stressed the importance of California Standards Four and Five, which, respectively, requires a school counselor to collaborate and coordinate with school staff, parents and local community resources, and to promote a safe environment (emotionally and physically) for all students. As a trained counselor, Respondent is expected to be aware of and responsive to his students’ developmental and privacy needs.

Dr. Rosenbledt opined that Respondent failed to fulfill his duties and responsibilities as a school counselor in many instances, including: failing to use progressive intervention strategies short of suspension; failing to treat students with respect; his inappropriate comments to female students, his disclosure of a student’s same sex girlfriend to her parent; his lack of coordination and collaboration with faculty or parents; in the Lam matter, his dual personal and professional role, and his removing student locator cards without permission from his supervisor; and his imposition of harsher discipline on African-American students. Dr. Rosenbledt further opined that the net effect of Respondent’s behaviors is that the students and families are unlikely to engage and connect with the school because they do not feel safe. According to Dr. Rosenbledt, this behavior is likely to recur because Respondent was given many opportunities to change, the misconduct was repetitive and not an isolated incident, and because Respondent’s temperament is “aggressive, demeaning and bullying.”

29. Respondent’s failure to comply with applicable performance and ethical standards constitutes unsatisfactory performance and unprofessional conduct.

Failure to Remediate Conduct/Lack of Cooperation and Sarcastic and Retaliatory Conduct Towards Supervisors

30. Pesek counseled Respondent on numerous occasions, beginning in November 2006, regarding his conduct. Respondent was warned numerous times, verbally, and in writing, to treat people equally and in a respectful fashion, and to refrain from abusive and intimidating behaviors. In late March 2007, Respondent was placed on administrative leave pending an investigation into his conduct. The District ended Respondent’s administrative leave at the end of spring semester 2007. He returned to his position in the fall of the 2007 school year, with directions to, among other things, treat all people with dignity; demonstrate greater cultural sensitivity and sound disciplinary judgment; consult with his supervisors regarding his disciplinary judgments, and follow his supervisor’s directives. Over the next few years complaints continued to mount, and he was warned repeatedly to remediate his conduct, and in particular, to impose discipline in a fair and even-handed fashion to all students, but he failed to do so.

31. On March 25, 2010, the District, through its Assistant Superintendent of Human Resources, issued to Respondent a formal Notice of Unprofessional Conduct and Unsatisfactory Performance (Notice) pursuant to Education Code section 44938. The Notice set forth the deficiencies in Respondent's performance, and provided specific examples of Respondent's failure to adhere to the standards of professionalism and performance expected by the District.

32. The Notice included a number of specific remedial requirements to assist Respondent in improving his performance during the 45 and 90 day periods provided by Education Code section 44938, and beyond. The Notice instructed Respondent to comply with all of the following remedial requirements:

- (1) To familiarize himself with and follow his Principal's written expectations for teachers.
- (2) To familiarize himself with and conduct himself in accordance with the principles outlined in the Code of Ethics for the Education Profession.
- (3) To familiarize himself with and conduct himself in accordance with the principles described in the Ethical Standards for School Counselors of the American School Counselor Association.
- (4) To familiarize himself with and follow Board Policy 4430.
- (5) To familiarize himself with and follow Board Policy 4460.
- (6) To familiarize himself with and follow Board Policy 6000.
- (7) To familiarize himself with and follow Board Policy 6123.
- (8) To keep his office door open at all times when he is not in session with a student, and to keep it ajar when he is in session.
- (9) To address all students in a calm, respectful, courteous and professional tone and manner, appropriate to a school environment.
- (10) To not deride, denigrate, disparage, or demean students.
- (11) To not threaten students.
- (12) To address all Galileo staff members, parents and community members in a calm, respectful, courteous and professional tone and manner, appropriate to a school environment.
- (13) To not deride, denigrate, disparage, or demean parents, guardians, or other members of the school community.
- (14) To not threaten parents, guardians or other members of the school community.
- (15) To avoid any sarcasm, ridicule or derision in his statements and interactions with Galileo students, staff, parents, or other members of the school community.
- (16) To not use profanity at any time in the course of his professional duties.
- (17) To answer all radio calls promptly and professionally.
- (18) To assure that his disciplinary actions with students are fair, consistent and factually justified.
- (19) To provide students a fair and reasonable opportunity to explain their actions before deciding or taking disciplinary action.

