

**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:

THOMAS JACKSON (EN 684301),

A Permanent Certificated Employee,

Respondent.

OAH No. 2023110661

DECISION

The Commission on Professional Competence (Commission) heard this matter in person on May 13, 14, 15, 16, 17, and 24, 2024, in Los Angeles, California, and by videoconference on May 31, 2024. Irina Tentser, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California, Charles Mendoza, and Ray Alcala constituted the Commission. ALJ Tentser presided.

Ellen C. Wu and Carlie Stewart, of Dannis Woliver Kelley, represented Francisco J. Serrato, Ed.D., Interim Chief Human Resources Officer for the Los Angeles Unified School District (District).

Tamra M. Smith and Ajlal M. Hasan, of Equality Law Office, represented Thomas Jackson (Respondent), who was present throughout hearing.

Prior to the presentation of the evidence, Respondent brought pre-trial motions. The ALJ considered and ruled on those motions, as reflected on the record. The ALJ ordered that any testimonial reference to the name of minor students be replaced in the hearing transcript by the students' first name and last initial.

Testimonial and documentary evidence was received. The record was closed and the matter was submitted for decision on May 31, 2024.

The Commission considered the entire record in executive session.

The Commission redacted personal information contained in the exhibits, such as Respondent's date of birth, while drafting the Decision.

In preparing the Decision, the Commission determined that there were exhibits that contained personal information which necessitated the issuance of a protective order to protect the privacy rights of minor witnesses, which was issued concurrently with the issuance of this Decision.

SUMMARY

The District seeks to dismiss Respondent on grounds of immoral conduct, including, but not limited to, egregious misconduct; unprofessional conduct; evident unfitness for service; persistent violation of or refusal to obey school laws; immoral conduct; and willful refusal to perform regular assignments without reasonable cause. Respondent disputed the factual allegations and argued that grounds for dismissal do not exist. The District established Respondent engaged in unprofessional conduct

through a preponderance of the evidence but did not establish Respondent's dismissal was warranted based on the application of the *Morrison* factors. The evidence presented by the District was insufficient to establish Respondent's immoral conduct, including, but not limited to egregious misconduct; evident unfitness for service; persistent violation of or refusal to obey school laws; immoral conduct; and willful refusal to perform regular assignments without reasonable cause.

FACTUAL FINDINGS

Jurisdiction and Parties

1. On October 18, 2023, Complainant served on Respondent the District's Notice of Board of Education Intention to Dismiss and Placement On Immediate Unpaid Suspension and Statement of Charges. On November 16, 2023, Respondent timely requested a hearing.

2. On December 13, 2023, acting in his official capacity, Complainant filed and served on Respondent, an Accusation. On November 16, 2023, Respondent timely served a Notice of Defense.

3. On May 13, 2024, the District filed and served the Amended Accusation (Amended Accusation). The Amended Accusation is the operative pleading in this matter. (Ex. 23.)

4. Respondent, 60, is a permanent certificated employee of the District and is on paid status. He holds a single subject teaching credential in industrial arts and a supplemental teaching credential in introduction to physical education (P.E.). At all relevant times, Respondent has been employed as a middle school P.E. teacher at

Robert Louis Stevenson Middle School (Stevenson). His most recent position at Stevenson was P.E. Department Chairperson and Chemical Safety Coordinator. Since approximately October 6, 2021, Respondent has been assigned to local District east.

Complainant's Charges Against Respondent

5. In the Amended Accusation against Respondent, in five charging allegations, Complainant alleges that cause exists to dismiss Respondent from his employment as a permanent certificated employee of the District for, variously:

- a. Immoral Conduct, including but not limited to, egregious misconduct, under Education Code sections 44932, subdivision (a)(1), and 44939; (All further statutory references are to the Education Code unless otherwise specified.)
- b. Unprofessional Conduct, under section 44932, subdivision (a)(1);
- c. Evident unfitness for service, under section 44932, subdivision (a)(5);
- d. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employment him, under section 44932, subdivision (a)(8);
- e. Immoral conduct, under section 44939; and
- f. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district, under section 44939.

Notices and Warnings Issued to Respondent

MAY 20, 2013 CONFERENCE MEMORANDUM

6. On May 20, 2013, Respondent received a conference memorandum from Leo Gonzalez, then the principal, regarding student discipline, antibullying, respectful treatment of all persons, providing the best example as a teacher, engaging in verbal confrontations with students, maintaining positive and professional employee-student relationships, and failing to report serious incidents that can put students' safety in jeopardy. In the memoranda were certain suggested assistance available to Respondent (i.e., optional participation in the District's Employee Assistance Program for assistance with any anger management issues), directives issued to him, and a warning that disciplinary action might follow. (Exhibit 1.)

7. Respondent disputed the allegations against him contained in the May 20, 2013 Conference Memorandum and asserts he submitted a written responses to the memo on May 31 and June 4, 2013. (Exhibit DD.) Respondent admitted he grabbed one of the student's arms, inadvertently causing a bruise, when he broke up a physical fight between two students. (Testimony of Respondent.)

8. The May 20, 2013 conference memo establishes Respondent received notice and was aware the following policies: Stevenson Middle School Discipline Policy; District Bullying and Hazing Policy; District Abolitions of Corporal Punishment; District's Board of Education Resolution on Respectful Treatment of All Persons; and District's Employee Code of Ethics. (Exhibits 11, 13, 16, 17, 19 and 22.)

DECEMBER 6, 2017 CONFERENCE MEMORANDUM

9. On December 6, 2017, Respondent received a conference memorandum from Julio Hernandez, then the assistant principal, regarding student discipline, antibullying, respectful treatment of all persons, providing the best example as a teacher, engaging in verbal confrontations with students, maintaining positive and professional employee-student relationships, and refraining from intimidation and retaliation. Aside from reiterating the basis for the conference memorandum and providing copies of memorandum-related District policies and procedures, no additional assistance or guidance was provided to Respondent. Directives were issued to him, including that he always conduct himself in a professional manner, and a warning that disciplinary action might follow. (Exhibit 2.)

10. Respondent disputed the allegations against him contained in the December 6, 2017 Conference Memorandum and submitted a written response to the memo. (Exhibit FF.)

11. The December 6, 2017 Conference Memorandum establishes Respondent received notice and was aware the following policies: District Board's Resolution Reaffirming Respectful Treatment of All Persons; California Standards for the Teaching Profession; District Bullying and Hazing Policy; District Employee Code of Ethics; District Abolition of Corporal Punishment; and District Nondiscriminatory Statement. (Exhibits 12, 13, 15, 16, 17, and 19.)

