

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
SANTA ANA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation and  
Statement of Charges Against:

ROBERT CHAVEZ,  
A Certificated Employee,

Respondent.

OAH Case No. 2010120537

**DECISION**

This matter was heard by the Commission on Professional Competence on August 25, 2011, in Santa Ana under the authority of Education Code sections 44932 and 44939. The Commission was comprised of the following members: Mimi Gaudette, a retired elementary school teacher of the Fullerton School District; Allison Israwi, Vice Principal and former elementary school teacher with the Downey Unified School District; and Vincent Nafarrete, Administrative Law Judge of the Office of Administrative Hearings.

Complainant Superintendent of Schools for the Santa Ana Unified School District was represented by Eric Bathen, Attorney at Law, and Jordan Meyer, Attorney at Law. Chad Hammitt, Executive Director of Human Relations of the Santa Ana Unified School District, was present during the hearing. Respondent Robert Chavez was present throughout the hearing and represented by Carlos R. Perez, Attorney at Law.

Oral, documentary, and stipulated evidence having been received and argument heard, the Commission on Professional Competence submitted this matter for decision on August 25, 2011, and finds as follows:<sup>1</sup>

**FACTUAL FINDINGS**

1. The Santa Ana Unified School District (school district) is a large, comprehensive school district located in Orange County that is comprised of 36 elementary schools, nine intermediate schools, three alternative high schools, and seven high schools.

---

<sup>1</sup> The Administrative Law Judge on his own motion admits complainant's Exhibit 2 (Request for Hearing) and Exhibit 3 (Notice of Accusation and Accusation) into evidence and marks complainant's Hearing Brief as Exhibit 25.

The school district serves and educates approximately 54,000 students and employs approximately 2,500 teachers. The administrative offices of the school district are located at 1601 East Chestnut Avenue in Santa Ana.

2. (A) On July 2, 2010, Jane A. Russo, Superintendent of Schools (Superintendent), for the school district made the Statement of Charges and recommended the immediate suspension and dismissal of respondent Robert Chavez (respondent) as a permanent certificated employee. On August 24, 2010, the Governing Board of the school district met in a closed session and adopted the recommendation of the Superintendent set forth in the Statement of Charges to suspend respondent without pay and benefits and to dismiss him from employment with the school district.

(B) On November 18, 2010, the Superintendent made and served the Notice of Intention to Suspend and Dismiss, notifying respondent that the Governing Board had resolved in closed session to suspend him without pay and benefits and to dismiss him for the reasons set forth in the Statement of Charges. The Statement of Charges was attached to the Notice of Intention to Suspend and Dismiss. On December 8, 2010, respondent timely filed a Notice of Defense, requesting a hearing to determine if there was cause to suspend and dismiss him from his employment with the school district.

3. On December 13, 2010, the Accusation, Case No. 2010120537, was made and filed by the Superintendent in her official capacity with the school district. The Statement of Charges was attached to and made part of the Accusation. The Notice of Accusation and Accusation, Statement of Charges, pertinent sections of the Education and Government Codes, and a copy of respondent's employment contract were properly served upon respondent by first class mail. On December 29, 2010, a Notice of Defense was filed on behalf of respondent, objecting to the Accusation and requesting a hearing.

4. (A) On December 28, 2010, pursuant to a Request to Set filed by the school district, the Office of Administrative Hearings conducted a telephonic conference during which the hearing on the Accusation and Statement of Charges was scheduled and ordered to begin on July 25, 2011. On January 6, 2011, the parties entered into a Stipulation Regarding Commencement of Hearing, waiving the requirement under Education Code section 44944 to commence a hearing within 60 days, agreeing to participate in a trial setting conference, and agreeing to complete discovery in this matter no later than seven days prior to the hearing.

