

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
LOS ANGELES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

CARLOS POLANCO,

a Permanent Certificated Employee,

Respondent.

OAH No. 2019040983

DECISION

The Commission on Professional Competence (Commission) heard this matter in Los Angeles, on October 22 through 24, 2019, October 28 through November 1, 2019, November 4 through 8, 2019, January 14 through 17, 2020, and by videoconferencing on July 1 and 2, 2020, July 6 through 10, 2020, and July 13, 2020.¹ The Commission consists of Dr. Carolyn Monroe, Los Angeles Unified School District (retired); Robert Earl, Los Angeles County Office of Education; and Administrative Law

¹ Videoconferencing was due to the COVID-19 pandemic.

Judge Eric Sawyer, Office of Administrative Hearings (OAH), State of California, who presided.

Ellen C. Wu, Esq., and Lynn Ibarra, Associate General Counsel, represented complainant Los Angeles Unified School District (District).

Rusty Gore, Esq., and Richard J. Schwab, Esq., represented Carlos Polanco (Respondent), who was present each hearing day.

The parties presented opening statements, oral and documentary evidence, and closing arguments. The case was submitted for decision at the conclusion of the hearing on July 13, 2020. The Commission thereafter conducted its deliberations in executive session.

SUMMARY

The District seeks to dismiss Respondent, a veteran teacher who has taught for the District since 2000. Primarily, three principals, who observed Respondent teach 16 lessons over three school years, consistently concluded Respondent is an ineffective teacher. Respondent was provided with substantial assistance and guidance in response to noted deficiencies, including teaching coaches for over two years, without success. Respondent also received Below Standard performance ratings in his Final Evaluations for 2016, 2017, and 2018. Finally, Respondent acted unprofessionally in comments he made in front of students in class and on a field trip, during a History Department meeting with colleagues, and to one of his teaching coaches. Respondent's excuses and justifications for his ineffective teaching and unprofessional comments were not convincing. The Commission therefore concludes Respondent's dismissal from the District is warranted.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Board of Education (Board) is the duly elected, qualified, and acting governing board of the District, organized, existing, and operating pursuant to the provisions of the California Education Code and other laws of the State of California.
2. Respondent is a permanent certificated employee of the District.
3. On February 15, 2019, Jose R. Cantu, Ed.D., in his official capacity as the District's Assistant Chief Human Resources Officer, signed a Statement of Charges against Respondent, alleging factual and legal grounds for termination of his employment with the District. (Ex. 30, pp. 2-98.)
4. By a letter dated March 20, 2019, Respondent was advised by Mr. Cantu that the Statement of Charges had been filed with the Board, and that, during a closed session of a Board meeting held on March 19, 2019, the Board decided to dismiss Respondent within 30 days, unless he requested a hearing. (Ex. 30, p. 1.) On April 18, 2019, Respondent timely requested a hearing. (Ex. 31.)
5. On April 26, 2019, the District filed an Accusation with OAH and served it on Respondent, including the allegations made in the Statement of Charges. (Ex. 32.) Respondent filed a Corrected Request for Hearing and Notice of Defense. (Ex. 33.)
6. On June 11, 2019, the District filed the operative pleading in this matter, the Amended Accusation, and served it on Respondent. (Ex. 34.) By operation of

Government Code section 11507 and the Education Code, Respondent was not required to, and did not, file a response.

Respondent's Background Information

PERSONAL

7. Respondent is a 47-year-old married man with one child. He was born in El Salvador. He and his family came to this country when he was 12. After graduating from a District high school, Respondent served in the military for four years. In 1993 Respondent graduated from East Los Angeles Community College with a degree in electronics, but by then he was interested in teaching.

EDUCATION AND CREDENTIAL

8. In 1993, Respondent enrolled in California State University, Los Angeles. He majored in Latin American Studies, which had an emphasis in history. Respondent remained enrolled in college while also working as a Teacher Assistant (TA) for the District as discussed below in more detail. Respondent earned his Bachelor of Arts degree in 2003.

9. In 2004, Respondent obtained a clear single-subject teaching credential in social science from the California Commission on Teacher Credentialing (CTC). He also has a bilingual, cross-cultural, language and academic development (BCLAD: Spanish) authorization, which allows him to instruct for English language development in grades twelve and below.

TEACHING EXPERIENCE WITH THE DISTRICT

10. In 1995, Respondent was hired by the District as a TA. He worked as a TA in District elementary schools from 1995 through 2000.

11. From 2000 through 2004, Respondent taught history for sixth, seventh, and eighth grade classes at the District's Virgil Middle School under an emergency permit and thereafter under a pre-intern certificate. The record is unclear concerning Respondent's employment with the District in 2005 and 2006. However, he was assigned as a pool teacher at Franklin High School in 2007 through 2008.² He was thereafter assigned to teach social studies at East Valley High School from 2009 through 2013. From June 2013 through October 2015, Respondent did not teach or interact with students for reasons that are not pertinent to this case.

12. This case involves events that occurred in October 2015 through March 2019. During that time, Respondent was assigned as a history teacher at Vista Middle School, Richard E. Byrd Middle School, Sylmar Leadership Academy, and Walter Reed Middle School.

² A pool teacher is a substitute teacher assigned to a particular school and performs whatever teaching duties are needed at that school, e.g., helping the librarian, teaching classes following the direction of a permanent teacher assigned to that class, etc. A pool teacher may be assigned to his or her own class, but performs the other duties as needed the rest of the day. A pool teacher is still subject to evaluation of their performance by the principal of the school where assigned.

State Standards, District Assignments, Assistance, and Guidance

13. (Charge 1.)³ As a District secondary teacher, certain of Respondent's regular assignments were identified and provided to him in the District's Secondary Teacher Class Description, and included but were not limited to:

- a. Teaching classes in accordance with the requirements of approved courses of study and at a rate and level commensurate with established student progress expectations, using adopted textbooks and other instructional materials authorized for such courses;
- b. Using information about individual students' academic strengths, needs, and progress in planning;
- c. Designing activities to engage students in cognitively challenging work aligned to state standards;
- d. Using resources to promote high levels of learning and student engagement in the classroom;
- e. Closely monitoring student learning to understand how students are progressing, and providing instructive and timely feedback that will move student learning forward;

³ For ease of reference, the "charges" alleged in the Amended Accusation are specified at the beginning of the Factual Findings resolving them.

f. Establishing a safe and supportive classroom environment where risk taking is encouraged, students feel free to contribute ideas, and teacher/student interactions are respectful and polite; and,

g. Providing clear behavioral expectations for students and monitoring student behavior in class and on campus.

14. (Charge 2.) As a District Secondary Teacher credentialed by the CTC, certain of Respondent's regular assignments were identified and provided to him in the California Standards for the Teaching Profession (CSTP or standards), and included but were not limited to:

- a. Engaging and supporting all students in learning;
- b. Creating and maintaining effective environments for learning;
- c. Understanding and organizing subject matter for student learning;
- d. Planning instruction and designing learning experiences for all students;
- e. Assessing students for learning; and
- f. Developing as a professional educator.

15. (Charges 3 & 4.) On or about June 6, 2013, while assigned to East Valley High School, Principal Carrie H. Allen provided Respondent with verbal assistance and guidance on, among other things, adhering to the District's Code of Conduct with Students, the Board's resolution on the Respectful Treatment of All Persons, and the District's Employee Code of Ethics. Respondent was given the same assistance and

guidance in writing on or about June 7, 2013. No evidence was presented concerning any other assistance and guidance that was provided to Respondent at that time.

16. A. The District's practice is for a school's principal or assistant principal to conduct one or more informal observation(s) of a teacher each school year to ensure that teaching is in alignment with the District's regular assignments and the CSTPs, including those described in Factual Findings 13 and 14.

B. The teacher in question is notified in advance of the date the informal observation will be conducted, giving him or her time to prepare for it. The teacher's performance is evaluated against the District's regular assignments described above.

C. After the informal observation, the teacher meets with the administrator to receive feedback, provide a response, and receive assistance and guidance if needed. The teacher subsequently receives a conference memorandum, in which the administrator documents what was discussed during the meeting, as well as any assistance, guidance, and directives provided.

D. Any subsequent informal observation(s) is/are also done to determine whether a teacher implements previous suggestions, guidance, and directives. Teachers are expected to implement a directive immediately after one is issued.

17. Every school year a teacher also receives a formal observation, which is pre-planned with the teacher before the observation. The formal observation provides an administrator the opportunity to observe a teacher and provide feedback and ratings around seven "Focus Elements" chosen from a list of 15. Three of these elements are selected by the District, three selected by the teacher, and the administrator and teacher jointly select the remaining element.

18. Toward the end of the school year, a teacher receives a Final Evaluation, in which his or her overall performance is rated under various categories. The results of the formal observation are noted in the Final Evaluation, as well as information from informal observations. The teacher in question receives a rating of either Below Standard Performance, Meets Standard Performance, or Exceeds Standard Performance.

Vista Middle School

19. After his absence from teaching for well over two years, Respondent was assigned to Vista Middle School (Vista) in late September 2015.