- (20) To familiarize himself with the principles of restorative justice, and with the District's restorative justice policy, and use those principles in the performance of his work place duties.
- (21) To develop and follow principles of progressive discipline, and to use suspension only when lesser means of behavior correction are unlikely to be effective, and then only in full compliance with the requirements of District policy and California law.
- (22) To familiarize himself with the discipline provisions of the District's Student, Parent, Guardian Handbook,.
- (23) To insure that the discipline administered to students is measured and proportionate to the behavior presented.
- (24) To endeavor at all times to deescalate conflicts, whether with students, parents, community members, or other members of the school and District staff.
- (25) To the extent possible, to select disciplinary interventions which minimize interruption of student attendance and learning.
- (26) To inform himself of the rules and regulations concerning discipline of special education students, and – in consultation with the school's special education staff – to assure that his disciplinary actions are measured, tailored, and appropriate in light of the student's special education program and needs.
- (27) To assure:
 - (a) That all discipline is meted out in a fair and equitable manner;
 - (b) That it is justified at the inception; and
 - (c) That his disciplinary actions are not affected by considerations of race, ethnicity, gender, disability or other protected personal characteristics.
- (28) If he is uncertain whether his proposed disciplinary action complies with these requirements, to consult with his principal (or other members of his leadership team, in the principal's absence) before taking that action.
- (29) To maintain an accurate log of all significant disciplinary actions, including all students who are suspended or referred for expulsion, showing for each student:
 - (a) The date of the action;
 - (b) A brief description of the circumstances giving rise to the action;
 - (c) The date and time of each parent contact relating to the matter, along with the type of contact (*e.g.*, telephone call, office conference, letter home);
 - (d) The length of the suspension;
 - (e) The identity of all other students involved in the incident; and
 - (f) Any behavioral interventions attempted before the suspension or expulsion referral was imposed. To keep this log current and

- have it available for review by his Principal or Assistant Principals upon request.
- (30) When suspending students from school:
 - (a) To contact the student's parent or guardian by telephone to discuss the reasons for the suspension decision, using all contact numbers available to him.
 - (b) To complete all suspension paperwork promptly, providing it personally to the parent or guardian if they pick the student up at school, and delivering it through the student (with a copy mailed to the parent the same day) if they are not.
 - (c) To provide a duplicate copy of the suspension paperwork to his supervisor the same day the suspension is imposed.
 - (31) To maintain an accurate log of all parent conferences or contacts, showing:
 - (a) The parent's name;
 - (b) The student's name;
 - (c) The date and time of the contact or call;
 - (d) The reason for the contact or call;
 - (e) The date, time and substance of any follow up calls.

To keep this log current and have it available for review by his Principal or Assistant Principals upon request.
 - (32) To respond to all parent telephone calls as quickly as reasonably possible, and in no case more than 24 hours after receipt.
 - (33) To familiarize himself with and follow District policy regarding police interviews with students.
 - (34) Except in emergency situations, to not contact the police or law enforcement authorities concerning a student without first discussing the matter with the Principal or another member of the school's leadership team.
 - (35) To not ride in the School Resource Officer's car (or other police vehicle) except when genuinely necessary to the performance of his workplace duties, and then only after informing his Principal (or other member of the leadership team, in the Principal's absence).
 - (36) To maintain an accurate and up-to-date log of all contacts with the police, probation authorities, or other law enforcement authorities, showing:
 - (a) The date of contact;
 - (b) The agency or official contacted;
 - (c) The student discussed;
 - (d) The reason for the contact, including a brief summary of the substance of the conversation; and
 - (e) The date, time and substance of any follow up contacts regarding the matter.

To keep this log current and have it available for review by his Principal or Assistant Principals upon request.