(B) On June 27, 2011, the Office of Administrative Hearings conducted a prehearing conference with the parties. During the prehearing conference, complainant made a motion to continue the hearing scheduled for July 25, 2010, on the grounds that her main witness was not available to testify. Respondent did not object to the continuance motion. The hearing was continued to August 24 and 25, 2011. On June 28, 2010, the school district properly served respondent with a Notice of Hearing. On August 19, 2011, the parties entered into a Stipulation that the hearing would commence and be completed on August 25, 2010. Jurisdiction exists in this matter under Education Code sections 44939 and 44932.

Respondent Robert Chavez

5. (A) At all times relevant herein, respondent has been employed as a permanent certificated employee of the school district. He holds a multiple subject teaching credential in general subjects that was issued to him on December 1, 2002, by the California Commission on Teacher Credentialing (CTC).<sup>2</sup>

(B) Respondent attained a Bachelor of Arts in liberal studies in 1979 as well as Master of Arts in social science in 1981 from New Mexico Highlands University. He completed 45 hours in elementary education and obtained an elementary teaching license from the State of New Mexico in 1992. He began teaching in a parochial school in Santa Fe, New Mexico, and then taught in a public school in that state. In 1994, he was recruited to join the faculty at the Moreno Valley Unified School District and moved to southern California. He taught elementary school in Moreno Valley for five years.

(C) In or about July 1999, respondent was hired by the school district to teach elementary school pursuant to an emergency teaching credential. From September 1999 through 2002, he taught at the school district's Garfield Elementary School. On December 1, 2002, he obtained his preliminary multiple subject teaching credential from the CTC. From 2002 through 2006, respondent taught at Fremont Elementary School.

6. (A) In or about November 2004, the school district notified respondent that he had not met the criteria to be considered a Highly Qualified Teacher under federal law. The No Child Left Behind Act of 2001 (NCLB) was a landmark educational reform to improve student achievement, schools, and the quality of teachers. NCLB required, in part, that states develop plans to achieve the goal by the end of the 2005-2006 school year that all teachers of core academic subjects be highly qualified. Under NCLB, a Highly Qualified Teacher is one who has attained a bachelor's degree, been issued a state certificate or license to teach, and has demonstrated competence in each of the core academic subjects taught by the teacher. NCLB also provided for federal funding or grants to improve the academic standing of disadvantaged schools and the academic achievement of students in low performing schools.

(B) In 2004, the California State Board of Education promulgated regulations to implement NCLB. The regulations required, in part, that elementary school teachers who are "new" to the teaching profession pass a subject matter examination approved by the CTC. For a holder or candidate for a multiple subject teaching credential, the approved

---

<sup>2</sup> With his multiple subject teaching credential, respondent is authorized to teach all subjects in a self-contained classroom. As a self-contained classroom teacher, he can also team teach or regroup students across classrooms in grades 12 and below, including preschool, and in classes organized primarily for adults. In addition, respondent's multiple subject credential authorizes him to teach core classes consisting of two or more subjects to the same group of students in grades five through eight, and to teach any of the core subjects to a single group of students in the same grade level as the core for less than 50 percent of his work day.

elementary subject matter examination is the California Subjects Examination for Teachers (CSET) in Multiple Subjects, an examination comprised of three sub-tests, the objective of which is to verify subject matter and basic skills competence as part of the qualifications to teach in public schools. Under state NCLB requirements, an elementary teacher is “new” to the profession of teaching if he or she holds a credential issued on or after July 1, 2002, and must demonstrate subject matter competence by passing the CSET in Multiple Subjects.

(C) As such, an elementary school teacher who is new to the teaching profession will be considered a Highly Qualified Teacher for purposes of both NCLB and state regulations if he or she has attained a college degree, possesses a teaching credential, and passes the CSET in Multiple Subjects. Based on federal and state mandates, the requirement that respondent be a Highly Qualified Teacher under NCLB by passing the CSET in Multiple Subjects constituted a rule or regulation of the school district.