20. Vista's principal is Joe Nardulli. Principal Nardulli is well experienced, having been with the District for 32 years, the last eight of which as Vista's principal. As explained below, he treated Respondent like any other new teacher to his school, and even assigned him to shadow another history teacher for eight days before taking over his own class. While testifying, Principal Nardulli appeared calm, even-tempered, and a good historian. His testimony was consistent with conference memoranda he issued to Respondent. He was clear and definitive in his testimony and did not appear to embellish the facts. Based on these circumstances, the Commission found Principal Nardulli's conference memoranda and testimony concerning Respondent to be credible and a reliable source to make factual findings.

21. On October 19, 2015, Respondent met with Principal Nardulli for about 30 minutes. Principal Nardulli went over Vista's policies and procedures, as well as important District policies and Board resolutions. Respondent also was given several hours on his own to study Vista materials and District policies. Respondent also met with History Department Chair Denise M. Harper for about 30 minutes.

22. On October 20, 2015, Respondent was assigned to co-teach with Mr. Herrera in an eighth grade history class as a way of acclimating Respondent to Vista. Respondent co-taught with Mr. Herrera until he (Mr. Herrera) left the school in late October, at which time Respondent took over the class. Respondent's attempt in his testimony to denigrate the value of Mr. Herrera's assistance was not convincing. Mr. Herrera had taught for the District for many years and was familiar with the workings of Vista. Moreover, it was an opportunity few teachers enjoy when they transfer to a new school.

23. The Commission finds Principal Nardulli's treatment of Respondent more generous than one would expect a veteran teacher like Respondent to receive; it more resembled how a new teacher to the profession would be treated.

24. During the hearing, Respondent complained that he felt rusty from not teaching for over two years and because he had last worked with high school students. His complaint was not credible, in light of his overall teaching experience with the District, including several years teaching middle school students, and the fact he was allowed to co-teach for a number of days with Mr. Herrera. Moreover, Respondent's overall high school experience was not as extensive as he intimated in his resume (ex. 201) or his direct testimony, meaning he should have felt just as comfortable teaching middle school students as high school students.

25. A. (Charge 5.) While he taught at Vista from late October through early December 2015, Respondent failed to treat students respectfully on one occasion, and acted inappropriately in front of students on another occasion, as follows:

B. On one occasion occurring no later than early December 2015, student Alexay was being consoled by a few other students in class because she was upset. The

other students hugged her. Respondent told the students to go back to their tables, but they did not respond. Respondent told the students he would take their photographs and show them to their parents if they did not do as directed. At some point during the discussion, Alexay threatened to sue Respondent. Respondent told her to not be a "cry-baby," but he did so in front of the class, which embarrassed Alexay. As the teacher, Respondent is obligated to be cautious when dealing with the emotions of a teenager in distress. Respondent showed disregard for Alexay and said something that could have worsened her distress, especially in front of her peers.

C. During the above-described situation with student Alexay, Respondent intended to take the students' pictures on his phone so that he could document the students' behavior to their parents. Respondent tried but was unable to take pictures because the camera on his phone was not working. The students did not know that. One of the students complained to her mother, who became upset and complained to Principal Nardulli. In threatening to take photographs of the students, including Alexay, Respondent made the students feel uncomfortable. Doing so also escalated an emotional situation. Taking a photograph also would have invaded the privacy of the students and not been an appropriate disciplinary technique, so the student's mother was rightfully upset.

D. By no later than early December 2015, Respondent and his class were on a field trip at the Museum of Tolerance. Another teacher on the field trip got into a pointed political discussion with a docent. After the discussion, Respondent consoled the other teacher by saying, "Now I understand why Donald Trump doesn't like Hispanics." At least one student overheard the comment and complained to her parent, causing the parent to complain to Principal Nardulli. Respondent should not have engaged in political discussions like that within earshot of students, and his

comment caused at least one student to complain to a parent, which negatively impacted his relationship with that student. Respondent also escalated a potentially volatile situation in front of students, instead of either trying to de-escalate it or at least use it as a teachable moment with students the next day in class.

26. A. (Charge 6.) On November 10, 2015, Respondent attended a History Department meeting being led by Ms. Harper, the History Department Chair.

B. During the meeting, one attendee advised he was thinking of teaching in high school. Respondent explained to him, and to all those in attendance, how high school students are different from middle school students. In the course of explaining the difference, Respondent made the following remarks:

i. "It's better being at a high school than a middle school."

ii. "High school girls come on to you and try to get me alone."

iii. Mimicking a female voice, he said, "Mister, my uncle has a place in Tijuana, Let's go for the weekend."

iv. "The problem with gay students, you have to watch out because they will try to get you alone, especially if you are young."

v. "All the pretty girls in high school want private tutoring."

vi. "The female students can be flirty and try to get you alone in the classroom."

C. Respondent's comments made his colleagues feel uncomfortable. Ms. Harper became offended, left the meeting, and several days later complained about Respondent to her husband and then Principal Nardulli. Ms. Harper also credibly

testified that the other meeting attendees, all males, looked shocked and then began shifting their bodies away from Respondent as he continued talking. Respondent's comments would have made a reasonable person feel uncomfortable in that setting.

27. (Charges 7 & 8.) On December 11, 2015, Respondent met with Principal Nardulli to discuss these events. Respondent was also provided with verbal assistance and guidance including, among other things, not making inappropriate, disrespectful, and derogatory comments to District staff or students; his responsibility to behave in a professional manner at all times; the District's Code of Conduct with Students; the Board's resolution on the Respectful Treatment of All Persons; and Standard Two of the CSTP, *Creating and Maintaining Effective Environments for Student Learning*. Principal Nardulli provided Respondent with the same assistance and guidance in his conference memorandum dated December 14, 2015.

28. The Commission finds that Respondent's comments and actions subject to Principal Nardulli's conference memorandum violated the directives Respondent were given by Principal Allen of East Valley High School on or about June 6, 2013, in that Respondent was not respectful to students and colleagues.

29. During the meeting with Principal Nardulli, Respondent said he did not want to work with "Ms. Harper and these people." (Ex. 5, p. 3.) Principal Nardulli testified that Respondent was upset that other teachers complained about him. So he asked Principal Nardulli during the meeting, "Can you please transfer me to another school over the vacation?" (Ex. 5, p. 3.)

30. On December 16, 2015, Principal Nardulli issued to Respondent a Notice of Unsatisfactory Service or Act and suspended him for 11 days, based on his conduct

with students and his comments made during the History Department meeting. Respondent unsuccessfully appealed the suspension.

Richard E. Byrd Middle School

31. Respondent was transferred to Richard E. Byrd Middle School (Byrd) during the winter break. Respondent's testimony that he felt he was being punished by a mid-school-year transfer was disingenuous, in that he had requested the transfer.

32. Deborah Wiltz, Ed.D., is the principal at Byrd. She was advised by the District that Respondent was being assigned to Byrd, but she was provided no information about the transfer. She therefore mistakenly believed Respondent was the long-term substitute teacher for Ms. Bell, a history teacher who was about to go on extended maternity leave.

33. Respondent arrived at Byrd on January 11, 2016. Principal Wiltz assigned Respondent as the long-term substitute for Ms. Bell. Respondent shadowed Ms. Bell for a few days until she left and Respondent took over her classes. However, Principal Wiltz shortly later learned Respondent was not a long-term substitute teacher and so she reassigned Mr. Mayorga to Ms. Bell's classes, and reassigned Respondent to be a history pool teacher.

34. On February 22, 2016, Respondent took over Ms. Bell's classes again when Mr. Mayorga's contract expired. Respondent remained in that assignment until Ms. Bell returned to teaching on April 25, 2016. Thereafter Respondent served as a history pool teacher for the rest of the Spring semester.

35. Principal Wiltz is an experienced educator. She has been with the District since 1984. In addition to having a doctorate in education, she also has multiple

credentials, including as a teacher, counselor, and administrator. In fact, she has a credential allowing her to teach history. During the hearing, her testimony was clear, thorough, and definitive. Based on these circumstances, the Commission found Principal Wiltz's conference memoranda and testimony concerning Respondent to be credible and a reliable source to determine factual findings.

JANUARY 13, 2016 INFORMAL OBSERVATION

36. Principal Wiltz decided to do an informal observation of Respondent in the classroom. In addition to the above-described District practice regarding informal observations, Principal Wiltz felt observing Respondent was warranted because he was new to the school.

37. On January 13, 2016, Principal Wiltz conducted an informal observation of Respondent teaching a lesson on medieval Japan to his period 3 Honors World History class. Her observations, conference memorandum, and testimony established the following.

38. (Charge 9.) Respondent failed to design rigorous activities to address the needs of his World History Honors students, despite having a full workday to plan with the students' previous teacher, Ms. Bell. Respondent's agenda only listed low-level activities that did not provide students with opportunities to evaluate, synthesize, and/or analyze the content of the lesson. This was especially problematic given that these were Honors students who were capable of more.

39. (Charge 10.) Respondent failed to post a learning objective to communicate learning expectations to students. Instead, he posted the content standard number and the word "Japan," which is not a proper objective. In fact, Respondent never explained the standard he would teach that day.

40. (Charge 11.) Respondent failed to adhere to even the low-level agenda he posted. In particular, he told students, "I'm going to go over the notes. Copy the warm up." He then had students copy notes projected on a screen regarding Japan's geography, society, and religion, but Respondent did not review the notes as he had promised on the agenda.