- (37) To promptly inform parents or guardians any time their child is arrested or taken into police custody, by telephoning all available parent contact numbers until the parent is reached. If unable to promptly reach a parent or guardian at their listed contact numbers, to contact the Principal (or other member of the school leadership team, in the Principal's absence) to inform them of that fact and to seek guidance on how to proceed.
- (38) To interrupt instructional time only when genuinely necessary to the performance of his professional duties, and then only in the least intrusive and disruptive fashion possible in the circumstances.
- (39) When his responsibilities necessitate that he telephone or enter a classroom, to minimize the extent of that interruption as much as possible, and make a sincere effort to avoid interrupting the same classroom on a frequently repeated basis.
- (40) When meeting students in his office, to provide them a written pass for their return to class, accurately reflecting the time they arrived at and left his office.
- (41) To attend all Student Support Services, SST, SAP, IEP and other meetings for which he is scheduled, arriving on time and properly prepared for the meeting, and participating appropriately throughout the meeting.
- (42) To arrive for scheduled conferences and meetings in a timely manner, unless genuinely prevented from doing so by circumstances beyond his control.
- (43) To inform himself of the school's protocols for dealing with students who may be at risk of harming themselves, and to carefully adhere to those procedures, including advising and involving the school's Wellness staff in dealing with such situations.
- (44) To appropriately maintain the confidentiality of student disciplinary matters, sharing that information only with others involved in the situation who have a genuine and appropriate need to know that information.
- (45) To not share confidential information concerning students with other students or their families.
- (46) To not discuss disciplinary matters involving students in front of other students or their families.
- (47) To not publicly discuss or disclose confidential information concerning one student to others.
- (48) To not needlessly discipline students in the presence of their peers.
- (49) To not announce, in a public setting such as a classroom, that a particular student is being suspended or otherwise disciplined.
- (50) To take care to respect the privacy of students and to maintain and handle student information in a sensitive and professional manner.

- (51) To not disclose student records to persons outside the authorized Galileo or District staff, without prior written authorization by his Principal or Assistant Principals.
- (52) To not needlessly subject students to embarrassment, scorn, ridicule or humiliation.
- (53) To respect the confidentiality of counseling and Wellness Center activities.
- (54) To not discuss or disclose confidential personnel information, including information concerning his professional performance, discipline, or remediation, in the presence of students.
- (55) To familiarize himself with and follow Board Policies 4320 and 4420, concerning the confidentiality of personnel matters.
- (56) To address students by their given names, unless he is given express permission by the student to use a “nick name” or other form of address.
- (57) Within 30 calendar days of receiving the Notice of Unprofessional Conduct and Unsatisfactory Performance, to register and complete the (two-hour) online sexual harassment training prevention program which District supervisors and administrators receive.
- (58) To be sensitive to the developmental and maturational needs and privacy concerns of adolescent girls, and to not inappropriately comment or question his female students regarding their menstrual periods. Should there be any doubt regarding the appropriateness of a particular interaction, to refer the girl to the Wellness Center or other female staff member.
- (59) To not comment on the physical appearance or attractiveness of students.
- (60) In all dealings with students or parents, to conduct himself in a calm, respectful, professional manner, even when provoked or treated discourteously.
- (61) To not physically grab, strike, push, hit or restrain students, except when necessary to address a threat to the student’s own safety or the safety of others, and then only to the extent reasonably necessary to protect the individuals involved.
- (62) To promptly report to his supervisor, in writing, any situation in which he believed it was necessary for him to physically grab, strike, push, hit or restrain a student, providing a complete and accurate factual description of the situation, and any relevant surrounding circumstances, including a full explanation of the need for physical intervention.
- (63) To forebear from any form of corporal punishment.
- (64) To familiarize himself with and follow California Education Code sections 49000 and 49001.
- (65) To promptly report all instances of suspected child abuse or neglect, by calling the Child Protective Services Agency hotline at. To follow up

all CPS reports, in writing, on the same day as the oral report was made, using the reporting form which was attached to the Notice. To provide a copy of the written report to his supervisor on the day it was submitted.