12. The 2013 and 2017 Conference Memorandum are part of the District's regularly kept records for Respondent and are considered solely in this Decision for the purpose of establishing whether Respondent had notice, based on being issued the memorandum, of the relevant policies. The memorandums are not considered as a

basis of establishing discipline in this matter for any of the allegations because the allegations pertain to alleged wrongdoing by Respondent which occurred more than four years before the filing of the notice of the intention to dismiss in this matter. (Ed. Code, § 44944, subdivision (b)(2)(A) and (B).)

NOVEMBER 9, 2022 CONFERENCE MEMORANDUM

13. On November 9, 2022, after Respondent was reassigned from Stevenson in October 2021, a conference was held between Dr. Jose Morales (Dr. Morales), principal, Respondent, a (United Teachers Los Angeles) UTLA Area Representative, and a District Staff Relations Field Director. The conference described the circumstances surrounding a September 30, 2021 verbal and physical altercation between Respondent and student J ■■■ H.Z. (J ■■■) from involved parties and witnesses and included some student witness accounts of Respondent's behavior towards J ■■■ specifically and other students generally in his 6th period P.E. class during the 2021/2022 school year. The November 2022 conference memo included reference to the 2013 and 2017 conference memos as prior warnings to Respondent involving similar issues.

14. The November 2022 conference memo's directives to Respondent were classified as assistance and guidance. The directives reminded Respondent not to touch students for any reason unless it is for their safety or the safety of others, not to single out or embarrass students in the presence of other students, discipline and call out students, if needed, in a manner that maintains Respondent's professionalism, maintain appropriate and professional relationships with students and refrain from yelling at them, and conduct himself, as an employee and representative of the District, with excellence, integrity and responsibility. Respondent was also provided

with copies of memorandum-related District policies and procedures; no additional assistance or guidance was provided to Respondent.

15. Respondent was not afforded the opportunity to participate in any optional professional development training programs and activities to address the issues identified in the November 2022 conference memo. The memo included a warning that disciplinary action might follow, and that Dr. Morales would continue to investigate the allegations and consider Respondent's response prior to rendering a decision which may result in disciplinary action, including, "but not limited to a Notice of Unsatisfactory Act(s)/Service, suspension and/or dismissal from the [District.]" (Exhibit 7.)

16. Respondent received copies of the May 30, 2013 and December 6, 2017 conference memos and the following state and District policies and as part of the November 2022 conference: Child Abuse and Neglect Reporting Requirements Bulletin, Human Resources Division class description for Secondary Teacher, Discipline Foundation Policy Bulletin, the following policies: District Board's Resolution Reaffirming Respectful Treatment of All Persons; California Standards for the Teaching Profession; District Bullying and Hazing Policy; District Employee Code of Ethics; District Abolition of Corporal Punishment; and District Nondiscriminatory Statement. (Exhibits 12, 13, 15, 16, 17, and 19.)

17. Respondent disputed the allegations regarding the September 30, 2021 incident between him and J [REDACTED] against him contained in the Conference Memorandum and submitted a written response to the memo. (Exhibit E.) In his written response, Respondent noted that while the November 2022 conference memorandum referenced prior accusations against him in the May 30, 2013 and

December 6, 2017 conference memos, his previous written responses denying the accusations contained in the memos were not mentioned. (*Id.*)

DECEMBER 7, 2022 NOTICE OF UNSATISFACTORY ACT

18. On December 7, 2022, Respondent was issued a Notice of Unsatisfactory Act via email after a zoom meeting between Respondent, a UTLA Area Representative, and a District Staff Relations Field Director. The notice informed Respondent that the school/section administrator recommended Respondent be dismissed from the District and be issued a 15-day suspension based on Respondent's conduct for the period from August 2021 through October 2021. The charges listed the notice were primarily based on the September 30, 2021 incident between Respondent and J [REDACTED] and included additional allegations of Respondent's conduct in disciplining students. (Exhibit 9.)

19. The assistance and guidance provided to Respondent in the notice was limited to reference to the prior conference memos issued to Respondent on November 9, 2022, December 6, 2017, and May 30, 2013, and a Final Evaluation issued to Respondent by Kellie R. Pryor, an assistant vice-principal, for 2019-2020, rating Respondent as meeting standard performance. (Exhibit 9.)

DECEMBER 7, 2022 NOTICE OF SUSPENSION OF CERTIFICATED EMPLOYEE

20. On December 7, 2022, at the same meeting where Respondent was issued the December 7, 2022 Notice of Unsatisfactory Act, a Notice of Suspension suspending Respondent for 15 days was issued. The suspension was based on identical "charges," all pertaining to student discipline, as contained in the Notice of Unsatisfactory Act. (Exhibits 9 and 10.)

21. No meaningful assistance and guidance were provided to Respondent in the suspension notice. The assistance and guidance were limited to reference to the prior conference memos issued to Respondent on November 9, 2022, December 6, 2017, and May 30, 2013, and a Final Evaluation issued to Respondent by Kellie R. Pryor, an assistant vice-principal, for 2019-2020, rating Respondent as meeting standard performance. (Exhibit 10.)

22. Generally, the District afforded Respondent the opportunity to participate in various professional development training programs, including the yearly required training given to all certificated teachers, during his tenure at Stevenson; Respondent participated in those opportunities.

Complainant's Charging Allegations 1 through 3

23. These charges pertain to events that are alleged to have occurred on September 30, 2021, during the 2021/2022 school year.

CHARGE 1

24. Complainant alleges in Charges 1 that, on September 30, 2021:

[Respondent] exhibited poor judgment when he engaged in a verbal and physical altercation with 6th grade student [J■■■■] outside of the boys' P.E. office, which resulted in [Respondent] grabbing J■■■■'s arm and leaving him with a bruise.

(Exhibit 23.)

25. The evidence supported Charge 1, in part. It was established Respondent exhibited poor judgment when he engaged in a verbal and physical altercation with 6th grade student J■■■■ outside the boys' P.E. office on September 30, 2021. (First name and last name initials are used when referring to student and parent witnesses to protect their privacy rights.) It was established Respondent grabbed J■■■■'s left forearm during the altercation, leaving redness on J■■■■'s arm where Respondent grasped it. The evidence did not establish Respondent bruised J■■■■'s arm when he grasped it, but that a bruise of unknown origin was already on J■■■■'s left forearm in the same area where Respondent grasped J■■■■'s arm.