41. (Charge 12.) Respondent failed to deliver coherent instruction. Instead, he taught an undirected lesson not aligned to the standard he was supposed to teach (analyze the geographic, political, economic, religious, and social structures of the civilization of medieval Japan). Respondent's lesson was erratic, had little structure, and was confusing to the students.

42. (Charge 13.) Providing teacher-directed lessons is a regular assignment of all District teachers prescribed by reasonable rules and regulations of the District. Respondent failed to do so during this lesson, without reasonable cause, for the reasons described above in resolving charges 9 through 12.

43. (Charge 14.) Respondent failed to demonstrate sufficient knowledge of the subject matter by not providing students with accurate, complete information, and not modeling correct academic language. For example, Respondent asked students about their ancestors in Mexico, but did not link that to the lesson on Japan. He mentioned medieval Europe but did not sufficiently link that to the lesson on Japan. He made confusing comments about the Samurai but failed to discuss important facts about the Samurai that students would find interesting.

44. (Charge 15.) Respondent failed to provide clear, explicit instructions for a silent reading activity. Respondent simply told the students to read, but provided no

direction or examples. He did not properly monitor the students' activity to confirm whether they were reading or understanding the material.

45. (Charge 16.) Respondent failed to ask questions to reveal students' understanding of the concept/content of the lesson, nor did he use effective discussion techniques to ensure all students shared their thinking around challenging questions. Instead, he asked irrelevant, off-topic questions. He provided no coherent or systematic discussion of the concepts or terminology.

46. (Charge 17.) As demonstrated by his performance during this lesson, Respondent was aware of but failed to perform certain of his regular assignments, including but not limited to, designing activities to engage students in cognitively challenging work aligned to standards; closely monitoring student learning to understand how students are progressing; understanding and organizing subject matter for student learning; and planning instruction and designing learning experiences for all students (regular assignments as prescribed by the District). Respondent's failure to perform these regular assignments as prescribed by the District was without reasonable cause.

47. (Charge 18.) On January 27, 2016, Principal Wiltz met with Respondent to discuss the informal observation, including her critiques discussed above. She also provided Respondent, verbally and in her conference memorandum given to Respondent the same day, with assistance and guidance including, among other things, preparing and delivering effective and coherent Common Core State Standards-based instruction, as well as teaching directed lessons every day. (Ex. 7, pp. 5-6.) She also gave Respondent a District Lesson Design Template, a Gradual Release of Responsibility handout, and a Depth of Knowledge Question Stems handout to assist him. (*Id.*, p. 6.)

48. (Charge 19.) On January 27, 2016, Principal Wiltz, verbally and in writing, directed Respondent to: a) provide instruction that is well-planned, appropriate for the level of students' achievement, and engages the students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily for all his classes. (Ex. 7, p. 6.)

FEBRUARY 24, 2016 INFORMAL OBSERVATION

49. On February 24, 2016, Principal Wiltz conducted an informal observation of Respondent teaching a lesson about the Crusades to his period 1 Honors World History class. Her observations, conference memorandum, and testimony established the following.

50. (Charge 22.) Respondent failed to provide students with opportunities to analyze, synthesize, and think critically. Instead, he assigned low-level activities that primarily involved copying text. By doing so, Respondent failed to differentiate⁴ instruction for the Honors-level students, who required a greater level of challenge and engagement.

⁴ Differentiated instruction is an approach that helps educators tailor their teaching so that all students, regardless of their ability, can learn the classroom material. The primary hallmarks of differentiated instruction are providing different mediums for learning to the different students in a class, as opposed to offering the same activities to all of the students, and having different expectations for successful completion of the work. The District requires differentiated instruction because most District classes have a blend of typical students with those who are English learners, have learning disabilities, or require special education.

51. (Charge 23.) Respondent failed to engage students in meaningful whole-group or small group discussions in order for them to develop grade level listening and speaking skills. For example, during a warm-up activity, Respondent said, "Explain how you can motivate people. I'm going to give you two minutes to explain to somebody how you can motivate." For approximately two minutes, most students held off-topic conversations rather than discuss "how you can motivate." When he asked for volunteers to share their responses with the whole group, only one of the 35 students raised a hand. Respondent did not call on other students or encourage participation.

52. (Charge 24.) Respondent failed to ask questions to reveal students' understanding of the posted content standard. Instead, he asked low-level, recall, loosely related questions. For example, rather than ask questions regarding the multiple causes and effects of the Crusades, Respondent only focused on one factor (trading) that motivated European Christians to begin their military expeditions.

53. (Charge 25.) Respondent failed to monitor students' work, offer corrective feedback, or listen to student responses in order to understand how they were progressing. It is important to monitor student work and give feedback. Students need to know how they are doing and where correction is necessary.

54. (Charge 26.) Respondent failed to demonstrate sufficient knowledge of the subject matter when he did not provide clarifying or additional information to support student achievement of the learning objectives. Instead, he offered tangential, ambiguous, irrelevant comments, followed by disconnected questions after each section. Some of Respondent's comments were trivially true, but did not acknowledge historic significance. Respondent also failed to offer important historic facts, such as that Jerusalem was later lost by the Crusaders. Even though Respondent's comment on

what students may learn in high school (Hitler's Germany) was potentially intriguing, Respondent was so vague about the topic that students did not know what he was talking about or how to connect that to his current lesson.

55. (Charge 27.) Respondent failed to establish an effective classroom management system and failed to redirect student off-task behavior, resulting in unclear behavioral expectations. For example, throughout the lesson class, all table groups held off-topic conversations but Respondent did not redirect any students. One male student played with a purple flyer during the entire class but Respondent did not direct him to the assigned activity. On other occasions, when Respondent tried to redirect off-task students, he was not effective: he just told students to get into groups, but did not provide direction on what would then happen. Without the foundation or structure such direction would provide, students assumed the table group time was free-time for talking. Finally, Respondent did not discuss a rubric for the activity, which also prompted off-topic discussion.

56. (Charge 28.) Respondent similarly failed to establish clear routines and procedures to maintain an orderly, well-managed class. For example, because he did not establish a seating chart, he asked other students if certain peers were present, which is not appropriate. Respondent should have had a way of knowing if students were in their seats. That activity sent a message to students that Respondent did not care who was there. Another example was when the bell rang and students attempted to leave the classroom. Respondent tried to maintain order by telling them to sit down. However, he should have prefaced his comments by reminding students that they had already been told to not leave the class when the bell rang and then confirming with students that they had been so instructed before. Respondent's actions did not show a professional level of planning.

57. (Charge 29.) During this lesson, Respondent failed to comply with the verbal and written directives provided to him by Principal Wiltz on January 27, 2016. By this time, Respondent had been teaching for the District for approximately 16 years. Principal Wiltz one month before gave him specific directives on how to teach and what not to do. Respondent did not provide a meaningful explanation for his failure to execute those directions in this lesson. Under these circumstances, the most reasonable explanation is that Respondent willfully refused to follow her directives.

58. (Charge 30.) Respondent was aware of but failed to perform his regular assignments as prescribed by the District without reasonable cause.

59. On March 17, 2016, Principal Wiltz met with Respondent to discuss the informal observation. She issued him a conference memorandum on the same day. During the meeting and in the conference memorandum, Principal Wiltz provided Respondent with 12 different points of assistance and guidance responding to the deficiencies noted above. (Ex. 8, pp. 5-6.) She also provided him with the same directive she gave him the preceding January, which was to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes. (*Id.*, p. 6.)

60. Part of Principal Wiltz's assistance and guidance for Respondent was to take him to observe another Byrd history teacher, Mr. White, teach a lesson. Principal Wiltz and Respondent did so in April 2016. Principal Wiltz selected Mr. White because he taught a Magnet class similar to Respondent's Honors class. The two observed Mr. White, who was teaching an engaging lesson, for about 40 minutes. Principal Wiltz liked Mr. White's lesson. But Respondent told Principal Wiltz that he did not learn anything because he believed he taught the same way as Mr. White. Respondent also

told Principal Wiltz that she only liked Mr. White's lesson because he was her friend and "kissed her butt," or a phrase to that effect.

2016 FINAL EVALUATION

61. A. (Charge 31.) On April 28, 2016, Principal Wiltz issued Respondent's Final Evaluation, in which he received a Below Standard performance rating.

B. The evaluation was based on determinations that Respondent failed to deliver effective teacher-directed lessons; ask questions designed to reveal students' understanding of concepts being taught; deliver coherent instruction; provide students with opportunities to analyze, synthesize, and think critically; monitor student work and listen to their responses to understand how they were progressing toward learning objectives; demonstrate sufficient knowledge of the subject matter; and establish clear routines and procedures to maintain an orderly and well-managed classroom.

C. Principal Wiltz believed that Respondent had not improved his teaching despite her assistance and guidance. Based on her above-described informal observations of Respondent, as well as a formal observation she conducted on April 4, 2016, Principal Wiltz concluded Respondent was ineffective, which warranted his Below Standard performance rating.

Sylmar Leadership Academy

62. In June 2016, Respondent heard that two pool teachers (including him) would not be retained at Byrd. At that time, Suellen Helm-Torres, the principal of Sylmar Leadership Academy (Sylmar) was advised by the District that Respondent would be assigned to Sylmar, even though she had no vacant history positions.

