

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2012050315

NANCIE VALENT

A Permanent Certificated Employee,

Respondent.

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) at Los Angeles, California, on August 12-16, 2013, and September 3 and 4, 2013. The Commission consists of the following members: Philip Ramos, Teacher, Pomona Unified School District; Jan Miller, Retired Teacher, Orange Unified School District; and Glynda B. Gomez, Administrative Law Judge, Administrative Law Judge, Office of Administrative Hearings.

The Los Angeles Unified School District (District) was represented by Michelle Goldsmith, Esq., of Bergman Dacey Goldsmith, Attorneys at Law. Respondent Nancie Valent (Respondent) was present and was represented by Daniel J. Kolodziej, Esq., of Trygstadt, Schwab & Trygstadt, Attorneys at Law.

Rulings on motions were made on the record during the proceedings except for Respondent's motion to strike the cause of action for unprofessional conduct, which is hereby denied. Oral and documentary evidence was received. The record remained open until September 13, 2013 for the submission of a copy of a power point presentation and a list of deposition transcript excerpts submitted jointly by the parties. The evidence was received and marked as Exhibits F and G, respectively. The record was closed and the matter was submitted for decision on September 13, 2013. The Commission considered the matter in executive session. After due consideration of the record, the Commission makes the following factual findings, conclusions of law, and order:

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## FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Vivian K. Ekchian in her official capacity as Chief Human Resources Officer for the District.
2. On April 11, 2012, Respondent was given written notice of the District's intention to dismiss Respondent unless she demanded a hearing. On April 26, 2012, Respondent submitted a demand for a hearing.
3. The Statement of Charges and Accusation is dated May 16, 2012,<sup>1</sup> and recommended the dismissal of Respondent from the District for the following legal causes under Education Code<sup>2</sup> sections 44932 and 44939: (1) immoral conduct; (2) unprofessional conduct; (3) evident unfitness for service; and (4) 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 of Education or by the governing board of the school district employing Respondent.
4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings. Respondent's outstanding Motion to Strike the Cause of Action for Unprofessional Conduct based upon an alleged failure to provide Respondent with a Stull evaluation is denied.
5. District contends that Respondent is subject to dismissal based upon a sexually inappropriate and aggressive statement she is alleged to have made to a student, text messages she sent to students and staff and having dinner alone with a student.
6. Respondent contends that she never made the statement alleged or any statement similar thereto, that she sent school related and appropriate text messages to students she coached on the track team, she responded to invitations from students to join the track team after track meets for dinner on a few occasions and that on one occasion she and a student arrived at the IHOP restaurant for a track team post-meet dinner and no one else came, so they had dinner and left. Respondent further contends that she responded to a text message from a staff member about the assistant principal, but did not initiate the contact.

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1 Complainant's oral motion to amend the Accusation on page 2, line 7 to insert "It was reported that:" after "2010." was granted, on the final day of hearing without objection.

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

### *Background Information*

7. Respondent graduated from California State University at Long Beach with a Bachelor of Arts degree in Kinesiology and Physical Education with an emphasis in Secondary Physical Education. As part of her educational program she completed course work in athletic training and conditioning. Respondent received a single subject Ryan credential in Physical Education in 2003.

8. Respondent has been employed by the District since April of 2004 and has been a permanent certificated employee since July 7, 2006. Respondent was a physical education teacher at John Marshall High School (Marshall HS) from April 26, 2004, to July 1, 2009. She served as an assistant track coach at Marshall HS during the 2008-2009 school year. Effective July 1, 2009, and due to low enrollment at Marshall HS, Respondent was transferred to Drew Middle School (Drew MS) where she served as a physical education teacher until she was reassigned to the Local District 7 Office on May 7, 2010. Respondent remained at the Local District 7 office until she was assigned to work at home and ultimately removed from paid status.

9. While Respondent was an assistant track coach at Marshall HS during the 2008-2009 school year, she was assigned to coach the sprinters. Among the sprinters were male students MT, VR, GG and JC. Respondent was not popular with the coaching staff and had a reputation amongst the sprinters as being somewhat of a bossy, militaristic coach. VR did not like her approach and tried to avoid immediate contact with her because he found her to be abrasive and to interfere with the way he wanted to run the 4x4 relay race. VR also was a hurdler and as such was not usually coached by Respondent or with the sprinters except for the 4x4 relay.