26. In mitigation, Respondent's action in grabbing J■■■■'s left forearm was an impulsive and reflexive result of J■■■■ colliding first with Respondent, who was blocking J■■■■'s exiting the double doors of the P.E. building.

CHARGE 2

27. Complainant alleges in Charge 2 that, on September 30, 2021:

[Respondent] did the following to J■■■■ in the presence of students:

- a. Did not let J■■■■ run with the rest of the class because he was not dressed for P.E.
- b. Intentionally isolated J■■■■ by telling him, "Now you can run," or words to that effect, after everyone else had finished the run.

- c. Took J■■■■'s backpack away from him and told him not to leave at the end of class when J■■■■ refused to run.

28. Charges 2a and 2c were partially established by Respondent's admissions. (Exhibits E [Respondent's November 17, 2022 written response to conference summary] and EE [Respondent's October 6, 2021 police interview video].) Respondent first talked to J■■■■ about not being dressed for his 6th period P.E. class, offered him loaner P.E. clothes that were available (which J■■■■ refused), then instructed J■■■■ to stand by the wall with the intention J■■■■ run with the class (because Respondent believed J■■■■ was hiding by the gate to avoid running with the class), asked J■■■■ why he didn't run laps with the class after the class completed the laps, to which J■■■■ responded because Respondent told him to stand by the wall. After the students ran, Respondent instructed J■■■■ several times to run a lap by himself, which J■■■■ refused. After J■■■■ refused to run a lap by himself, Respondent instructed J■■■■ to sit down several times, which J■■■■ refused.

29. Based on J■■■■'s multiple refusals to follow instructions and participate, Respondent asked J■■■■ if he had to call J■■■■'s mother to talk to her about J■■■■'s behavior, to which J■■■■ responded words to the effect of "go ahead." It was Respondent's practice to call a student's parent anytime he had three or more "problems" in one day with a student. (Exhibit E, p. B31.) After P.E. class on September 30, 2021, Respondent "grabbed [J■■■■'s] pack [sic] that was on the ground and away from J■■■■ in class so [J■■■■] would follow [Respondent] back to the Boys PE Office to call [J■■■■'s] mom." (*Id.* at p. B32; See also Exhibit 6, p. A17.)

30. Charge 2b was not established. Count 2b's allegations against Respondent are based on hearsay statements attributed to J■■ during an August 8, 2022 interview by Student Safety Investigation Team (SSIT) investigators, as contained in SSIT's September 27, 2022 Investigative Report (Investigative Report). (Exhibit 6, p. A24.) Complainant presented no testimonial evidence from any percipient witness (other than Respondent) as to what occurred during Respondent's 6th period September 30, 2021 to establish Charge 2 at hearing. (See Evid. Code, § 412, ["If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."].) Respondent denied Count 2b's allegations. Consequently, the evidence did not support Charge 2b.

CHARGE 3

31. Complainant alleges in Charge 3 that, on September 30, 2021:

[Respondent] did the following to J■■:

- a. Argued with J■■ as they both entered the P.E. office.
- b. Threatened to call J■■'s mother, which resulted in J■■ becoming emotional and leaving the office.

32. The evidence supported Charge 3, in part. Charge 3a was established. Respondent and J■■ were arguing about J■■'s behavior in Respondent's 6th period P.E. class on September 30, 2021 when they entered the P.E. office. (Testimony of J■■ V■■; Exhibit 6, p. A15.)

33. Charge 3b was partially established. J■■ was not initially emotional when Respondent threatened to call his mother. J■■ became emotional, however, after

Respondent was successful in reaching his mother by telephone to discuss scheduling a parent-teacher conference to discuss J■■■■'s class behavior. (Exhibit 6; Testimony of Mr. V■■■■; Testimony of Mr. Ocampo-Savin; and Testimony of Respondent.)

SEPTEMBER 30, 2021 ALTERCATION BETWEEN RESPONDENT AND J■■■■ AND CREDIBILITY FINDINGS

34. There is a conflict in the evidence regarding what occurred on September 30, 2021 between Respondent and J■■■■ during their altercation outside the P.E. office at the main double doors of the P.E. building. J■■■■'s claim Respondent grabbed him and left a bruise on his arm as a result is the primary basis for Charge 1's allegations against Respondent. J■■■■ did not testify at hearing; his October 6, 2021 written statement and videos of his October 6, 2021 videos of police interviews were submitted into evidence. (Exhibits 4, T, U, and V.) Respondent's hearing testimony is unreliable and inconsistent with prior statements and his deposition testimony; he admitted at hearing he did not have an independent recollection of what occurred on September 30, 2021, adopting his October 6, 2021 video interview with police on October 6, 2021 as the most accurate record of what he claimed occurred during the altercation. (Exhibit EE.)

35. The District established through both direct and corroborating contemporaneous evidence and hearing testimony that Respondent did grab J■■■■'s arm during the altercation, causing redness to J■■■■'s arm. The evidence was insufficient, however, to establish that the bruise on J■■■■'s arm was caused by Respondent grasping his arm during their altercation.

36. Respondent's mitigating claim that J■■■■ ran into him during their September 30, 2021 altercation trying to leave the P.E. building was also established

through credible direct and corroborating contemporaneous evidence and hearing testimony.

37. The reliability of the evidence in this matter is affected by the delay between the incident and its investigation by the District, the quality of the District's investigation and documentation of the incident, and the bias and self-interest of the parties and witnesses.

38. To the extent the evidence is proximate to the incident, substantially consistent, and there is a lack of demonstrated bias by that witness, the evidence is credited and provided evidentiary weight in this matter. To the extent the evidence is shown to be biased, self-interested, contradictory, and based on incomplete or faulty data, it is not relied upon in this Decision to make factual findings.

39. The hearing testimony of the witnesses was evaluated pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given.

40. There is no dispute between the parties that Respondent instructed J ■■■, then a student enrolled in his 6th period P.E. to go with him to the boys P.E. office on September 30, 2021 after the period concluded. (On September 30, 2021, the boys P.E. office was comprised of the four desks of the four male Stevenson P.E. teachers, Respondent, Mr. Vara, Mr. Gregory Mijares, and Mr. Ocampo-Savin.) Respondent

intended to contact J■■■■'s mother to discuss issues he was having with J■■■■ in his P.E. class on September 30, 2021, which Respondent alleged included J■■■■ not dressing in P.E. clothes, not running laps with the class and then refusing to run a lap after the class completed the lap, and refusing to comply with Respondent's instruction to J■■■■ that he sit by Respondent during the class after refusing to run the lap. J■■■■ disputed Respondent's allegation that he did not participate in class and told Respondent he did not care if Respondent called his mother. (Exhibit 4.)