63. In August 2016, Respondent was ordered to report to Sylmar. Principal Helm-Torres assigned Respondent to be a pool history teacher. She also assigned him to co-teach one sixth, seventh, and eighth grade history class with three other history teachers who she felt would be good role models for him. Respondent did not have his own classroom, did not prepare lesson plans, and was not the lead instructor in any of the classrooms where he co-taught.

64. Principal Helm-Torres has been with the District for 31 years, the last eight of which as principal at Sylmar. She previously was a Beginning Teacher Support and Assessment (BTSA) support provider, in which she was trained to foster and mentor new teachers. Thus, she had a good understanding of how to welcome a new teacher to Sylmar and facilitate his or her growth. As described above, she was more generous in helping to acclimate Respondent to Sylmar than one would expect a veteran teacher to receive. During the hearing, her testimony was clear and succinct. The Commission also notes her observations of Respondent's teaching were consistent with those offered by the principals who supervised Respondent before and after her. Based on these circumstances, the Commission found Principal Helm-Torres's conference memoranda and testimony concerning Respondent to be credible and a reliable source to determine factual findings.

65. Principal Helm-Torres informally observed Respondent in September and October 2016 and conducted a formal observation of him in November 2016. However, because Respondent did not have his own classroom, did not prepare lesson plans, and was not the lead instructor, Respondent and Principal Helm-Torres agreed the informal observations would not be recorded. Respondent testified he received nothing but good comments from Principal Helm-Torres after those observations;

Principal Helm-Torres testified that she limited herself only to offering a few suggestions because Respondent was not teaching from his own lesson plan.

66. In December 2016, Principal Helm-Torres was contacted by the District and advised that Respondent needed to be assigned to his own classroom. As of December 18, 2016, Respondent was assigned to teach one class in each of the sixth, seventh, and eighth grades. He was given his own classroom. He also was assigned two periods as a pool history teacher, and one conference period.⁵

JANUARY 27, 2017 INFORMAL OBSERVATION

67. Now that he had his own classes, Principal Helm-Torres felt an informal observation of Respondent was warranted. This was especially so because Respondent was still fairly new to Sylmar and had received a Below Standard performance Final Evaluation the prior spring semester.

68. On January 27, 2017, Principal Helm-Torres conducted an informal observation of Respondent teaching his period 4 eighth grade United States History class. Based on the dynamics described below, the Commission was unable to ascertain what lesson Respondent had intended to teach that day. Her observations, conference memorandum, and testimony established the following, except where noted otherwise.

⁵ A conference period is time set-aside for a teacher during which the District cannot require the teacher to engage in any activity other than parent-teacher conferences, evaluating student work, planning, and preparation.

69. (Charge 32.) It was not established by a preponderance of the evidence, as alleged, that Respondent failed to sufficiently plan for his lesson by not having an agenda or instructional objective posted to inform students of the day's learning. The parties presented conflicting evidence whether Respondent had actually posted the agenda or objective on the white-board that day.

70. (Charge 33.) Respondent failed to deliver effective instruction. He projected a non-instructional Essential Question (EQ) on the screen: "Did you study for the quiz? Why/Why not?" Respondent's question was not essential. The EQ is supposed to summarize what is being learned and why it is important. A question about being prepared for a quiz did not relate to the objective that day. Respondent also did not engage students in a discussion around the EQ, but said, "We have our Essential Question. It's going to be an open IN [Instructional Notebook] for the quiz." It was evident his directions were unclear because several students worked on their notebooks rather than write a response to the EQ.

71. (Charge 34.) Respondent failed to circulate in the classroom to ensure that students were writing their responses to the EQ. Instead, he worked on his laptop at the back table and shuffled through papers. Resource Specialist Teacher Ms. Connolly arrived to assist six of the 31 students in the class who had Individualized Education Programs (IEPs). She circulated the classroom and also assisted non-IEP students who raised their hands regarding the EQ. The excuses Respondent provided in his testimony for not circulating in the classroom that day were not convincing.

72. (Charge 35.) Respondent provided unclear, contradictory directions to students. Specifically, about four minutes after students began working, Respondent called on a student to share his response. When the student attempted to answer, Respondent said, "Did you study for the quiz or not?" The student did not respond

and Respondent did not call on any other student to answer the EQ. At about noon, Respondent projected the quiz on the screen, informing students they could use their IN and textbooks for the multiple-choice questions and short answer response. However, once they started the quiz, Respondent said, "Don't spend too much time looking in your book. Sometimes it's a distraction."

73. (Charge 36.) Respondent failed to have clear expectations for student behavior and did not redirect off-task behavior. For example, several students began talking. Respondent said, "It's open IN, open book [textbook], but it's not open friends. So don't talk." They stopped momentarily but quickly resumed talking. Respondent did not redirect them. For at least 15 minutes, three male students sat without completing any work. A male student sitting at the front of the classroom fell asleep and did not wake up until Respondent collected the quizzes at approximately 12:31 p.m. There were other examples of off-task behavior noted by Principal Helm-Torres. The students were off-task because Respondent was not clear in his directions. His efforts to redirect students' off-task behavior was ineffective. Moreover, some of Respondent's comments to students were not respectful, which established a dynamic of some students in return not being respectful to Respondent.

74. (Charge 37.) Respondent did not use class time appropriately but rather engaged students in non-instructional activities for approximately 20 minutes. For example, he spent several minutes discussing the importance of two handouts they should have completed for homework. He spent an additional six minutes collecting homework from the few students who completed it. At approximately 12:37 p.m., he began discussing the importance of the IN but few students listened because most were trying to complete the homework assignment he had just collected. Several students were coloring or completing a map assignment. Respondent spent the rest of

the class showing students each page of the IN and reviewing what they needed to have on each page. At approximately 12:49 p.m., he said, "Ok guys, we need to stop. The rest we already talked about it."

75. (Charge 38.) Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes. Given that Respondent had taught for the District since 2000, he clearly understood the directives. Since Respondent had been allowed to co-teach for several months at Sylmar before this lesson, he clearly had the preparation time and means available to comply. The most reasonable conclusion that can be drawn is that Respondent did not comply with Principal Wiltz's directives because he willfully disregarded what she told him the year before and decided to just teach his own way.

76. (Charge 39.) As demonstrated by his performance in this lesson, Respondent was aware of but failed to perform his regular assignments as prescribed by the District without reasonable cause.

77. On February 9, 2017, Principal Helm-Torres met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated February 10, 2017. During the meeting and in the conference memorandum, Principal Helm-Torres provided Respondent with nine different points of assistance and guidance responding to the deficiencies noted above, as well as that

Respondent would be provided with a Peer Assistance and Review (PAR) coach to help him develop and implement rigorous teaching.⁶ (Ex. 10, p. 4.)

FEBRUARY 23, 2017 INFORMAL OBSERVATION

78. Principal Helm-Torres conducted an informal observation of Respondent teaching a lesson on the Bill of Rights to his period 4 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

79. (Charge 40.) Respondent failed to cognitively engage students in the lesson when he had them copy the Bill of Rights from the PowerPoint presentation, copy what he wrote under the *Bill of Rights in my own words* section, and lectured for several minutes, giving examples of each Amendment in the Bill of Rights. Respondent did not effectively discuss vocabulary for the lesson. For example, he did not explain what is a bill and how that is different from the Bill of Rights. He did not explain that the Bill of Rights enumerates rights the government cannot abridge; it is not a list of things you have the right to do. Asking students to discuss the Bill of Rights without first explaining it was not effective. Copying material is not cognitively stimulating.

80. (Charge 41.) Respondent failed to monitor student learning when he circulated the classroom several times but did not engage students in meaningful discussion about the work. In particular, he circulated the classroom and asked

⁶ PAR is a confidential program provided by the District in which a consulting teacher, with at least eight years of full-time, satisfactory performance with the District, works jointly with the participating teacher to provide review, assistance, and guidance to the participating teacher in order to improve his or her instructional skills.

students to discuss what a right is with their partners, but did not ask many of them to share their answers with him, nor did he provide feedback to those who did. He completed a loop around the classroom, went back to his computer and then said, "Let's stop." He later asked students what they thought the Second Amendment was going to be and again circulated the classroom, but walked away when a group of students did not answer. When he approached a couple of female students, they looked at him and giggled. Respondent also giggled and walked away. Principal Helm-Torres found Respondent's circulation to be robotic and his questions not thoughtful. The Commission agrees.

81. (Charge 42.) Respondent failed to manage technology effectively. At least four times he switched from the document reader to the PowerPoint presentation on his laptop, losing valuable instructional time. During these transitions, students also lost attention, resulting in non-engagement in the lesson.

82. (Charge 43.) Respondent failed to effectively manage or address student off-task behavior. For example, some students did not respond when he attempted to redirect them by several times saying, "Shhh." He also counted back from five to one. He said, "Attention, Stop. Twenty seconds is over" or "I'm waiting for you to be quiet." Respondent's techniques were ineffective, and seemed more punitive than efforts to redirect.