10. At some time around April 30, 2010, the Marshall HS football coach, Andrew Moran (Moran), became aware of conversations that student MT had with student VR and a second conversation between MT and a female student. Moran understood there to have been a comment of an inappropriate sexual nature made to MT by Respondent. MT had a reputation amongst his friends for being "over the top" and not entirely truthful when telling stories. Moran was not aware of this reputation and took the matter seriously. Moran also did not like Respondent and was happy that she had been reassigned to Drew MS. On April 30, 2010, Moran reported to Vice Principal Erick Juarez (Juarez) that Respondent had made a comment of an aggressive sexual nature to a student. Juarez instructed him to report the information to the Los Angeles Police Department and prepare a Suspected Child Abuse Report (SCAR).

11. Juarez made this instruction because Moran, like all of the District employees, has a mandatory duty to report suspected child abuse. Moran reported his

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suspicious to the Los Angeles Police Department and prepared a SCAR. In the SCAR, Moran wrote:

[MT] told me that Ms. Walent won't stop texting him, she is no longer a teacher or coach at the school but maintains an almost obsessive relationship with members of the track team. He told me that at times she has been inappropriate verbally in a sexual nature. Specifically "when you turn 18 I'm going to rape you" and "you couldn't handle a girl like me, you'd be done in 2 seconds."

12. Marshall HS principal Daniel Harrison (Harrison) interviewed MT, JC and VR on May 4, 2010. Harrison testified, and his summary of interviews<sup>3</sup> reflects, that MT told him Respondent had taken team members to IHOP, called or texted track team members about track events, discussed track form and style, gave massages, joked about dating the male students, and talked to the students about her personal relationship with her boyfriend. There was no mention by MT, JC or VR to Harrison that Respondent stated that she would "rape" MT when he turned 18.

13. On May 27, 2010, the Los Angeles Police Department conducted an investigation of the SCAR which included an interview of MT by Officer Malik Wilds. Respondent was never interviewed. The SCAR complaint was closed without prosecution, because Officer Wilds' investigation determined that a crime had not been committed.

14. District school police Detective Ray Jordan (Detective Jordan), who was on special assignment to the Employee Relations Unit, interviewed students MT, VR, LC, former student MP, Moran, Harrison, and the school athletic director. Detective Jordan did not find any witness that heard the alleged comment. Significantly, MT told a slightly different version of the events to Detective Jordan than to Harrison or Officer Wilds. In his interview with Detective Jordan on September 22, 2010, MT stated that the comment was made in joking in a parking lot of an IHOP restaurant with female student LC present and former student MP present. When interviewed, neither LC nor MP remembered the statement. MT advised Detective Jordan that he never felt harassed and never thought that Respondent would rape him. MT also told Detective Jordan that Respondent was a big "smack talker" and the comment was just a joke. Respondent, on the advice of her union representative, refused to be interviewed by Detective Jordan.

15. Videotaped deposition testimony of MT was offered at the administrative hearing because MT was unavailable and out of the country at the time of the hearing. MT's demeanor and the manner in which he testified suggested that he wanted to distance himself from the allegations against Respondent. He was reluctant to answer questions about Respondent, minimized any comments she made, and blamed the track

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<sup>3</sup> Harrison did not take notes during the interviews.

athletes for badgering Respondent. At one point in his testimony, MT declined to give further details or information about Respondent and cited Ramadan, a religious holiday for him, as the reason. MT proclaimed that he did not want to break his Ramadan fast by telling lies. MT testified that there was a joke about him turning 18 that was made in a restaurant with other students around, but did not offer any specific recollection of Respondent making the statement alleged in the Accusation.

16. Respondent credibly testified on her own behalf and denied ever making the statement alleged or any statement similar to the alleged statement at any time. Respondent was candid in her testimony. Her demeanor was professional and serious. She provided thoughtful and complete answers to the questions asked of her in contrast to MT's evasive testimony. Respondent's unequivocal denial of the statement was more convincing than MT's wavering and inconsistent, uncorroborated statements made to investigators, administrators and staff at different times.

17. In paragraph 1 of the amended charges, Complainant alleges that "It was reported that: on Friday, April 30, 2010, Ms. Nancie Walent a P.E. teacher at Drew Middle School (a displaced P.E. teacher from Marshall High School) said to [MT], an 11<sup>th</sup> grade male student at Marshall High School, 'when you turn 18 I'm going to rape you. You couldn't handle a girl like me; you'd be done in two seconds.'" The Commission found that Complainant failed to establish by a preponderance of the evidence that this statement or any similar statement was made to MT by Respondent. However, Moran understood this or something similar to be a comment made by Respondent. As someone with a mandatory child abuse reporting duty, Moran reported it as such to the school administrators and police under direction of Marshall HS administrators on April 30, 2010.