41. When Respondent and J■■■■ arrived at the P.E. Office on September 30, 2021, there were two other P.E. teachers present in the office, Mr. Vara and Mr. Ocampo-Savin. Mr. Mijares was not initially in the office when Respondent and J■■■■ arrived but entered the office after the altercation between J■■■■ and Respondent at the P.E. main double doors. Mr. Vara heard but did not see what occurred throughout the altercation because he was working at his desk and his view was blocked by the computer monitors at his desk. Mr. Ocampo-Savin was a witness to parts of the altercation.

42. J■■■■ was not upset when he first entered the P.E. office with Respondent. Respondent initially tried calling J■■■■'s mother on the P.E. office landline phone and was unable to reach her, leaving a voicemail in Spanish about needing to schedule a parent conference because J■■■■ was not following class rules. (J■■■■'s mother is primarily Spanish speaking.) Respondent then contacted J■■■■'s uncle and did reach the uncle. Respondent told the uncle he was trying to reach J■■■■'s mother to talk to her about J■■■■'s behavior in his P.E. class.

43. After his conversation with uncle, Respondent was able to speak with J■■■■'s mother with the aid of Mr. Ocampo-Savin, who acted as Respondent's translator during the conversation. During their telephone conversation, Respondent complained

about J■■■■'s class behavior and told mother to come to school for a parent-teacher conference. J■■■■ became upset after Respondent was able to reach his mother.

44. While waiting for J■■■■'s mother to arrive, Respondent left the P.E. office and went into the hallway of the P.E. building. J■■■■ also went to the hallway of the P.E. building and tried to leave through the P.E. building's main exit double doors. Respondent and J■■■■ argued in the hallway. Respondent blocked his exit and J■■■■ ran into Respondent, trying to get past Respondent and leave the building. Respondent lost his balance because of J■■■■ running into him, grabbed the double doors with one arm and J■■■■'s left forearm with the other arm. (Testimony of Y■■■■ R.T.; Exhibits 4, 5, 6, 24, 25, S, T, U, V, Z, YY.)

45. While their testimony varied as to how loudly Respondent was speaking during the argument, Mr. Vara and Ocampo-Savin both testified at hearing and prepared written statements that they heard Respondent and J■■■■ arguing in the hallway outside the boys P.E. office during the altercation. (Exhibits 24 and O.) Mr. Vara heard the P.E. double doors opening and closing during the altercation. (Testimony of Mr. Vara; Exhibits 24 and O.) Respondent pulled J■■■■ back into the P.E. building during the altercation.

46. Student Y■■■■ R.T., who was walking by the P.E. building at the time, saw Respondent grasping J■■■■'s arm as he pulled J■■■■ back into the P.E. building. (Testimony of Y■■■■ R.T.; Exhibits 6, p. A18; Exhibits Z and YY.) Y■■■■ R.T. told her mother about seeing Respondent grabbing and pulling J■■■■ into the P.E. building when her mother picked her up from school on the day of the incident. (Testimony of E■■■■ T.)

47. After their altercation, J■■■■ went to the P.E. office and was upset and crying. J■■■■ called his mother on his cell phone and told his mother Respondent had grabbed and bruised him; he took a picture of his left forearm with his cellphone and sending it to his mother. (Testimony of Mr. Ocampo-Savin; Exhibits 4 [J■■■■'s October 6, 2021 witness statement], 5 and 25 [the photo J■■■■ took of his arm where Respondent grasped him immediately after their September 30, 2021 altercation provided to Principal Morales and to police], the Los Angeles Police Department (LAPD) police cam videos of J■■■■'s October 6, 2021 interviews with officers.]

48. None of the teachers admitted at hearing to looking at J■■■■'s arm when he returned to the Boys P.E. Office after his altercation with Respondent in the hallway. Mr. Vara and Mr. O'Campo-Savin's accounts of what they saw vary in some respects, but both teachers were present when J■■■■ took the picture of his arm [Mr. O'Campo-Savin's right leg, sitting at his P.E. office desk, is visible in the background of the picture] and heard J■■■■ tell his mother words to the effect of "look what he did to me" or that he had been hit on the arm by Respondent when speaking with his mother. Mr. Mijares, who translated for Respondent during the parent-teacher conference after the altercation on September 30, 2021, also testified at hearing he heard J■■■■ tell his mother on the phone that Respondent had grabbed him and was going to send his mother pictures.

49. Respondent's claims that J■■■■'s cellphone photo of his arm is not authentic and was doctored is unpersuasive and not supported by convincing evidence.

50. Regarding the bruise on J■■■■'s arm, Respondent acknowledged seeing bruising on J■■■■'s arm. Mr. Ocampo-Savin also told SSIT investigators he saw marks on J■■■■'s arm, but later recanted that portion of his statement at hearing. The evidence

was insufficient to establish that Respondent caused the existing bruising on J■■■■'s arm on September 30, 2021. Rather, it was established, based on the typical progression and coloration of bruising, as testified to by Respondent's expert, Dr. Stewart Silverstein, that the bruising on J■■■■'s arm where Respondent grabbed him was most likely already present at the time Respondent grasped J■■■■'s arm during their altercation.

51. Once Respondent and J■■■■ returned to the Boys P.E. office after their altercation in the hallway, J■■■■ was upset and accused Respondent of grabbing and bruising him during the altercation. Respondent denied J■■■■'s claims he grabbed and bruised him and stated it was J■■■■ who had hit him. (Testimony of Mr. Vara, Mr. Ocampo-Savin, and Mr. Mijares.) Mr. Mijares testified at hearing Respondent told him he was standing in front of the double doors in the hallway when J■■■■ tried to push his way out and that Respondent's forearm was a little sore because J■■■■ was trying to push his way out. After the incident, Mr. Mijares told Respondent, whom he characterized as an "old school" disciplinarian, that next time Respondent should let the student go home if they don't want to stay for detention. Mr. Mijares expressed his belief to Jackson that a better way to handle the situation and avoid an altercation between student and teacher, like Respondent being pushed, was to let the student go. According to Mr. Mijares, Respondent agreed and told Mr. Mijares he was right and the next time he would let "him" go. (Testimony of Mr. Mijares.)