- (66) To be truthful and forthright in all interactions with his supervisors and colleagues.
- (67) To follow the directives of his supervisors, whether written or oral, and to promptly follow through to completion on all assigned duties.
- (68) By the end of each work week, to provide his supervisor a copy of his weekly schedule for the following week, including student names and appointment times for all scheduled student or parent meetings.
- (69) To familiarize himself with and follow Board Policy 5163.
- (70) To familiarize himself with and follow Board Policy 5165.
- (71) To treat all people fairly and equitably, without regard to race, ethnicity, gender, national origin, English learner status, disability or other protected characteristics.
- (72) To not refuse to assist or interact with any person due to their race, gender, disability, or other protected characteristic. Any refusal to do so will be construed by the District as an act of immoral conduct which is sufficient, without more, to justify the termination of his employment, and as evidence of evident unfitness to serve as a certificated employee within the meaning of California Education Code section 44932(a)(5).
- (73) To not threaten, intimidate, or retaliate against staff, students, parents, or others who have complained of his actions.
- (74) To assure that he takes no action and makes no statement which could be construed – or reasonably misconstrued – as retaliatory against any person who has reported or complained of his actions or who as cooperated or assisted in the District’s investigation of his actions.

33. Respondent did not comply with these directives. At times, he responded to the directives in a sarcastic and insubordinate fashion. For example, in response to the directive that he keep his door open at all times when he was not in session with a student, he hung a large sign on his door that read: “Please consider this door open at all times.” Similarly, he responded to the directive to submit copies of his weekly schedule by turning in a single page stating “no appointments scheduled.” He did this from March until the end of May, 2010, when he stopped work for the 2009 to 2010 school year.¹³ He was directed to, but failed to maintain complete logs of student discipline, as well as contacts with parents and police.

¹³ Respondent stopped working at the end of May 2010. He filed a claim for workers’ compensation, claiming “mental and psychological” injuries due to the “constant, continuous, merciless harassment” by Pesek and the three assistant principals. This claim was ultimately denied, and he returned to work in the fall of the 2010 school year.

34. Additionally, on numerous occasions he failed to respond to radio calls for assistance from Assistant Principal Zoe Duskin, Lambert, and other school personnel, despite the fact that his radio was operating and he was available to answer it. One one occasion, Duskin told him that school personnel had been calling him in order to locate student emergency cards, and he responded in a flippant and abrupt manner.

35. In April 2010, in another incident involving Lam, Respondent thought he saw Lam in a car with L. N. He handled the matter himself instead of contacting Pesek or Pringle, contrary to Pesek's instructions. Additionally, he contacted the police without first consulting with his supervisors, in direct violation of a remedial directive and District policy.¹⁴ Pringle learned of the incident when she was contacted by a school resource officer. She called Respondent four or five times by radio, but again, he failed to answer her calls.

36. Respondent's failure to alter his conduct, after having received numerous opportunities to do so, constitutes unprofessional conduct, unsatisfactory performance, and an evident unfitness for service.

Respondent's Defense and Credibility

37. Respondent denied that he engaged in the behaviors set forth above. He believes that the discipline he imposed was justified, fair and properly implemented. He maintains that he has never suspended a student without hearing the student's side of the story. He denies acting in an abrasive or abusive manner towards students, or parents. He denies that he attempted to intimidate faculty, or treated those who questioned his behavior with sarcasm, or that he failed to cooperate with faculty, or follow the directives of his supervisors. He maintains that he did not exercise poor judgment or fail to control his impulses in dealing with students, parents, staff or his supervisors. He also denies that he treated African-American students in a discriminatory fashion.

38. Respondent agrees that, to the extent that his testimony is at odds with the other witnesses, that "someone is lying." Respondent's denial that he committed the misconduct proven at the hearing was neither forthright nor credible.

39. Respondent believes that Pesek, Pringle, and Lambert discriminated against him because he is male. He asserts that he is the only one who has been "written up," and he believes this is based upon his gender. In May 2010, he filed a gender discrimination claim with the California Department of Fair Employment and Housing.

40. Respondent asserts that his work is respected and appreciated by some students and faculty at Galileo. Respondent presented "thank you" notes and letters from students and faculty in support of his assertion, as well as a petition signed by some faculty

¹⁴ See Footnote 7.

and staff at Galileo. In addition, at the hearing, an African-American parent testified that Respondent had helped her daughter after she had been attacked, and for that, she was very grateful. It is also noted that between 2003 and 2006, Respondent received some very favorable evaluations of his work at Galileo. These factors are noted. They do not, however, mitigate the serious nature and extent of Respondent's misconduct, and his inability or unwillingness to acknowledge his misconduct and alter his behaviors.