7. (A) During the 2005-2006 school year, the school district notified respondent that he was required to create a compliance plan so that he could pass the CSET and be considered a Highly Qualified Teacher under NCLB and state regulations. On or about January 10, 2005, respondent received a letter from a curriculum specialist of the school district informing him of a teachers’ association meeting regarding the requirements for becoming a High Qualified Teacher under NCLB. He attended the meeting and received information about being a new teacher and the requirement that a new teacher must pass the CSET to become a Highly Qualified Teacher. He also learned that, if he was considered not to be new teacher, he could apply for the Highly Objective Uniform State Standard of Evaluation (HOUSEE) option and obtain an exemption from taking and passing the CSET.

(B) After attending the meeting, respondent obtained copies of his college transcripts, his New Mexico teaching license, his teaching credential issued by the CTC, and other documents.<sup>3</sup> On January 17, 2005, he forwarded the documents to the curriculum specialist and applied to the school district for the HOUSEE option to determine whether he had sufficient experience, coursework, and professional development to be considered subject matter competent in the core academic subjects that he was teaching in elementary school without having to take the CSET.

(C) In or about August 2005, the Assistant Superintendent of Human Resources spoke and/or met with respondent and discussed his compliance with NCLB.

---

<sup>3</sup> On or about July 14, 2003, respondent obtained a letter from the Credentials Assistance for Students in Education, College of Education, California State University San Bernardino (Exh. G), that confirmed he had previously completed the equivalent of a bachelor’s degree in liberal studies and that the CTC had waived the requirement that he pass the CSET series examination for purposes of issuance of his multiple subject teaching credential. It was not established by Exhibit G, however, that respondent had necessarily received any kind of waiver of the requirement that respondent take and pass the CSET to become NCLB compliant.

Respondent asserted that he was not a new teacher and should be exempt from taking the CSET under the Housse option. He gave documents to the Assistant Superintendent in support of his position. The Assistant Superintendent indicated he would look into the matter.

(D) It was not established that the school district at any time granted respondent's Housse application. Nor was it established that respondent qualified under the Housse option to be exempt from taking and passing the CSET to gain NCLB certification. Both the NCLB Teacher Requirements presented by complainant (Exh. 13) and the Teachers Qualifications Under NCLB presented by respondent (Exh. Z) demonstrated that the Housse option was available only to teachers who were not new. Respondent was a new teacher because he attained his teaching credential from the CTC on December 1, 2002, which was after the cut-off date of July 1, 2002. In any case, respondent did not take or pass the CSET during the 2005-2006 school year.

8. (A) In a letter dated August 15, 2006, the school district's Executive Director of Human Resources informed respondent that Fremont Elementary school, where he had been teaching, was a Title I school that required all teachers to be compliant with NCLB.<sup>4</sup> Because he was "not NCLB compliant," the Executive Director asked respondent to call her so that they could discuss his transfer to a non-Title I school and the school district could meet NCLB requirements. Subsequently, respondent called the Executive Director and, during the ensuing school year, he was transferred to Greenville Fundamental School, which was not a Title I school. He taught at Greenville Fundamental School for the next four school years.

(B) In or about August 2006, the Assistant Superintendent of Human Resources personally met with respondent and discussed his compliance with NCLB. The Assistant Superintendent told respondent that he must take and pass the CSET.

(C) On October 23, 2006, the Beginning Teacher Support and Assessment (BTSA) Induction Coordinator from the Human Resources office wrote to respondent, among other teachers, that the school district had reviewed his credential and school assignment and determined that he was not compliant with NCLB. By this letter, the school district informed respondent that he was required to take and pass the CSET as soon as possible to become NCLB compliant and was directed to attend a mandatory meeting where he could receive assistance in developing a plan to achieve compliance with NCLB. Respondent was not able to attend the meeting because he had committed to attend a National Education Association (NEA) conference. He did not prepare or submit a plan to take and pass the CSET.

---

<sup>4</sup> A Title I school is comprised of a certain percentage of students from low income families and thus eligible for federal funding to improve student academic performance. NCLB requires all school districts and schools receiving Title I funds to meet certain state adequate yearly progress goals for student academic proficiency.