18. In paragraph 2 of the charges, Complainant alleges that "During the 2009-2010 school year, Ms. Nancie Walent, a P.E. teacher at Drew Middle School (a displaced P.E. teacher and former assistant track coach from Marshall High School), sent text messages to [MT], an 11<sup>th</sup> grade male student, asking where the students were going to meet after the Marshall High School track meet." The Commission found that Respondent exchanged text messages with MT regarding post-track meet dinners and sent him text messages to determine time and location of the post-track meet dinners. There was nothing inappropriate about the text messages or Respondent's conduct in this regard and the text messages did not violate any law, policy, prohibition or regulation.

19. In paragraph 3 of the charges, Complainant alleges that "During the 2009-2010 school year Ms. Nancie Walent a P.E. teacher at Drew Middle School, (a displaced P.E. teacher and former assistant track coach from Marshall High School), had dinner alone with [JC], a 17 year old student from Marshall High School from 8:30 to 10:00 p.m." The Commission determined that Respondent and JC did have dinner at an IHOP restaurant. The facts and circumstances of the dinner were that JC had invited Respondent to join the track team for a post-track meet dinner at the end

of the 2009-2010 track season and she agreed to attend. When Respondent arrived, she was surprised to find that JC was the only track team member at the IHOP. The other members of the track team had gone to a different event or restaurant. JC and Respondent had dinner at the IHOP and left separately. The dinner was shortly after a track meet and did not extend until 10:00 p.m. There was no evidence of anything inappropriate about Respondent's conduct or her attendance at the dinner. Respondent's conduct did not violate any law, policy, prohibition or regulation.

20. In paragraph 4 of the charges, Complainant alleges that "During the 2009-2010 school year Ms. Nancie Walent a P.E. teacher at Drew Middle School, (a displaced P.E. teacher and assistant track coach from Marshall High School), texted members of the Marshall High School track team." Complainant established that Respondent exchanged text messages with some of her former students including MT and JC. There was no evidence that the text messages or Respondent's conduct were inappropriate in any way. Respondent attended some Marshall HS track meets after she was transferred to Drew MS for the sole purpose of supporting the student athletes that she had previously coached. The Commission found it commendable that Respondent was willing to return to Marshall HS to support her former student athletes.<sup>4</sup> Respondent's conduct did not violate any law, policy, prohibition or regulation.

21. In paragraph 5 of the charges, Complainant alleges that "While being housed at Local District 7 offices, Ms. Nancie Walent P.E. teacher at Drew Middle School, contacted Drew Middle School staff members to inform them that Mr. Manuel Santamaria, Assistant Principal at Drew Middle School, was being housed at Local District 7." Complainant established that Respondent replied to a text message from her colleague Teresa Conti, an adaptive physical education teacher at Drew MS, in which Ms. Conti asked Respondent "Where are you?" and "Is Santa there?" Respondent replied "I saw him." Both Respondent and Ms. Conti understood "Santa" to mean Mr. Santamaria. Respondent did not initiate the contact with Ms. Conti. Respondent had not been given any instruction that she was not to contact former colleagues nor was she given instruction that she was not permitted to disclose the names of any other employees that were being housed at the Local District 7 office. Respondent's conduct did not violate any law, policy, prohibition or regulation.

22. Complainant did not establish that Respondent violated school rules, the District code of conduct, the Code of Ethics, the Sexual Harassment Policy, the rules for housed employees at District 7 Offices or any other directive, policy or rule set by the District or the State board of Education.

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<sup>4</sup> The sprinters did not have an assistant coach assigned to them once Respondent was transferred to Drew MS. Respondent was not permitted to volunteer as an assistant coach for the 2009-2010 school year.

## LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter pursuant section 44944. (Factual Findings 1 through 4.)

2. Pursuant to section 44944, subdivisions (c)(1)-(3), when a school board recommends dismissal for cause, the Commission may only vote for or against it. Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction.

3. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardiner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

4. The Accusation and Statement of Charges does not set forth specifically which of the District's factual allegations relate to each of the four alleged grounds for dismissal: (1) immoral conduct, (2) unprofessional conduct, (3) evident unfitness for service, and (4) refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district

5. Section 44932 provides in pertinent part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

...[¶]...

(5) Evident unfitness for service.