83. (Charge 44.) For the same reasons explained above regarding Charges 29 and 38, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 verbal and written directives to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

84. (Charge 45.) As demonstrated by his performance in this lesson, Respondent was aware of but failed to perform his regular assignments as prescribed by the District without reasonable cause.

85. On March 2, 2017, Principal Helm-Torres met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated March 3, 2017. During the meeting and in the conference memorandum, Principal Helm-Torres provided Respondent with five different points of assistance and guidance responding to the deficiencies noted above, including that he should continue working with his PAR coach. (Ex. 11, p. 4.)

MARCH 30, 2017 INFORMAL OBSERVATION

86. Principal Helm-Torres conducted an informal observation of Respondent teaching his period 1 sixth grade Ancient Civilization class a lesson on the conflict between the Persians and Greeks. Her observations, conference memorandum, and testimony established the following.

87. (Charge 46.) Respondent failed to sufficiently plan for and deliver instruction to his class. For example, he did not review or identify the learning objective for the day's activity. Although he began the activity by grouping students to work on their Persian Empire/Greek City-States projects with up to four students working on one poster, he let one student, Angel, work alone. Not all students in the group were able to work on the poster at the same time, some students sat at their desks looking on or visiting students in other groups. Respondent thereafter failed to adjust the activity to ensure all students were accountable for the work. While he told one student, "You have to work with your group," he did not give specific directions

before walking away. Respondent also did not redirect other students who were not working on the poster.

88. (Charge 47.) Respondent failed to communicate the criteria and rubric by which their Persian Empire/Greek City-States poster project and oral presentations would be evaluated, nor did he give them directions on how to effectively present their projects to the class or provide constructive feedback. Overall, Respondent did not manage this activity adequately. As a result, the students did not understand the activity.

89. (Charge 48.) Respondent failed to create an environment of respect and rapport, or manage student off-task behavior. For example, other students were talking when student Angel was ready to present his poster. Respondent said, "I'm waiting." When student Jocelyn continued talking to students at another table, he said, "That's it. Go back to your place. It's time for the presentations. Sit down. That's it. No more time." At least four students had their heads down on their desks during the presentation. Respondent did not redirect them. Students continued talking as Table 6 was presenting. Respondent said, "We're not ready. Quiet down." The students' off-task behavior was a product of the problems discussed above. Respondent was not clear on his expectations for the poster presentations, so students did not know what to do or how to behave when other students were talking. Respondent did not respond to the off-task behavior with respect.

90. (Charge 49.) Respondent failed to effectively manage instructional time to ensure that all students were able to present, and that all students could hear the presentations. In particular, when the last group presented, Respondent asked them to continue even though there was only one minute left in the instructional period. The bell rang shortly after they began so Respondent asked the class to wait until that

group finished. However, several students started putting their materials away and packing their backpacks.

91. (Charge 50.) For the same reasons explained above regarding Charges 29, 38, and 44, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

92. (Charge 51.) As demonstrated by his performance in this lesson, Respondent was aware of but failed to perform his regular assignments as prescribed by the District without reasonable cause.

93. A. On April 17, 2017, Principal Helm-Torres met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated April 20, 2017.

B. During the meeting and in the conference memorandum, Principal Helm-Torres provided Respondent with assistance and guidance responding to the deficiencies noted above. (Ex. 12, p. 4.) Principal Helm-Torres also reminded Respondent of her directives from prior informal observations. (*Ibid.*)

C. Collectively, Principal Helm-Torres directed Respondent to:

- i. communicate the learning objectives during the day's instructional period;

- ii. when putting students in groups, ensure that they are all held accountable to the work by assigning tasks for each of them;
- iii. inform students of the criteria and performance standards by which their oral and written work will be evaluated;
- iv. continue working with his PAR coach to implement rigorous lesson plans, use a variety of instruction to respond to students' diverse needs, and create a classroom environment that engages all students;
- v. state the daily agenda and objectives for each lesson;
- vi. monitor student learning by circulating the classroom and engaging students by asking questions; and
- vii. remind students of the standards of behavior before the start of class, including sitting up in their seats.

2017 FINAL EVALUATION

94. A. (Charge 52.) On April 28, 2017, Principal Helm-Torres issued Respondent a Below Standard performance rating in his Final Evaluation.

B. The rating was based, in part, on Principal Helm-Torres's determinations that Respondent, among other things, failed to: post an agenda or instructional objective to inform students of the day's learning; circulate the classroom and redirect off-task behavior; use instructional time effectively; set clear expectations for student behavior; cognitively engage students in the lesson; monitor student learning; and manage technology in the classroom.

C. Based on her above described informal observations of Respondent, as well as a formal observation she conducted in November 2016, Principal Helm-Torres concluded Respondent was ineffective, which warranted his Below Standard performance final rating.

MAY 22, 2017 INFORMAL OBSERVATION

95. Principal Helm-Torres conducted an informal observation of Respondent teaching a lesson on the astronomer Galileo to his seventh grade Honors History class. Her observations, conference memorandum, and testimony established the following.

96. (Charge 53.) Respondent failed to effectively deliver instruction by having 35 Honors students in his class complete low level activities. In particular, Respondent projected a PowerPoint slideshow on the board and asked students to copy the information from the four slides onto a Cornell notes handout. He also asked students to write a one-paragraph summary of the slideshow, using the sentence stem *These are facts that I know about* as a guide.⁷ Students were to use the Cornell notes they had copied to write their summaries and after only four minutes of independent writing, Respondent asked several students to read their summaries aloud. Honors students are capable of more challenging work than this. Suppressing their cognitive skills by giving them low level material like this was a waste of instructional time.

97. (Charge 54.) Respondent failed to encourage students to use the Cornell notes and write their own questions to elicit higher level thinking. Instead, he summarized most of the information on the slides for the students. Respondent did

⁷ A sentence stem is the beginning of an unfinished sentence, which helps students get their sentence started and finished.

not need to summarize the slides for them. The students should have been prompted to use Cornell notes to create their own thinking, understanding, and questioning, not rely on Respondent's summary.

98. (Charge 55.) Respondent failed to use instructional time effectively when the slow, drawn out pace of his lesson opening resulted in student off-task behavior that he did not redirect. Respondent spent approximately 10 minutes reading, or having students read aloud, the standard, lesson objective, EQ, homework, and agenda. Each time Respondent asked a student to read one of the items above aloud, he talked several minutes more to expound upon the item. Because he belabored the obvious, his students became bored and engaged in off-task behavior. Respondent redirected students who were talking off-task by saying, "You're so disrespectful when you don't listen." Respondent showed no understanding of timing and sequencing his lesson.

99. (Charge 56.) Respondent was unsuccessful in engaging students in a productive classroom discussion about Galileo. Rather than facilitate a discussion with the Honors students, he asked and answered his own questions, resulting in student off-task behavior. For example, he used anecdotes when he asked, "Have you heard some athletes are saying that the Earth is flat?" He asked students to talk to their peers about a current idea that they would challenge. When a student said he would challenge the high tax rate in our state, Respondent again expanded on his idea by saying, "The concept of paying taxes, paying the government. . ." Students started having side-bar conversations. Respondent became irritated, and said, "I'm waiting for everyone to listen and pay attention." He called on another student to share what she would challenge. She indicated the school uniform policy. Again, Respondent expanded on her idea and by telling a story about growing up in an all boy's school

where he had to wear uniforms. Asking and answering his own questions before Honors students was a waste of instructional time and prompted off-task behavior.

100. (Charge 57.) Respondent failed to provide specific feedback to move students' learning forward and align it with the lesson objective by making generic comments after students shared their summaries. For example, he said: "Very good, excellent I liked the way it moved, good job." He also said, "Excellent, excellent. I wish I could write like that." Respondent's feedback was so general it did not advance what the students learned from the material. This interaction added nothing to the lesson.

101. (Charge 58.) Respondent failed to maximize instructional time by not managing technology effectively. At the beginning of the lesson, he used approximately eight minutes switching from the document reader to the slideshow on his laptop, resulting in students' off-task behavior. He then asked the various tables' paper monitors to distribute the Cornell notes handout while he connected the projector to his laptop. As students waited at their desks, they began to talk loudly. Respondent attempted to redirect them by saying several times, "Shhh. Silence. We're getting noisy."

102. (Charge 59.) Respondent failed to establish procedures for dismissing students at the end of the instructional period, when he allowed students to leave the classroom after the bell rang. More specifically, at approximately 10:11 a.m., Respondent said, "Let's clean up." By this time, several students had their backpacks on and were ready to leave. When the bell rang at approximately 10:12 a.m., three students immediately left the classroom. Respondent told the remaining students, "If your chairs are in, you may go." The students simply walked out of the classroom. Respondent failed to establish a clear process for ending class and for the students to be dismissed. Respondent should have dismissed the students and not simply let them

walk out of the classroom when the bell rang. In that sense, Respondent allowed the students to take control of the classroom dismissal, which should never happen.

103. (Charge 60.) For the same reasons explained above regarding Charges 29, 38, 44, and 50, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

104. A. (Charge 61.) Respondent failed to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; monitor student learning by circulating the classroom and engaging students in conversation by asking questions; and remind students of the behavior standards before class starts. However, it was not established, as alleged, that Respondent failed to state an agenda and objective for the lesson.