52. J■■■■'s mother subsequently arrived for the parent-teacher conference on September 30, 2021. Mr. Mijares acted as interpreter for the meeting. J■■■■'s mother, Respondent, J■■■■, and Mr. Mijares participated in the meeting. (Mr. Ocampo-Savin did not participate in the meeting, having left for the day.) There is some dispute about what occurred during the meeting. The credible evidence established Mr. Mijares, who

was acting as translator for J■■■■'s mother, introduced himself to her as the "team lead." J■■■■'s mother spoke about J■■■■ being grabbed by Respondent, which Respondent denied, stating J■■■■ ran into him pushing his way out because he didn't want to stay for detention. J■■■■'s consecutive dates of not dressing for P.E. and not wanting to run laps were discussed. J■■■■'s mother reported being unable to find P.E. clothes in J■■■■'s size; Respondent provided J■■■■ with P.E. clothes. J■■■■'s mother stated she did not want to cause trouble for J■■■■, but she did not want Respondent to "retaliate" against J■■■■ because of the altercation. J■■■■'s mother was offered the opportunity to switch J■■■■ to another class, which she refused. Respondent agreed to respect the decision to keep J■■■■ in his class, and J■■■■'s mother stated she was not going to complain about the altercation between Respondent and J■■■■. (Testimony of Mr. Mijares.)

53. By all accounts, J■■■■, his mother, Mr. Mijares, and Respondent believed the matter was resolved after their September 30, 2021 meeting. Nevertheless, the next day, Respondent, concerned with J■■■■'s accusations against him, without notifying J■■■■'s mother, transferred J■■■■ out of his 6th period P.E. class and into Mr. Vara's P.E. class. Mr. Mijares and Mr. Ocampo-Savin both had a negative opinion of J■■■■ and did not believe J■■■■'s assertions he had been grabbed by Respondent on September 30, 2021, but believed Respondent's account, as their mentor, of the altercation. As a result, they concluded that they did not have a reasonable suspicion of child abuse such as to trigger their mandated reporter obligations and did not report the September 30, 2021 altercation to Stevenson administration or authorities.

54. Approximately a couple days after the September 30, 2021 altercation, Mr. Vara, after first speaking with Mr. Mijares about whether he intended to report the altercation to administration, and being told that the matter was not going to be

reported, reported the altercation Assistant Vice Principal Joe Ojeda, who reported it to Principal Morales. Mr. Vara, who was not on good terms with Respondent and Mr. Mijares and was not speaking to Respondent or Mr. Mijares at the time of the September 30, 2021, incident, provided an account of the incident that contained both accurate and false information. For example, while Mr. Vara's October 5, 2021 written statement was established by credible evidence, Mr. Vara's statements to SSIT investigators on August 12, 2022 and September 7, 2022, stating Respondent asked Mr. Mijares to back him up about what happened between Respondent and J [REDACTED] and that Mr. Mijares agreed, implying the two conspired to cover up wrongdoing by Respondent, was not established by the evidence. (Exhibits 6, pp. 15-16, and 24.)

55. On October 6, 2021, Principal Morales reported the matter to police, who ultimately did not prosecute Respondent due to the September 30, 2021 altercation with J [REDACTED]. While Respondent discussed filing a claim of battery against J [REDACTED] during the subsequent investigation of both the District and police, he did not file a battery claim against J [REDACTED]. Respondent maintains he is the victim of the September 30, 2021 altercation. Mr. Vara, Mr. Mijares, and Mr. Ocampo-Savin were all investigated by the District to determine if they failed to timely report suspected child abuse after the September 30, 2021 altercation. As recently as January 2023 and the hearing in this matter, Mr. Mijares and Mr. Ocampo-Savin were providing written statements regarding their actions on September 30, 2021 in response to conference memos issued to them by Stevenson administrators.

56. Both Respondent and J [REDACTED] did not provide a full and accurate account of their altercation on September 30, 2021. Respondent has consistently denied he grabbed J [REDACTED]'s arm during their September 30, 2021 altercation, claiming it was J [REDACTED] who ran into him during their altercation at the double doors of the P.E. building main

entrance. (Exhibit EE; Testimony of Respondent.) It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) Respondent's claim J■■ ran into him first during their altercation was established by the evidence. Respondent's denial he grabbed J■■'s arm in response is not credited and is contradicted by the weight of the credible evidence to the contrary.

57. Similarly, J■■ was partially truthful in his account of his altercation with Respondent on September 30, 2021 in his written statement, with police, and with investigators. He willfully omitted the fact that he first collided with Respondent when he tried to get past Respondent to leave the building before Respondent grasped his arm and pulled him back into the P.E. building. When J■■ did admit, during his second interview with officers on October 6, 2021, he collided with Respondent trying to leave the building, he minimized his body's impact on Respondent when he ran into him, claiming he merely walked into Respondent trying to get out of the P.E. building. (Exhibits U and V.)

58. In his statement to SSIT investigators and hearing testimony, Principal Morales claimed Respondent admitted to grabbing J■■'s sweatshirt during his October 6, 2021 interview regarding the incident. (Testimony of Principal Morales; Exhibit 6, pp. A14-A15.) It was not established, however, Respondent admitted to grabbing J■■'s sweatshirt during the altercation. Principal Morales' claim is unreliable, affected by his bias against Respondent, whom he believed to be a teacher with a history of aggression against students, and his perception that Respondent, Mr. Mijares, and Mr. Ocampo-Savin conspired to cover-up the September 30, 2021 altercation and J■■'s transfer to Mr. Vara's P.E. class. (Exhibits 6, pp. A14-A15; P, p. B75; T.) He did not contemporaneously document the interview or the alleged

admission, lending less evidentiary weight to his claim. Principal Morales also claimed he saw bruising on J■■■■'s arm on October 6, 2021 where J■■■■ reported Respondent grabbed him during their September 30, 2021 altercation. However, there was no bruising on J■■■■'s arm on October 6, 2021, as confirmed by J■■■■ and police officers during his interview with police officers that day and by the testifying police officers at hearing. (Testimony of Officers Juan Cobian and Junior McMeekin.)

59. The District presented the credible testimony of percipient witness Y■■■■ R.T. who saw part of the altercation between Respondent and J■■■■. J■■■■ initially told Principal Morales there was a student who witnessed the altercation when he was interviewed by Principal Morales on October 6, 2021. (Exhibit P, p. B75.) The District did not provide the name of the witness to the police during their criminal investigation of the matter. (Exhibit S, p. B91.) And according to police records, a District representative, whose identity is in dispute, subsequently told the police that the "witness" did not witness the incident. (*Id.*)

60. The evidence established the District delayed in launching its investigation into the September 30, 2021 incident for almost a year, until early August 2022. Part of the District's delay is attributable to the District waiting to conduct its investigation until the police's criminal investigation of the September 30, 2021 incident was complete. (Testimony of Doris Frierson; Testimony of Detective Joshua Rider.) However, the District was informed by police the District could proceed with its investigation in approximately December 2021 and then inexplicably delayed until August 2022 to begin to conduct interviews with witnesses. (Testimony of Doris Frierson; Exhibit 6.)