...[¶]...

(7) 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 of Education or by the governing board of the school district employing him or her.

6. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an

inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. "Unprofessional conduct," as used in section 44932, subdivision(a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553; see *Perez v. Commission on Professional Competence* (1983) 149 Cal. App. 3d 1167, 1174.)

8. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.) Evident unfitness for service requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (Id. at p. 1444.)

9. Under section 44932, subdivision (a)(7), the violation of school rules 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 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.)

10. Even where unprofessional conduct or evident unfitness for service are established, it must also be established that such unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal. 3d 208; *Woodland, supra*, 4 Cal.App. 4th at pp. 1444-1445.) Under the facts of the *Morrison* case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

11. Complainant did not establish that Respondent's conduct was immoral. It was not established that Respondent's conduct was inconsistent with rectitude,



indicative of corruption, indecency, depravity, dissoluteness; nor that she displayed willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community or an inconsiderate attitude toward good order and the public welfare. The Commission determined that cause does not exist to dismiss Respondent for immoral conduct, pursuant to section 44932, subdivision (a) (1), for the reasons set forth in Factual Findings 7-22 and Legal Conclusions 1-6 and 10.

12. Complainant did not establish that Respondent engaged in unprofessional conduct. It was not established that Respondent violated ethical rules or engaged in conduct unbecoming of a member of the teaching profession. The Commission determined that cause does not exist to dismiss Respondent for unprofessional conduct, pursuant to section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 7-22 and Legal Conclusions 1-5, 7, and 10.

13. Complainant did not establish that Respondent is unfit to teach. It was not established that Respondent has a defect in her temperament or a fixed character trait that makes her unfit to teach. The Commission determined that cause does not exist to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 7-22 and Legal Conclusions 1-5, 8, and 10.

14. Complainant did not establish that Respondent violated school rules, the District code of conduct, the Code of Ethics, the Sexual Harassment Policy, the rules for housed employees at District 7 Offices or any other directive, policy, law, or rule set by the District or the State board of Education. The Commission determined that cause does not exist to dismiss Respondent for persistent violation of school laws of the state or the reasonable regulations prescribed by the government of the public schools by the State Board of Education or by the governing board of the school district employing him pursuant to section 44932, subdivision (a) (7), for the reasons set forth in Factual Findings 7-22 and Legal Conclusions 1-5 and 9-10.

15. Because none of the charges were sustained the Commission does not believe that the factors set forth in *Morrison* apply to this case. Because the charges were not sustained, the Commission determined that Respondent should not be dismissed. (Factual Findings 7-22 and Legal Conclusions 1-14)

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## ORDER

The Accusation and Statement of Charges are dismissed. Nancie Walent shall not be dismissed from her position as a permanent certificated employee of the Los Angeles Unified School District.

October 25, 2013

  
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Jan Miller

Member

Commission on Professional Competence

October \_\_\_\_\_, 2013

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Phillip Ramos

Member

Commission on Professional Competence

October \_\_\_\_\_, 2013

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Glynda B. Gomez

Administrative Law Judge

Chairperson

Commission on Professional Competence

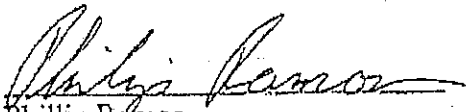
ORDER

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October \_\_\_\_, 2013

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Jan Miller  
Member  
Commission on Professional Competence

October 30, 2013

  
\_\_\_\_\_  
Phillip Ramos  
Member  
Commission on Professional Competence

October \_\_\_\_, 2013

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Glynda B. Gomez  
Administrative Law Judge  
Chairperson  
Commission on Professional Competence

## ORDER

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October \_\_\_\_, 2013

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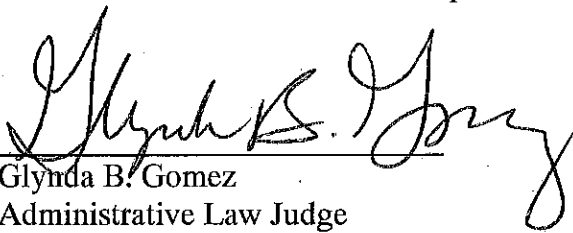
Jan Miller  
Member  
Commission on Professional Competence

October \_\_\_\_, 2013

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Phillip Ramos  
Member  
Commission on Professional Competence

October 30, 2013



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Glynda B. Gomez  
Administrative Law Judge  
Chairperson  
Commission on Professional Competence