(D) In a November 2006 meeting with the BTSA Induction Coordinator and a curriculum specialist, respondent requested a waiver or exemption from taking and passing the CSET on the grounds that he had completed his college degree, obtained a New Mexico teaching license, and held a substitute and emergency teaching permits prior to July 1, 2002. The BTSA Induction Coordinator informed respondent that the school district would not grant his request for a waiver or exemption from taking and passing the CSET. Later, the BTSA Induction Coordinator contacted the California Department of Education and received confirmation that respondent was not eligible for a waiver or exemption.

9. (A) In November 2006, the school district forwarded a NCLB Non-Compliant Teacher Validation Form to respondent and informed him that, under NCLB, the school district was required to notify parents if their students had been instructed for four or more consecutive weeks by a teacher who is not highly qualified in the core subjects. The school district asked respondent to complete the Validation Form and returned it to Human Resources office. On November 29, 2006, respondent completed and returned the form.

(B) In or about December 2006, as required by NCLB, the school district notified parents of students in respondent's classrooms at Fremont Elementary School and Greenville Fundamental School that their students had been taught for four or more consecutive weeks in that school year by respondent, a teacher who was not considered highly qualified in his core subjects. The school district used the Validation Form completed by respondent to fill out the Parent Notification form that was sent to the parents.

10. Respondent continued teaching in the school district for the next three school years without having taken the CSET or obtained NCLB certification. During the 2008-2009 school year, the school district was designated as a "program improvement school district." As a consequence of this designation, the school district had to agree that all of its schools would comply with NCLB certification standards and all teachers would become Highly Qualified Teachers under NCLB and state regulations. The school district faced possible sanctions, including reporting requirements and loss of funding, for the failure to comply with program improvement and/or NCLB regulations.

11. (A) On November 30, 2009, the BTSA Induction Coordinator notified respondent by a letter that the school district had reviewed his credential and school assignment and determined that he was not compliant with NCLB. By this letter, the school district again informed respondent that he was required to become compliant with NCLB by taking and passing the CSET as soon as possible and invited him to attend an "individualized meeting" to receive assistance to achieve NCLB compliance. Respondent called and re-scheduled the meeting to January 2010.

(B) In January 2010, the school district held NCLB Compliance Plan Meetings with several teachers, including respondent. At his individualized meeting on January 19, 2010, respondent attended and brought with him a representative from the teachers' association. The school district was represented at this meeting by the Executive Director of Human Resources and the BTSA Induction Coordinator. Respondent was advised that he

was not NCLB compliant or considered a Highly Qualified Teacher and needed to submit a compliance plan for taking and passing the CSET. The school district had prepared a form entitled, "NCLB Individualized Compliance Plan," on which a teacher was to state whether he or she was a "new" teacher or a "not new" teacher and agreed to complete the necessary requirements to become NCLB compliant, including enrolling in and completing a test preparation course and passing the CSET.

(C) At his individualized meeting on January 10, 2010, respondent indicated he would think about submitting a compliance plan. He questioned again whether he should be considered a not new teacher because he had completed his college coursework and obtained a New Mexico teaching license before July 1, 2002, and was therefore exempt from taking and passing the CSET for purposes of NCLB compliance. Respondent did not refuse to take the CSET during the compliance meeting on January 19, 2010.

(D) Three weeks later, on February 1, 2010, the BTSA Induction Coordinator wrote a letter to respondent in which it was acknowledged that he had attended his individualized NCLB Compliance Plan Meeting. Respondent was advised that the school district had looked into his question whether he should be considered a not new teacher based on his out-of-state teaching license. The BTSA Induction Coordinator informed respondent that to be considered "not new" to the teaching profession under state regulations he must have attained his California teaching credential by June 30, 2002, and that he did not meet this criteria. Respondent was directed to take and pass the CSET by June 30, 2010, to attain status as a Highly Qualified Teacher under NCLB.

(E) By letter dated February 23, 2010, the Executive Director of Human Resources confirmed with respondent that he had been told that he was not compliant with the certification or highly qualified teacher requirements under NCLB. Respondent was directed to submit proof to the school district by June 30, 2010, that he had attained certification as a Highly Qualified Teacher. He was further advised that his failure to meet the NCLB certification requirements would result in proceedings to dismiss him from employment with the school district.