61. During his August 8, 2022 interview with SSIT, J■■■■ told SSIT investigators student Y■■■■ R.T. "may have" witnessed Respondent grabbing his arm during his

August 8, 2022 interview. (Exhibit 6, p. A17.) There was an almost yearlong delay before Y■■■■ R.T. was identified as a potential witness to the September 30, 2021 altercation. Her statements to SSIT investigators, video deposition testimony excerpts, and hearing testimony therefore are judiciously reviewed. (Exhibits 6, p. A18, Z, and YY.) "Testimony which you believe given by one witness is sufficient for the proof of any fact. However, before finding any fact to be proved solely by the testimony of such a single witness, you should carefully review all of the testimony upon which proof of such fact depends." (*People v. Rincon-Pineda*, (1975) 14 Cal.3d 864, 885.)

62. Respondent's assertions Y■■■■ R.T. fabricated her testimony because she and J■■■■ are friends or because she had or has romantic feelings for J■■■■ is speculative and unsupported by convincing objective evidence. Y■■■■ R.T. always acknowledged that during the early fall of 2021 she and J■■■■ were students in most of the same classes. However, she credibly and consistently denied she was J■■■■'s friend. Aside from suggesting that Y■■■■ R.T. had conspired to lie for J■■■■ because she was motivated by friendship or romantic feelings, Respondent provided no credible evidence to support claimant Y■■■■ R.T.'s was a biased witness. In fact, Y■■■■ R.T. did not personally know Respondent and was never a student in Respondent's P.E. class.

63. Further, Y■■■■ R.T. credibly addressed why she did not promptly come forward and report witnessing Respondent grabbing J■■■■'s arm and pulling him into the P.E. building on September 30, 2021 during her April 23, 2024 deposition testimony, stating she was reluctant to come forward because she did not feel she had sufficient English language skills and was reluctant to subject herself to the rigors the investigative process would entail, including being subjected to the deposition process. (Exhibit YY.)

64. Y■■■■ R.T. was provided the aid of a simultaneous translator during the deposition, which caused Y■■■■ R.T. to ask Respondent's counsel to repeat certain questions during the deposition. Respondent's argument that Y■■■■ R.T. was not truthful during her deposition is baseless.

65. Similarly, the claim Y■■■■ R.T.'s testimony should be wholly discredited because Y■■■■ R.T. made some inconsistent statements is unconvincing. There were minor inconsistencies in Y■■■■ R.T.'s statements. For example, which direction she was walking from or to on the day of the incident after school, which students she walked and spoke with after school, whether there were others in the P.E. building area when she witnessed Respondent grabbing and pulling J■■■■, and which of J■■■■'s arms (right or left) Respondent was holding during the grabbing and pulling. Y■■■■ R.T. also reported seeing a bruise on J■■■■'s arm when he came back to school days after the incident, but the origin of the bruise is unclear.

66. Nevertheless, Y■■■■ R.T. is unequivocally consistent that she saw Respondent grab and pull Respondent into the P.E. building. She also testified in a forthright and credible manner at hearing. Accordingly, her testimony, alone, is direct credible evidence establishing the fact Respondent did grasp and pull J■■■■'s arm during their September 30, 2021 altercation.

67. It was established J■■■■ spoke both in a serious way and in a boasting way about having Respondent arrested after Respondent was arrested and removed from Stevenson in October 2021. (Testimony of Renzo Miranda and Y■■■■ R.T.) Respondent's argument that J■■■■'s boasting about the September 30, 2021 altercation is evidence J■■■■ fabricated his allegations because he did not like Respondent is speculative and unconvincing. J■■■■ was surprised when Principal Morales and the

police interviewed him about the September 30, 2021 altercation with Respondent. He, like Respondent, believed the matter was resolved.

68. There is no credible evidence of a conspiracy in this matter by either J ■■■ or Respondent. Rather, this is a case of an instance of unprofessional conduct by Respondent, an adult and professional educator, in engaging in an altercation with an 11-year-old student who refused to follow instructions and stay for detention after the student instigated the altercation.

69. As a final matter, neither of Respondent's experts' testimony is convincing and is given little evidentiary weight, as it is speculative and based on a lack of objective data. "'[T]he weight to be given to the opinion of an expert depends on the reasons he [or she] assigns to support that opinion.' [Citation]; its [sic] value ' 'rests upon the material from which his [or her] opinion is fashioned and the reasoning by which he [or she] progresses from his [or her] material to his [or her] conclusion' " ' [Citation.] Such an opinion is no better than the reasons given for it [citation], . . . " (*White v. State of California* (1971) 21 Cal.App.3d 738, 759-760; see also *Richard v. Scott* (1978) 79 Cal.App.3d 57, 63-64; see also *In re marriage of Battenburg* (1994) 28 Cal.App.4th 1338, 1345.)

70. The testimony of Dr. Stewart Silverstein, Respondent's expert regarding the origin of J ■■■'s September 30, 2021 pre-incident existing left forearm bruise is provided little evidentiary weight. Dr. Silverstein admitted he based his opinion on a picture of J ■■■'s arm, did not examine J ■■■ at the time of the incident, and did not examine J ■■■'s medical records. His testimony as to the origin of the bruise is therefore speculative and given little weight. However, Dr. Silverstein's testimony that bruises, in general, normally take some time to form is accepted as credible based on his knowledge and experience.

71. The testimony of Mark J. Eskridge, a digital forensic examiner, who testified as an expert on the authenticity of the photograph of J■■■■'s arm provided to police, is also not credited and given little evidentiary weight. (Exhibit 25.) Mr. Eskridge concluded that the string of characters in the header indicated the photo may have been photoshopped. However, he acknowledged the photo he examined came from police records and was not the original photograph taken by J■■■■ and was not taken directly from J■■■■'s phone. Mr. Eskridge could not answer whether the police uploading the photograph to their police database and downloading the photo could have affected the photograph's header information. In fact, Mr. Eskridge admitted, he had never analyzed a photograph uploaded through police records and was unfamiliar with the program AXON Capture utilized by law enforcement to the photo in question.