B. Respondent's performance described above demonstrated that his failure to comply with those directives was willful. As a veteran teacher, Respondent knew he was required to comply with these directives in the regular course of teaching. Principal Helm-Torres was simply reminding him of requirements he already knew from his many years of service and, in a sense, from what Principal Wiltz had also directed him to do. Respondent failed to offer a satisfactory explanation for not executing those directives. Under these circumstances, the only reasonable explanation is that Respondent decided to not comply with those directives.

105. (Charge 62.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform regular assignments as prescribed by the District without reasonable cause.

106. (Charge 62.A.) As noted above, Principal Helm-Torres had Respondent work with a PAR coach during the Spring semester. Principal Helm-Torres met with Respondent's PAR coach before the coach began working with Respondent. Principal Helm-Torres told the PAR coach she was primarily concerned with Respondent's classroom management, student engagement, and ability to cognitively challenge students. Respondent worked with his PAR coach from February 17, 2017, through May 4, 2017, usually on Mondays, Wednesdays, and Fridays. The Commission notes that Respondent's poor performance demonstrated during the May 22, 2017 informal observation was after Respondent had completed his PAR coaching that semester.

107. On May 31, 2017, Principal Helm-Torres met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated June 6, 2017. During the meeting and in the conference memorandum, Principal Helm-Torres provided Respondent with six different points of assistance and guidance responding to the deficiencies noted above. (Ex. 14, p. 4.)

108. Near the end of the school year, Respondent was advised he would not return to Sylmar the following year. During the summer, the District reassigned Respondent to Walter Reed Middle School (Reed) for the 2017-2018 school year. However, Respondent was not advised of the reassignment until just before the Fall semester began.

Walter Reed Middle School

109. Reed is a high performance school. Reed has many students living outside the school's boundary whose parents petitioned to have their children enrolled at Reed because the school is so well regarded. The principal then at Reed was Jeanne Gamba. She stressed creating a positive and nurturing climate at Reed because it is a high performance school. Therefore, it was important to Principal Gamba to have good teachers who could provide a quality education.

110. There was no vacancy for a history teacher at Reed when Respondent was assigned there. So Principal Gamba assigned Respondent to teach one class, the period 1 eighth grade United States History class, and assigned him to be a pool history teacher for periods 2 through 6. Respondent also was assigned to a PAR coach, beginning the third week of the Fall semester. This was a light schedule for a veteran teacher like Respondent.

111. Principal Gamba taught in middle schools for over 10 years at the District and also was an instructional coach to other teachers. She had been an administrator for over eight years. During the hearing, Principal Gamba displayed a candid demeanor when testifying. She was clear and definitive. She kept calm and non-emotional when handling pointed cross-examination. Based on these circumstances, the Commission found Principal Gamba's conference memoranda and testimony concerning Respondent to be credible and reliable source to determine factual findings.

AUGUST 21, 2017 INFORMAL OBSERVATION

112. Principal Gamba decided to conduct an informal observation of Respondent early in the Fall semester. Her personal policy was to informally observe all new teachers to Reed, even veteran teachers like Respondent.

113. Principal Gamba observed Respondent teach a lesson to his period 1 eighth grade United States History class. This was the second week of school. Her observations, conference memorandum, and testimony established the following.

114. (Charge 63.) Respondent failed to plan and prepare a lesson aligned to the Common Core State Standards (CCSS) for his class. He first wrote an incomplete, generic agenda on the board and did not identify a learning objective or an appropriate history standard. Much later in the period, he projected a second agenda on the board, which he later submitted to Principal Gamba as a lesson plan. The second agenda included only a list of class rules and procedures to "talk about," rather than a detailed outline of what would be taught. During the lesson, Respondent did not access the Teacher's Edition (TE) textbook; he later complained about the TE to Principal Gamba, indicating he did not want to use it, which was not appropriate. Finally, Respondent did not have the lesson plan available for reference during the instructional period, which is a requirement of all District teachers.

115. (Charge 64.) Respondent failed to differentiate activities to support four Reclassified English Proficient (RFEP) students. Instead, he had all students complete the same activities. Respondent could have differentiated activities for his RFEP students by simply having them work on vocabulary and sentences, and then asking them to write a sentence using the vocabulary words.

116. (Charge 65.) Respondent failed to communicate the purpose of a handout on research questions. He did not explain the purpose of using the questions, nor did he connect them to the CCSS or the upcoming assignment.

117. (Charge 66.) A review of the entire lesson reveals that Respondent failed to effectively use instructional time for approximately half of the class period. He first reviewed the packet assigned the week prior.⁸ At approximately 8:50 a.m., after talking at length about the packet, Respondent distributed and reviewed the research questions handout. From approximately 8:50 to 9:00 a.m., Respondent took attendance, and then projected and reviewed the second agenda, which covered class procedures. He next informed students that since he ran out of time, he would continue with the handout the next day. Respondent asked students to put their materials away but, when reminded by a student, realized the instructional period did not end until 9:17 a.m., so he asked students to sit down again. Respondent re-projected the agenda on the board and reviewed the research questions handout. He spent the remaining 10 minutes asking a few students to share their answers aloud, but ran out of time and did not complete all items on the agenda. It was too late in the semester still to be covering class procedures. By doing so, Respondent demonstrated he was not prepared to teach that day.

⁸ A packet is handed out to students and contains worksheets, handouts, homework, and other materials used during class. Respondent usually had his students hand in the packets on Friday, which he reviewed over the weekend, and returned to students the following Monday. Respondent testified on cross-examination that it only took him three to five minutes to review a student's packet for that week, which to the Commission seems less than necessary.

118. (Charge 67.) Respondent failed to provide clear, comprehensible directions when he distributed the research questions handout and read from it. As a result, students did not know what he expected them to do. One male student shook his head, raised his hand, and asked if Respondent was assigning homework. Respondent said there would be no homework assigned that night. Two male students looked at each other and shook their heads. Two other male students simply sat and put their heads down on their desktops. Two female students looked at each other and one said, "Now I'm really confused." The students were baffled because Respondent was unclear or provided contradictory instructions.

119. (Charge 68.) Respondent interacted with students in a manner that did not promote fairness and respect by using a negative, sarcastic, and humiliating tone with several students. In particular, one male student turned around in his seat and talked to the student behind him. Rather than tell him to turn around and stop talking, Respondent said, "Face this way." When the student only partially turned around, Respondent said, "Do you understand 'face this way'?" When several students repeatedly called out answers to the research questions handout, Respondent said, "You've been in school half of your lives and you don't know how to raise your hands?" When a male student did something to upset him, Respondent paused and stared at him for several seconds. He did not address the behavior directly with the student but said to the class, "I'm disappointed. I don't think other teachers allow you to do that."

120. (Charge 69.) Respondent failed to establish a classroom culture that reflected high expectations of students to learn and achieve when he posted incomplete and blank bulletin boards in the classroom. One bulletin board contained a list of the state capitals but did not include a title, or corresponding CCSS. Another

bulletin board contained a list of geography vocabulary but did not include a title, or corresponding CCSS. The large bulletin board had a blank calendar posted.

Respondent only had one period to teach, so he had enough time to complete the bulletin boards by the second week of school. He also had time after class to do so. Completing the bulletin boards is worth the effort because it's an investment for the entire school year and shows students that you care. Respondent's excuses for not completing the bulletin boards by the second week of school were not credible.

121. (Charge 70.) Respondent failed to manage routines, procedures, and transitions for students sharing their answers with the class and class dismissals, resulting in a chaotic classroom environment. Specifically, Respondent asked students to share their answers to the questions on the research handout; however, several simply called out their answers. He reminded them to raise their hands but he continued to accept answers from students who did not. As a result, only a few students shared their answers. When the bell rang, students got up, put their backpacks on, and walked towards the doors. Respondent asked them to return to their seats since he had not dismissed them. Despite eight students not taking their seats, Respondent dismissed them without enforcing his command. These events highlight Respondent's ineffective teaching: even after spending so many days covering rules and procedures, students still were not following them.

122. (Charge 71.) Respondent failed to support student learning when he inconsistently reminded students engaged in off-task behavior to stay on task but did not introduce, teach, or reinforce a classroom management plan. For example, when a male student did not have his materials on his desk, Respondent reminded him to stay on task and to take out his materials. But at least three other male students did not retrieve their materials and Respondent did not redirect them. Respondent asked a

male student to stop talking even though two male students next to him were talking. When the two male students put their heads on their desks, Respondent did not redirect their behavior, or encourage them to complete the tasks. These events demonstrate that Respondent's efforts were ineffective, inconsistent, and that students ignored him.

123. (Charge 72.) For the same reasons explained above regarding Charges 29, 38, 44, 50, and 60, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

124. (Charge 73.) For the same reasons explained above regarding Charge 61, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and state the daily agenda and the objectives for the daily lesson.

125. (Charge 74.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

126. A. On August 31, 2017, Principal Gamba met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated September 5, 2017.

B. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with 11 different points of assistance and guidance responding to the deficiencies noted above. (Ex. 15, pp. 5-6.) Her verbal and written directives to Respondent are summarized as requiring him to:

- i. provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning;
- ii. state the daily agenda and the objectives for the daily lesson;
- iii. monitor student learning by not just circulating the classroom, but also asking students engaging questions;
- iv. remind students of the behavior standards before class starts and redirect students who are not following the standards;
- v. plan differentiated activities for students, e.g., English learners; and
- vi. adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students.