12. (A) On March 23, 2010, respondent provided the school district's Human Resources office with an undetermined proposal from June 2003 regarding NCLB Highly Qualified Teacher status.

(B) On March 24, 2010, the Executive Director of Human Resources sent a reply to respondent regarding his status as a Highly Qualified Teacher under NCLB. The Executive Director reiterated that teachers who received their credentials on or after July 1, 2002, must pass the CSET subject matter competency test to be considered a Highly Qualified Teacher. Respondent was reminded that, because he received his credential on or after July 1, 2002, he was required to pass the subject matter competency examination to become an NCLB Highly Qualified Teacher and that he had not done so. The Executive Director advised respondent that he was required to pass the CSET by June 30, 2010, in order to continue teaching in the school district.

(C) Later, when he did not receive any information that respondent had passed the CSET by June 30, 2010, the Executive Director of Human Resources recommended to the school district that respondent be dismissed from his employment. The Superintendent prepared the Statement of Charges as described in Finding 2 above.

13. On July 29, 2010, the Support Services and Credentials Manager of the Orange County Department of Education (OCDE) wrote to the Associate Superintendent of Human Resources that she is the only person authorized to evaluate whether a teacher or applicant who is trained out-of-state and holds a multiple subject credential has met the requirements for NCLB certification as a Highly Qualified Teacher. The teacher or applicant is required to submit for her evaluation his or her out-of-state teaching license, official transcripts showing attainment of a bachelor of arts degree in the core subject area, or completion of out-of-state examinations in the core subject area. The Supports Services and Credentials Manager indicated that she did not provide respondent with any other information on this topic. Nor was it established that respondent ever submitted his New Mexico teaching license, college transcripts, or proof of successful completion of out-of-state examinations to the Support Services and Credentials Manager at OCDE for an evaluation to determine if he met NCLB certification requirements.

14. (A) On May 8, 2010, respondent sat for the CSET in Multiple Subjects. He passed Subtest I but did not pass Subtests II or III. On July 10, 2010, respondent sat for the CSET in Multiple Subjects and retook Subtests II and III. He did not pass the two subtests. On September 11, 2010, he sat again for the CSET in Multiple Subjects and retook Subtest II. He did not achieve a passing test on Subtest II. Subsequently, respondent sat for the CSET in Multiple Subjects in January and/or February 2011 as well in July 2011 but did not pass either remaining subtest.

(B) Before sitting for the July 2011 CSET, respondent took a preparation course provided by a private company which was held at Santa Monica College and cost \$90. For the July 20011 CSET and prior examinations, he studied and reviewed materials on the internet, purchased books and note cards, and obtained tutoring.

(C) At no time relevant herein did respondent enroll in or take the CSET preparation course offered by the OCDE. Nor was it established that respondent obtained or reviewed CSET study guides available to teachers at the school district or OCDE. No later than February 2010, respondent was made aware by the school district that a preparation course was available at OCDE and that his expenses would be reimbursed if he took the OCDE preparation course and passed the CSET. He did not avail himself of these resources or supports at OCDE and the school district.

15. (A) Respondent presented the testimony of three character witnesses: Sergio Flores; Fernando B. Ledezma, a teacher with the Los Angeles Unified School District and a state representative with the California Teachers' Association (CTA); and Joseph Edward Guzman, a sixth grade Social Studies teacher with the Montebello School District and a state representative of the California Teachers' Association. In addition, respondent presented a



reference letter written by Marian A. Bliznik, a resource specialist teacher with the school district whose students were also taught by respondent.

(B) As established by the character evidence, respondent is an honest, trustworthy, and hardworking teacher. He is a well-respected advocate for civil rights, teachers' organizations, and Hispanic education. Respondent is an active volunteer with the Hispanic Caucus of CTA and the NEA and has held leadership positions in both organizations. Respondent is a dedicated teacher who exhibits both understanding and flexibility in working with students and takes pride in their accomplishments. As a bilingual and bicultural teacher, respondent has been a valuable role model for the school district.