Complainant's Charging Allegation 4

72. This charge pertains to events that are alleged to have occurred between August 2021 and October 2021.

73. Complainant alleges in Count 4 that, between August 2021 and October 2021:

[Respondent] did the following to students in his sixth period class:

Yelled at them to:

"Stop slacking."

"Pay attention."

"Listen."

Said, "I am going to yell at you again," or words to that effect.

Lashed out at student who made mistakes.

Made students stand and face the wall.

"Humiliate[d]" students in front of the class.

(Exhibit 23, p. A181.)

74. Count 4's allegations against Respondent are based on hearsay statements attributed to J.P., a randomly selected student witness, at Stevenson, during an August 18, 2022 interview by SSIT investigators, as contained in the Investigative Report. (Exhibit 6, p. A24.) The allegations were not established by direct evidence at hearing. Consequently, the evidence did not support Charge 4.

Complainant Charging Allegation 5

75. This charge pertains to allegations of misconduct alleged to have occurred between August 2021 and October 2021, as described in Charges 1-4, individually and/or collectively.

76. Complainant alleges in Charge 5 that, between August 2021 and October 2021, as to Charges 1-4, individually and/or collectively:

[Respondent] failed to follow multiple administrative directives previously given to him, including but not limited to, to the following:

- i. Immediately refrain from embarrassing students in the presence of others.
- ii. Conduct himself in a professional manner at all times.
- iii. Do not use demeaning or derogatory language with students.
- v. Utilize appropriate discipline techniques and follow the [Stevenson] discipline policy.
- vi. Adhere to all District policies and procedures, including but not limited to, the following:

[District] Employee Code of Ethics

[District] Code of Conduct with Students

[District] Board of Resolution on the Respectful Treatment of all Persons

California Standards for the Teaching Profession

[District] Abolition of Corporal Punishment Bulletin

(Exhibit 23, pp. A181-A182.)

77. Count 5 further alleges that the directives referenced therein, as set forth in Factual Finding 76, were issued to Respondent on the following occasions:

- a. Orally on December 6, 2017, and subsequently memorialized in the conference memorandum dated on December 6, 2017, issued by Julio Hernandez, Assistant Principal at [Stevenson].
- b. Orally on May 30, 2013, and subsequently memorialized in the conference memorandum dated on May 30, 2024, issued by Leo Gonzalez, Principal at [Stevenson].
- c. Yearly in the required training given to all certificated teachers.

(Exhibit 23, pp. A181-A182.)

78. The evidence did not support Charge 5 as it relates to Charges 2 through 4.

79. The evidence did not support Charge 5's allegations Respondent failed to follow multiple previously issued administrative directives as to Charge 1 that he immediately refrain from embarrassing students in the presence of others and not use demeaning or derogatory language with students.

80. The evidence partially supported Charge 5 as to Charge 1, which was established in part at hearing. It was established Respondent violated the previously issued administrative directives that he conduct himself in a professional manner at all times, utilize appropriate discipline techniques and follow the Stevenson discipline

policy, and adhere to all District policies and procedures by exhibiting poor judgment on September 30, 2021, when he engaged in a verbal and physical altercation with 6th grade student J■■■■ outside of the boys' P.E. office, which resulted in Respondent grabbing J■■■■'s arm, leaving redness on the arm.

Respondent's Additional Evidence

81. Respondent takes no responsibility for his actions in the altercation between himself and J■■■■ on September 30, 2021. Respondent believes he is the "victim" of the altercation and should not be subject to dismissal because J■■■■ ran into him during the altercation. Despite Respondent's failure to be forthright about his role in the altercation with J■■■■, J■■■■'s actions in instigating the physical altercation by running into Respondent somewhat mitigates Respondent's reflexive poor judgment in grasping J■■■■'s arm. Respondent credibly testified that he is a committed and capable educator who should continue to be retained as a teacher by the District.

82. Stevenson teachers and a former administrator testified in support of Respondent's claims that he possesses the requisite skills, integrity, and character to continue to be a teacher at Stevenson. The evidence was considered in rendering this Decision.

83. Respondent's fellow Stevenson P.E. teachers Mr. Mijares, Mr. Ocampo-Savin, and Ms. Mercedes Steiner praised Respondent's mentorship, consistent professionalism, and good classroom organization and management, during their hearing testimony. None of his P.E. teacher co-workers witnessed Respondent acting in an inappropriate manner with students, including yelling at students.

84. Ms. Steiner testified that, based on her observations, Respondent had "good rapport" with students. Mr. Ocampo-Savin described Respondent as "respectful"

to students and a “really good teacher,” praised Respondent’s practice of greeting his class’s students with a “joke of the day” to engage them in the lesson; and testified Respondent was successful in communicating with students. Mr. Ocampo-Savin consulted with Respondent on how to effectively communicate with his own students.

85. Except as set forth in this Decision, all other allegations in the Amended Accusation and all other contentions by the parties lack merit or constitute surplusage.

LEGAL CONCLUSIONS

Jurisdiction

1. The Commission has jurisdiction to proceed in this matter under section 44944. (Factual Findings 1-3.)

Burden and Standard of Proof

2. The District has the burden of proving cause for dismissal by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) A preponderance of the evidence means “‘evidence that has more convincing force than that opposed to it.’ [Citation.]” (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.) Preponderance of the evidence also means that “the evidence on [the District’s] side outweighs, preponderates over, is more than, the evidence on the other side.” (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

Statutory Grounds for Dismissal

3. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes described in sections 44932, subdivision (a), or 44939, are established. Here, the District seeks Respondent's dismissal based on immoral conduct, including but not limited to, egregious misconduct (§ 44932, subd. (a)(1)); unprofessional conduct (§ 44932, subd. (a)(2)); evident unfitness for service (§ 44932, subd. (a)(6)); persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her (§ 44932, subd. (a)(8)); immoral conduct (§ 44939); and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district (§ 44939.) (Factual Finding 5.)

4. The District's Amended Accusation and Statement of Charges charged Respondent with various acts to support the six statutory grounds for dismissal. (Factual Finding 1-5.) The Commission considered whether the District established each of the charged acts by a preponderance of the evidence. The Commission then considered whether the charged acts violated one or more of the alleged statutory bases for dismissal.

5. The Commission found that the District established charge 3a and partially established charges 1, 2a, 2c, 3b, and 4. The District did not establish Charges 2b and 4. (Factual Findings 23-80.)

6. Cause for dismissal of Respondent does not exist under section 44932, subdivision (a)(1), based on immoral conduct, including but not limited to egregious

misconduct, as set forth in Factual Findings 23 through 80 and Legal Conclusions 3 through 5.