C. Principal Gamba also gave Respondent handouts entitled *ELD Standards for Grade 8* and *Knowing Your Learning Target*, as well as copies of the Board's Resolution on the Respectful Treatment of All Persons and the District's Code of Conduct with Students. (*Ibid.*)

127. On October 5, 2017, Principal Gamba issued to Respondent a Notice of Unsatisfactory Service or Act, and suspended him for 11 days, based on the events that

occurred at Byrd and Sylmar discussed in resolving Charges 9 through 62 above. Respondent unsuccessfully appealed the suspension.

NOVEMBER 9, 2017 INFORMAL OBSERVATION

128. Principal Gamba conducted an informal observation of Respondent teaching a lesson on the three branches of government to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

129. (Charge 75.) Respondent's lesson plan for this class was not in alignment with what he wrote on the board at the beginning of class.

130. (Charge 76.) Respondent failed to plan effective differentiated activities or accommodations for four students with IEPs, as he designed the same activities for all the students.

131. (Charge 77.) Respondent failed to plan activities aligned to the learning objective or History/Social Science Content Standards he wrote on the board. Specifically, the planned activities focused solely on the three branches of government but did not address the Seven Principles of Federalism that he also wrote on the board.

132. (Charge 78.) Respondent failed to plan an EQ to assist students with their understanding of the Constitution and the Seven Principles of Federalism. Instead, he designed a low-level, recall activity that required students to simply "list the three branches of government."

133. (Charge 79.) Respondent failed to communicate the purpose of the lesson as written on the board in order to give students context for the learning. He

told students, "Today, we will focus on the three branches of government," but he did not review the two History/Social Science Content Standards that he also wrote on the board. Respondent did not make connections between the three branches of government and the learning objective or standards. He did not review the learning objective at the end of the lesson to recap and/or check for student understanding.

134. A. (Charge 80.) Respondent failed to engage students in standards-based activities when he asked them to discuss the three branches of government and copy information onto their packets.

B. More specifically, he showed a video about the three branches of government, pausing it three times to lecture about the information. When the video ended, Respondent asked students to work in "little groups of three" in order to add information to their Tree Maps. Later he called on two students to share a detail from their map, which they did. He projected an image of the three branches of government with their corresponding duties, then had students copy the information from the image onto their Tree Maps.

C. However, several students already completed their maps during the video, so they sat idly at their desks during the copying exercise. As the other students copied the information, Respondent lectured about the duties assigned to each branch but did not make connections between the three branches in order to assist students with understanding how the federal government functions. Respondent did not adequately explain the exercise.

D. In sum, students were merely copying materials and Respondent was not properly explaining the concepts. This was a wasted lesson.

135. (Charge 81.) Respondent failed to provide a model that followed a gradual release to independent writing.⁹ Student Keanu raised his hand and asked if he had to complete the work on the blank page of his packet. Respondent did not directly address Keanu's question. He essentially dismissed Keanu and moved on to a discussion about writing sentences, but his explanation of what he wanted students to do was disjointed. Respondent did not gradually release students. He just told them what to do all at the same time, which was not a gradual release, but a sudden release.

136. (Charge 82.) Respondent failed to provide feedback to students as they worked within their groups on adding two concrete details and commentary to a writing frame exercise. He did not ask students if they understood the exercise before he asked them to begin. He did not monitor their work or check for student understanding. Only one of 15 students sampled by Principal Gamba correctly completed the exercise while many others sat passively and waited for Respondent to write the sentences, which they then copied.

137. (Charge 83.) Respondent failed to ensure equitable participation in the classroom discussion. He used equity sticks only three times to call on students, but then called on student Keanu approximately nine times, allowing Keanu to dominate

⁹ The gradual release of responsibility involves the process of devolving responsibility within the learning process from the teacher to the students. The teacher, by design, transitions from assuming all the responsibility for performing an activity to a situation in which the students gradually assume more of the responsibility until they completely take over the activity.

the classroom discussion.¹⁰ Respondent improperly used the equity sticks. He should have used them until every student was called on. Instead, he stopped before many were called on. Although Respondent testified he used alternative measures to obtain equitable participation by students, his alternatives were not effective because many students did not participate. Respondent's testimony that he did not repeatedly call on Keanu was not credible. Contrary to Respondent's assertion, the fact that one student spoke so often shows not that the student was "on fire" for the lesson, but rather that the other students' fires had been extinguished.

138. (Charge 84.) Respondent failed to provide protocols to encourage small group discussion to support student learning of the three branches of government. When he prompted students to talk with their peers about this topic, only one of the 10 groups engaged in content-related discussion. Most of the other groups sat passively at their seats and did not engage in conversation.

139. A. (Charge 85.) Respondent created a hostile classroom environment for student Michael.

B. In particular, when Michael shouted out, "Magna Carta," without raising his hand, Respondent waved his hand towards Michael and said, "Raise your hand Michael," even though other students also called out answers. Michael

¹⁰ Equity sticks are a set of sticks (usually popsicle sticks) on which the names of individual students in a class are written. The teacher pulls from the equity sticks at random when choosing students to ensure an equal chance of participation. Equity sticks help reduce any intentional or unintentional bias a teacher may have when calling on students.

immediately raised his hand, and repeated, "Magna Carta." Respondent looked at him, thanked another student who raised his hand, and sarcastically said to Michael, "I appreciate the participation, but by calling out without raising your hand, then it deprives the students from having time to think and answer."

C. When Michael later asked to use the restroom, Respondent paused for a few seconds, and said, "Go ahead," and allowed him to leave without a restroom pass. When Michael returned, he walked past Respondent, who looked at the clock, looked at Michael, and shook his head in disdain, even though Michael was only gone a few minutes. Respondent's testimony that he did not shake his head upon Michael's return to the classroom was not convincing.

D. Because Michael did not have his packet and therefore could not complete the classwork, he sat at his desk for over 50 minutes without comment from Respondent. Upon learning that Michael left his packet at home, Respondent walked away, saying he did not have additional packets, and as a result, Michael did not access the curriculum, and did not complete any work during the instructional period.

140. (Charge 86.) Respondent failed to integrate technology effectively. In particular, Respondent did not reduce the size of the Tree Map to fit on the screen so students could see it. He did not increase the size of the model of the three branches of government, so it was difficult to see the print from the back of the classroom. He did not adjust the laptop settings so the computer would not go to "sleep" after a short period of time. As a result, the computer screen went blank at least four times during the instructional period.

141. (Charge 87.) For the same reasons explained above regarding Charges 29, 38, 44, 50, 60, and 72, Respondent's performance described above demonstrated

that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

142. (Charge 88.) For the same reasons explained above regarding Charges 61 and 73, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, and written directives of September 5, 2017: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; state the daily agenda and the objectives for the daily lesson; monitor student learning by not just circulating the classroom, but also asking students engaging questions; remind students of the behavior standards before class starts and redirect students who are not following the standards; and adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students (Principal Gamba's directive only).

143. (Charge 89.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

144. On December 1, 2017, Principal Gamba met with Respondent to discuss the informal observation. She thereafter issued him a conference memorandum dated December 4, 2017. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with 13 different points of assistance and guidance

responding to the deficiencies noted above, including to provide differentiated activities for IEP students as well as her prior directives. (Ex. 17, pp. 6-7.) She also gave Respondent handouts entitled *Knowing Your Learning Target*, *Gradual Release of Responsibility*, and *Making Cooperative Learning Powerful*, as well as copies of the Board's Resolution on the Respectful Treatment of All Persons and the District's Code of Conduct with Students. (*Ibid.*)

JANUARY 10, 2018 INFORMAL OBSERVATION

145. On January 10, 2018, Principal Gamba conducted an informal observation of Respondent teaching to his period 1 eighth grade United States History class a lesson on the daily life of pre-Civil War America portrayed in literature, art, and music. Her observations, conference memorandum, and testimony established the following.

146. (Charge 90.) Respondent failed to plan and prepare a learning objective that indicated what students would be learning in class. Instead, he prepared a list of activities that students would complete. A list of activities to be done does not advise students what they will learn that day. Even if so, Respondent did not even do all of the activities he listed. Principal Gamba had previously instructed Respondent on how to specify the daily objective, which he should have followed. Instead, Respondent disregarded her prior directive and wrote the objective his way.

147. (Charge 91.) Respondent failed to plan differentiated activities or accommodations for four students with IEPs. He designed the same activities for all students.

148. (Charge 92.) Respondent failed to plan activities aligned to the History/Social Science Content Standards he had identified on the board: Standard 8.4.4, which is to discuss daily life, including traditions in art, music, and literature of

early national America. Respondent's planned activities focused solely on having students copy facts from a PowerPoint presentation about the life of Washington Irving and answer questions about the Main Idea in Chapter 14 of their textbook. Respondent did not make any comparisons to American life during other times and he did not show the students anything tangible by Irving, such as his writings, art, etc.