16. Allegations contained in the Accusation and Statement of Charges or raised by either party during the hearing for which there are no specific findings in this Decision were deemed unproven or considered immaterial or irrelevant to this matter upon consideration of all of the evidence.

\* \* \* \* \*

Pursuant to the foregoing findings of fact, the Commission on Professional Competence makes the following determination of issues:

### LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter because it is seeking to dismiss respondent from his employment as a certificated employee of the school district. The applicable standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.)

2. Cause exists to suspend respondent from his employment pursuant to Education Code section 44939, for willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of his employing school district, based on Findings 1 – 16 above.

3. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(7), for persistent violation or refusal to obey reasonable regulations prescribed for the government of the school district by the State Board of Education or by the governing board employing him, based on Findings 1 – 16 above.

4. Education Code section 44939 provides, in pertinent part, that, upon the filing of a written statement of charges formulated by a governing board charging a permanent employee of a school district with willful refusal to perform regular assignments without

reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, the governing board may, if it deems such action to be necessary, immediately suspend the employee from his duties and give him notice of his suspension and, that 30 days after service of the notice, he will be dismissed, unless he demands a hearing.<sup>5</sup>

Section 44932, subdivision (a), provides that no permanent employee shall be dismissed except for one or more causes set forth in subdivisions (a)(1) through (a)(11). Under subdivision (a)(7) of section 44932, a permanent employee may be dismissed from employment for persistent violation of school laws or reasonable regulations prescribed by the government of public schools by the State Board of Education or by the governing board of the school district employing him. The violation or refusal to obey reasonable regulations must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

Under section 44944, subdivisions (c)(1)(A)-(C), the written decision of a Commission on Professional Competence must contain findings of fact, determinations of issues, and a disposition that shall be, solely, one of the following: the employee should be dismissed, the employee should be suspended for a specific period of time without pay, or the employee should not be dismissed or suspended. Section 44944, subdivision (c)(3), adds that the Commission on Professional Competence does not have the power to dispose of the charge of dismissal by imposing probation or other alternative sanctions; the imposition of suspension pursuant to section 44944, subdivision (c)(1)(B), is available only in a suspension proceeding authorized under section 44932, subdivision (b), or section 44933.

5. Discussion--In the present matter, the issue presented for decision is whether the school district properly suspended respondent without pay or benefits under section 44939 and whether respondent should be dismissed under section 44932, subdivision (a)(7). Here, complainant established by the preponderance of the evidence that cause existed, and continues to exist, for respondent’s immediate suspension for willful refusal to perform regular assignments without reasonable cause as prescribed by reasonable rules and regulations of the school district, and for the dismissal of respondent from his employment with the school district for persistent violation to obey school laws or reasonable regulations of the school district.

Beginning no later than the 2004-2005 school year, the school district sought to comply with federal NCLB certification requirements and state regulations thereunder by requiring that its teachers become Highly Qualified Teachers. The rule or regulation that new teachers in the public schools attain Highly Qualified Teacher status and thus NCLB

---

<sup>5</sup> All further section references are to the Education Code.

certification of subject matter competency by passing the CSET was a reasonable regulation of the state for the governance of a public school as well as a reasonable rule or regulation of the school district. In January 2005, respondent attended a meeting and learned about the NCLB certification, including the requirement that new teachers who were issued a California teaching credential on or after July 1, 2002, take and pass the CSET to demonstrate subject matter competency. Because he had prior teaching experience, a license, and coursework from New Mexico, respondent believed that he was a not new teacher. He obtained documents, including a letter from California State University San Bernardino that his university degree qualified him for a CTC waiver from the CSET series examination for purposes of obtaining a teaching credential. He then applied to the school district for the HOUSSE option to obtain NCLB certification. In the summer of 2005, respondent met with the Associate Superintendent and explained that he should be considered a not new teacher and not be required to take the CSET. The Associate Superintendent replied that he would look into respondent's claim. Accordingly, during the pendency of his HOUSSE option application beginning in January 2005, respondent may be said to have had reasonable cause not to follow the rule and regulation of the school district that he attain NCLB certification by taking and passing the CSET.