7. Cause for dismissal of Respondent exists under section 44932, subdivision (a)(2), based on unprofessional conduct, as set forth in Factual Findings 23-26, 31-32, 34-71, 75-77, and 80.

8. Cause for dismissal of Respondent does not exist under section 44932, subdivision (a)(6), based on evident unfitness for service, as set forth in Factual Findings 23 through 80 and Legal Conclusions 3 through 5.

9. Cause for dismissal of Respondent does not exist under section 44932, subdivision (a)(8), based on persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employment him, as set forth in Factual Findings 23 through 80 and Legal Conclusions 3 through 5.

10. Cause for dismissal of Respondent does not exist under section 44939, based on willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing district, as set forth in Factual Findings 23 through 80 and Legal Conclusions 3 through 5.

Analysis of Morrison Factors

11. In deciding whether cause for dismissal exists based on Respondent's unprofessional conduct, it also must be established that a teacher's misconduct relates to his fitness to teach pursuant to the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230 (*Morrison*). 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.) Further, the *Morrison* analysis need not be conducted on each individual fact established but is applicable to the collectively established facts. (*Woodland, supra*, 2 Cal.App.4th 1429, 1457.)

12. The *Morrison* factors were considered and compared to the facts established above. "Unprofessional conduct," as used in section 44932, subdivision (a)(2), is conduct that violates the rules or ethical code of a profession or that is unbecoming a member of a profession in good standing. (*Bd. of Ed. v. Swan* (1953) 41 Cal.2d 546, 553.) The *Morrison* factors analysis applies to causes for dismissal for unprofessional conduct. However, the *Morrison* court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. (*Morrison*, at p. 235.)

13. The applicable factors demonstrate Respondent's unprofessional conduct had a direct relationship to teaching but did not establish Respondent's unfitness to teach. (Factual Findings 23-80.)

1. THE LIKELIHOOD THE CONDUCT MAY ADVERSELY AFFECT STUDENTS OR FELLOW TEACHERS. Respondent's unprofessional conduct, verbally and physically arguing with J■■■ on September 30, 2021, was an instance of unprofessional conduct. Under the totality of the circumstances, it is reasonable to infer this behavior is unlikely to recur. Respondent has been issued disciplinary notices and direction because of the incident. In addition, Respondent's agreed with Mr. Mijares at the time of the incident that he would allow students to leave if they did not want to stay for detention. (Factual Finding 51.) It is therefore unlikely his conduct

will recur as to adversely affect students. Further, based on the evidence, it is a reasonable conclusion that the teachers who were aware of the incident would handle a similar situation differently in the future.

2. THE DEGREE OF SUCH ADVERSITY. The degree of adversity was low; it was established that both Respondent and J■■■■ believed the September 30, 2021 incident was resolved and were surprised when it became the subject of police and District investigation.

3. THE PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT. The unprofessional conduct is remote in time. The incident occurred on September 30, 2021, over two-and-three-quarters years ago.

4. THE TYPE OF TEACHING CERTIFICATE HELD BY THE PARTY INVOLVED. The type of teaching certificates held by Respondent require Respondent to be able to handle the day-to-day stressors of teaching, including dealing with a defiant student in a temperate manner, even when provoked by that student.

Respondent's physical actions with J■■■■ on September 30 were a serious lapse in professional judgment. However, it was an isolated incident that has had severe consequences on his life and teaching career.

Respondent's subsequent failure to take responsibility for his part in the situation with J■■■■ is concerning. Despite Respondent's lack of accountability, it is reasonable to infer he is unlikely to repeat his actions toward another student. Notably, Respondent contemporaneously agreed with Mr. Mijares that Respondent will allow students to leave in the future if they don't want to stay for detention. Accordingly, under the

totality of the circumstances, including the fact J■■■ instigated the physical altercation, the incident does not conclusively prevent Respondent's ability to function as a teacher in an effective and safe manner in a school environment with students.

5. THE EXISTENCE OF EXTENUATING OR AGGRAVATING

CIRCUMSTANCES, IF ANY, SURROUNDING THE CONDUCT. Extenuating circumstances were proven. The student, J■■■, initiated the contact with Respondent in trying to leave the P.E. building, which contributed to Respondent's reflexive action in response, i.e., grasping J■■■'s forearm to prevent him from leaving.

6. THE PRAISEWORTHINESS OR BLAMEWORTHINESS OF THE MOTIVES

RESULTING IN THE CONDUCT. Respondent's conduct is blameworthy. He is a veteran teacher with decades of experience and was the P.E. department head. He knew or should have known based on his training and experience that grasping a student was inappropriate under the circumstances and should have been documented.

7. THE LIKELIHOOD OF RECURRENCE OF THE QUESTIONED CONDUCT. It

is unlikely based on Respondent's contemporaneous agreement with Mr. Mijares' he will physically prevent a student from voluntarily leaving detention if he returns to a District classroom. (Factual Finding 51.) As discussed, Respondent took no responsibility for his conduct and demonstrated no remorse for his actions. Nevertheless, it is a reasonable inference, that the negative personal consequences he has suffered due to his momentary lapse in judgement makes it unlikely he would grasp a

student in the future even after the student instigates the physical contact with Respondent, unless it was consistent with District policy and procedure, such as to ensure student safety.

8. THE EXTENT TO WHICH DISCIPLINE MAY CAUSE ADVERSE IMPACT OR CHILLING EFFECT UPON THE CONSTITUTIONAL RIGHTS OF THE TEACHER INVOLVED OR OTHER TEACHERS. This is not foreseeable here.

14. The Commission has broad discretion to determine whether discipline is warranted, even where, as in this matter, cause for dismissal has been established. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 220-222.) A "disciplinary discharge," as sought here by the District, "often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal." (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 343-344.) Based on the totality and mitigating circumstances surrounding Respondent's unprofessional conduct, the District did not establish that dismissal is necessary to protect students, school employees, or others or to deter Respondent from engaging in similar conduct in the future. The Commission members agree unanimously.

ORDER

The Amended Accusation and Statement of Charges against respondent Thomas Jackson are dismissed.


DATE: 08/06/2024


Ray Alcala (Aug 6, 2024 12:54 PDT)

RAY ALCALA

Commissioner

DATE: 08/06/2024


Chuck Mendoza (Aug 6, 2024 13:36 PDT)

CHARLES MENDOZA

Commissioner

DATE: 08/06/2024



IRINA TENTSER

Administrative Law Judge

Office of Administrative Hearings