Unfitness for Service

41. Before a decision can be made as to whether there is cause to dismiss Respondent, it must first be determined whether Respondent's conduct demonstrates that he is unfit to teach under the criteria set forth by the California Supreme Court in *Morrison v. State Board of Education* (1970) 1 Cal.3d 214. Those criteria are: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the incident; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, of the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of recurrence of the questioned conduct; and (8) the extent to which disciplinary action may have an adverse or chilling effect upon the constitutional rights of the teacher involved or other teachers. (At pp. 229-331.) Not all of the *Morrison* facts must be considered, only the more pertinent ones. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) And the *Morrison* factors may be applied to all the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

42. An application of the most pertinent *Morrison* factors to Respondent's conduct demonstrates without equivocation that Respondent is unfit to teach. Respondent engaged in a pattern of misconduct in which he repeatedly violated District policies, statutes and the principal's instructions pertaining to student discipline; he treated members of the school staff and administration in an abrasive, abusive and sometimes vindictive manner; he made inappropriate comments to female students; he exercised poor judgment and impulse control; he did not know the ethical and performance standards applicable to his profession, and he engaged in a pattern of disparate discriminatory treatment towards African-American students. The evidence established that, to a substantial degree, Respondent's misconduct adversely affected his students and their parents, as well as other teachers, staff and administrators.

First and foremost, his conduct undermined the confidence of many African-American students, who were singled out and given excessive discipline for what were sometimes minor infractions; and at other times, turned out not to be any infraction at all. In so doing, Respondent also destroyed the trust that many African-American families placed in the school administration. A number of parents recounted the extent to which Respondent's conduct resulted in their children wanting to avoid him, or even school, at any cost.

Respondent also refused to follow school rules and policies, most notably, the basic legal requirements for a suspension and the directive that progressive discipline be used. His determinations to send students home for the day and to summarily suspend students without authorization to do so, interfered with students' education and unnecessarily escalated incidents that should have been dealt with in a less restrictive fashion.

The evidence was also replete with instances in which Respondent's conduct towards his colleagues supervisors was wholly unprofessional, disrespectful, and at times, intimidating. He responded negatively to supervision and constructive feedback, so much so, that he stopped answering the radio calls of his supervisors. Respondent's conduct towards some of his colleagues was equally unprofessional.

The totality of Respondent's conduct had a serious adverse impact on students, staff, fellow teachers, and administrators.

There are no extenuating or mitigating circumstances. There are many aggravating circumstances. This is particularly true with respect to Respondent's repetition of his misconduct despite numerous warnings from his supervisors, and his lack of candor in dealings with his supervisors. The evidence demonstrates that he is unwilling or unable to receive constructive feedback regarding his behaviors without reacting in an angry fashion.

There is nothing praiseworthy about the motives resulting in Respondent's conduct. While it appears that he is well-thought of by some students and faculty, and is, therefore, not without positive qualities, this does not mitigate the nature and extent of the misconduct proven at hearing.

The four-year record of misconduct shows a strong likelihood that Respondent, if given another chance, would continue his pattern of behavior. Respondent did not accept responsibility for his actions, and he did not admit to making any mistakes. His steadfast denial of the facts established at the hearing was not credible. There is little or no evidence in this record that would suggest that Respondent's behavior would improve in the future.

Disciplinary action against Respondent would have no adverse or chilling effect on his or other teachers' constitutional rights.

LEGAL CONCLUSIONS

1. Education Code section 44932 provides that permanent employees, including teachers, may not be dismissed from employment unless one or more of the causes listed in its subdivisions are proven. The causes alleged in this matter are: immoral conduct; unprofessional conduct; unsatisfactory performance; persistent violation of or refusal to obey school laws or regulations, and evident unfitness for service. The standard of proof applied in this proceeding is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

2. The term unprofessional conduct, as used in Education Code section 44932, is conduct that indicates an unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) It was established by the preponderance of the evidence that Respondent committed acts constituting unprofessional conduct pursuant to Education Code section 44932, subdivision (a)(1), by reason of, among other things, his failure to comply with Board policies, laws and directives of his supervisors regarding suspensions; his abusive and abrasive conduct in imposing discipline; his abusive and abrasive conduct towards faculty and his failure to work with them cooperatively; his inappropriate comments towards female students; his discriminatory disciplinary treatment towards African-American Students; his abusive and abrasive treatment of African-American students and their parents; his failure to exercise sound judgment and self-control; and his lack of knowledge or and failure to comply with performance standards and ethical duties.