In August 2006, however, the Associate Superintendent advised respondent that he was required to take and pass the CSET to become NCLB compliant. That same month, the school district further advised respondent that he was not NCLB compliant, needed to pass the CSET as soon as possible to gain NCLB certification, and was invited to a meeting to obtain help in preparing a plan for passing the CSET. At this time in August 2006, although he had not received formal denial of his HOUSSE option application, respondent was duly notified by the school district that he was a new teacher, not NCLB compliant, and required to take and pass the CSET. He had not received any waiver or exemption from taking the CSET and could no longer reasonably claim that he was a not new teacher and eligible for NCLB compliance through the HOUSSE option or through a waiver. Thus, by August 2006, respondent ceased to have reasonable cause not to comply with the school district's rule or regulation that he attain NCLB certification by taking the CSET.

Over the next four school years, respondent did not submit a compliance plan for taking a preparatory course and taking the CSET. He did not sit for and take the CSET. He did not avail himself of the resources at the school district and OCDE for preparing for and taking the CSET. He did not take the CSET for the first time until May 2010. By not taking and passing the CSET, respondent demonstrated a willful refusal to perform regular assignments without reasonable cause as prescribed by the reasonable rule or regulation of the school district within the meaning of section 44939. The school district's determination under section 44939 to suspend respondent without pay or benefits after 2009-2010 school was reasonable and justified.

Upon attending the compliance plan meeting in January 2010, respondent still did not agree to enroll in a preparatory course and pass the CSET. Even as late as March 2010, respondent was still insisting there was an alternative way for him to obtain NCLB certification. He did not take the CSET until May 2010 after receiving notice from the

school district that his failure to pass the CSET and become NCLB compliant would result in his dismissal. Thereafter, respondent did pass one of three subtests of the CSET and took a private preparatory course but he still has not been able to pass all three subtests of the CSET to verify his subject matter competence in the core subjects that he has been teaching to elementary school pupils.

Because he has not passed the CSET, respondent cannot be considered a Highly Qualified Teacher under NCLB and state mandates. Without passing the CSET and achieving Highly Qualified Teacher status, he is in violation of state regulations and the school district's rule or regulation that all teachers in the school district demonstrate NCLB compliance and meet certification requirements for subject matter competency. His violation of the state laws and school district regulations was persistent, for he was notified and made aware in 2006 that he was a new teacher and required to take and pass the CSET and then failed to comply with the school district's regulation and directive to take the CSET for more than four school years thereafter. The school district has now been designated a program improvement school district and all of its schools must be staffed by teachers with NCLB certification and/or Highly Qualified Teacher status. The school district can no longer shelter respondent from meeting NCLB certification requirements by transferring him to another elementary school as it did so in the past. Despite his years of experience and dedication, there is unfortunately no school or certificated position in the school district where respondent can teach elementary school since he lacks NCLB certification.

\* \* \* \* \*

//  
//  
//

WHEREFORE, the Commission on Professional Competence makes the following Order:

ORDER

The Accusation and the Statement of Charges, OAH Case No. 2010120537, filed and issued by complainant Superintendent of Schools of the Santa Ana Unified School District against respondent Robert Chavez is sustained, based on Conclusions of Law 1 – 5 above, jointly and for all. The suspension without pay or benefits and the dismissal of respondent Robert Chavez are both affirmed and respondent Robert Chavez may be dismissed as a permanent certificated employee of the Santa Ana Unified School District.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Mimi Gaudette, Commission Member  
Retired Teacher  
Fullerton School District

Dated: \_\_\_\_\_

\_\_\_\_\_  
Allison Israwi, Commission Member  
Vice-Principal and Former Teacher  
Downey Unified School District

Dated: \_\_\_\_\_

\_\_\_\_\_  
Vincent Nafarrete, Commission Member  
Administrative Law Judge  
Office of Administrative Hearings