3. Immoral conduct is conduct that is “hostile to the welfare of the general public and contrary to good morals” and “includes conduct . . . showing moral indifference to the opinions of respectable members of the community, and [conduct showing an] inconsiderate attitude toward good order and the public welfare.” (*Board of Education v. Weiland* (1960) 197 Cal.App.2d 808, 811, citing *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740.) It was established by the preponderance of the evidence that Respondent committed acts constituting immoral conduct pursuant to Education Code section 44932, subdivision (a)(1), by reason of his unfair disciplinary treatment of African American students, including singling out African-American students for discipline; imposing excessive discipline for minor disciplinary infractions; and making sarcastic and insulting comments to African-American students and their families. Respondent’s conduct raises concerns as to whether he can be trusted to treat all students in the same fashion, regardless of their race.

4. A teacher’s performance is unsatisfactory if it fails to meet objective standards of competency in the profession. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) As the Court of Appeal in *Perez* explained, the term competency means “properly or well qualified;” and, a teacher’s competency is measured by objective standards in the profession. (*Id.*, at pp. 1175-1176.) It was established by the preponderance of the evidence that Respondent committed acts constituting unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(4), by reason of, among other things, his failure to discharge his disciplinary duties in a manner consistent with Board policy, statutes, and his principal’s instructions; his failure to collaborate or cooperate with his colleagues or supervisors; his inappropriate comments towards female students; his discriminatory disciplinary treatment towards African-American students; his failure to exercise sound judgment and self-control; and his lack of knowledge of and failure to comply with, performance standards and ethical duties.

5. As interpreted by the Court of Appeal in *Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th 1429, the term evident unfitness for service as used in Education Code section 44932 “connotes a fixed character trait, presumably not remedial merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Woodland, supra*, at p. 1444.) In

other words, conduct constituting evident unfitness for service must demonstrate that the “unfitness for service be attributable to a defect in temperament—a requirement not necessary for a finding of ‘unprofessional conduct.’” (*Woodland, supra*, at p. 1445.)

6. It was established by the preponderance of the evidence that Respondent committed acts constituting evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(5), as that term is interpreted by the Court of Appeal in *Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th 1429. The evidence amply established that Respondent had reason to know that his conduct was wrongful, as the District gave him plenty of warnings and offers of assistance. As in the *Woodland* case, Respondent’s failure to correct his conduct after being advised and counseled to do so over a four-year period is traceable to a defect in temperament. There is no indication that Respondent’s performance or conduct will improve in any significant degree, in part because he is unwilling or unable to recognize that he has done anything unacceptable. This strongly suggests a likelihood of recurrence. Respondent’s denial of his role in many of the incidents proven at the hearing also further suggests that he is unlikely to make significant changes in his behavior in the future.

7. It was established by the preponderance of the evidence that Respondent committed acts demonstrating a persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of the public schools by the State Board of Education or by the governing board of the school district employing him pursuant to Education Code section 44932, subdivision (a)(7), by reason of, among other things, his repeated violations over a four-year period, of the District’s policies and school laws.

8. All factual findings and legal conclusions have been considered in reaching the determination that Respondent is unfit to teach under the *Morrison* factors, and that dismissal of Respondent from his position as a certificated teacher with the District is warranted pursuant to Education Code section 44932 for unprofessional conduct (subd. (a)(1)), immorality (subd. (a)(1)), unsatisfactory performance (subd. (a)(4)), evident unfitness for service (subd. (a)(5)), and a persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of the public schools by the State Board of Education or by the governing board of the school district employing him (subd. (a)(7)).

9. This is a unanimous decision of the Commission on Professional Competence. Commission members McNeel and Forman authorized Commission Chairperson Schneider to affix their names to the decision.

ORDER

Paul Y. Robertson is dismissed from his position as a certificated employee of the San Francisco Unified School District.

DATED: _____

APRIL McNEEL
Commission Member

DATED: _____

JACK FOREMAN
Commission Member

DATED: _____

DIANE SCHNEIDER
Chair, Commission on Professional Competence
Administrative Law Judge