149. (Charge 93.) Respondent failed to deliver the lesson in understandable ways the students by asking them to complete two low-level activities and not explaining how they were related. Specifically, Respondent told students to copy the information they deemed relevant from the PowerPoint slides about Washington Irving, but did not preface the activity by explaining how Irving's work contributed to and shaped American literature. Most of the information on the slides included facts about Irving's life but little about his contributions to American literature. Without connecting the PowerPoint presentation to the textbook questions, Respondent next instructed students to work with their groups to complete the Chapter 14 Main Idea questions without reviewing the section or reading it with them first.

150. (Charge 94.) Respondent failed to ensure equitable participation in activities when he did not use a consistent method for calling on students to share their answers. Instead, he selected students randomly or allowed them to call out their answers. He did not use equity sticks as Principal Gamba previously instructed him.

151. (Charge 95.) Respondent failed to provide feedback to students as they took notes on the PowerPoint presentation or worked with their groups on completing the Main Idea questions. He did not check for understanding by asking students questions throughout the PowerPoint presentation. Instead, he lectured for approximately 20 minutes about the life of Washington Irving while students sat passively in their seats. Respondent did not monitor students as they completed the

Main Idea questions to ensure they were all held accountable for the work. Although he circulated during this time, Respondent only made generic comments about the completion of the work, but not about the content. This lesson confirmed to the Commission that Respondent's preferred teaching mode is for students to copy material from notes on the board or projected, and then for him to lecture on the material without engaging students in a conversation about the lesson to check for understanding. That style of teaching is not satisfactory to the District.

152. (Charge 96.) Respondent failed to successfully use protocols to encourage small group discussion to support student understanding of the Main Idea questions in their textbooks. Respondent reviewed the handout *Group Daily Guidelines* included in the student packet at the start of the lesson but did not remind students of their respective roles before later asking them to complete the questions. As students worked, they did not engage in discussions about the text, and only one student in each group completed the work while the others sat passively. Respondent testified he glued the small group protocols onto the students' desks; but even if so, there was no evidence that Respondent made students accountable for executing those protocols.

153. (Charge 97.) Respondent failed to prepare activity packets for all students, and did not have enough textbooks for each student to reference content and answer the Main Idea questions in the textbook. As the students worked in their groups, only one student was held accountable for completing the work as the others sat passively in their seats until the packet and textbook were passed to the next student. While reviewing answers to the questions, Respondent frequently said, "It's okay if you don't know the answer" when few or no students raised their hands. He then instructed students to complete the questions for homework but provided no

direction on which student in the group would complete the questions since there was only one packet per group. This situation was entirely Respondent's fault. He only had one class to teach that semester. It would not have been difficult for him to get enough textbooks for one class. Respondent's testimony that all students had textbooks and packets but that the tables decided to share just one or two was not credible. Every child should have been working with his or her own textbook and packet. Having an entire table share one textbook and packet, even if true, was not efficient or effective.

154. (Charge 98.) Respondent failed to integrate technology effectively. In particular, he did not adjust the PowerPoint slides so students could see each image completely. When he reviewed the Main Idea questions with students, he projected the wrong page and students appeared confused. However, Respondent continued calling on students to provide the answers even though he never projected the correct page. Respondent testified he had longstanding problems with the document reader provided in his classroom. If so, he should have practiced working with the document reader before this planned observation to make sure there would be no problems. Or he should have developed another way of displaying the content to side-step the allegedly faulty document reader. Respondent presented no evidence of complaints about the document reader to administrators. His testimony was not credible. The Commission concludes the technological problem here was with the operator and not the equipment.

155. (Charge 99.) Respondent failed to have and enforce an effective classroom management system. Throughout the lesson, students quietly talked or giggled during the lecture. Respondent did not enforce consequences for the behavior. Respondent became frustrated and rather than acknowledge students who

were compliant, he repeatedly said, "Shhh." When students still did not respond, he became frustrated. He told students Hector and Joanna that he was losing patience with them. Overall, students in the class were frustrated and did not take the lesson seriously. This resulted in their misbehavior. Having a solid and engaging lesson would have prevented or at least reduced this behavior.

156. (Charge 100.) For the same reasons explained above regarding Charges 29, 38, 44, 50, 60, 72, and 87, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes. By this time, Respondent had been repeatedly told how to avoid the problems observed in his lessons, but he continued to repeat them. He also had been working with a PAR coach for parts of two school years. Respondent's failures are best explained by his willful refusal to teach as instructed by his current and past supervisors.

157. (Charge 101.) For the same reasons explained above regarding Charges 61, 73, 88, and 100, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, and written directives of September 5, 2017: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; state the daily learning objective for the daily lesson; monitor student learning by not just circulating the classroom, but also engaging students in conversation by asking questions; remind

students of the behavior standards before class starts, and when circulating, redirect students who are not following the standards; and adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students (Principal Gamba's directive only).

158. (Charge 102.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

159. On January 16, 2018, Principal Gamba met with Respondent to discuss the informal observation, and issued him a conference memorandum. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with 13 different points of assistance and guidance responding to the deficiencies noted above, including essentially her prior directives. (Ex. 18, pp. 5-6.) She also gave him a handout entitled *Grant Wiggins on the Fine Art of Giving Feedback. (Ibid.)*

FEBRUARY 5, 2018 INFORMAL OBSERVATION

160. On February 5, 2018, Principal Gamba conducted an informal observation of Respondent teaching a lesson on the Indian Removal during the Jackson Presidency to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

161. (Charge 103.) Respondent failed to write clear learning objectives in his lesson plans for the week of February 5, 2018, and on the board for his class that day. The learning objective Respondent wrote on the board included an activity for students to complete rather than a statement of what they would learn.

162. (Charge 104.) Respondent had indicated in his lesson plan for the week that he would follow a Stanford History Education Group (SHEG) Indian Removal lesson that day in class. Although Respondent attempted to follow the SHEG lesson, he did not follow it effectively, as also discussed in more detail below.

163. (Charge 105.) Respondent was required to but failed to post the History-Social Science Content Standard on the board before the instructional period. Instead, he erased a prior lesson's content standard number (8.8.1), and wrote "8.8.2" on the board, but left the wording from the prior content standard (8.8.1) on the board.

164. (Charge 106.) The activity Respondent asked students to complete that day is known as a "What I Know, What I Want to Know, What I Learned" (KWL) chart. However, before having students complete the KWL chart, Respondent failed to clearly state the learning objective to give them a context for their learning from that activity.

165. (Charge 107.) Respondent failed to engage students in cognitively challenging activities aligned to the History-Social Science Content Standard he had intended to teach that day (number 8.8.2). Instead, Respondent implemented the KWL chart in a way that made it a low-level activity as follows. Respondent asked students to think about what they knew and wanted to learn about Indian Removal, but then immediately called on several students to share their answers with the whole group. Students simply copied what Respondent wrote on the KWL chart displayed on the screen on their charts. Respondent next lectured for approximately 15 minutes about a three-slide PowerPoint presentation, which contained an image and a map depicting the Indian Removal. He asked a series of questions about the slides as students sat idly in their seats but Respondent did not ask students to complete a task associated with the slides. Respondent showed a video about the Indian Removal but it was inaudible,

so he stopped it after four minutes. Respondent did not ask students to complete a task associated with the video and continued lecturing.

166. (Charge 108.) Respondent failed to demonstrate sufficient knowledge of the subject matter by failing to properly teach the SHEG Indian Removal lesson. In particular, Respondent did not ask students to write what they saw on the PowerPoint presentation or elicit their responses after explaining the slides. He did not review all 11 events on a timeline featured in the materials or the accompanying essential notes supplementing the 11 events, which would have provided a context for the students.

167. (Charge 109.) Respondent failed to check for students' understanding of the Indian Removal lesson by not asking questions to further their knowledge. Instead, he asked students a series of low-level questions about their opinions, which they easily answered, and did not further their knowledge.

168. (Charge 110.) Respondent failed to ensure equitable student participation in the classroom discussion during the KWL chart activity. He randomly called on students or allowed them to call out answers, which he accepted. He used the equity sticks only three times to call on students to read the first three events on the timeline, resulting in four of the 29 students dominating the discussion. Overall, Respondent failed to instruct and enforce how students were supposed to respond to his questions in an orderly way.

169. (Charge 111.) Respondent failed to bring closure to the instructional period in order to assess student understanding of the Indian Removal lesson. Toward the end of class, Respondent asked students to write at least five things they remembered from the lecture about Indian Removal. He circulated the classroom and, as the students finished, asked them to hold up their charts. He glanced at the charts

and then told students to put their materials away. When he finally asked if anyone wanted to share, the bell rang and Respondent dismissed the class without closing the activity.

170. (Charge 112.) Respondent failed to create a safe, supportive classroom environment for student Diego. When Diego asked if he could use the restroom, Respondent looked at the clock, rolled his eyes, and asked Diego to complete his agenda. Diego took out his agenda and left to use the restroom without showing it to Respondent, which was not in accordance with Respondent's classroom restroom policy. Respondent's testimony and physical demonstration during the hearing that he is not physically able to roll his eyes were not convincing. Even if so, he just as easily could have been looking up to the ceiling in disdain of Diego when Principal Gamba observed this interaction.

171. (Charge 113.) Respondent failed to integrate technology effectively. During the PowerPoint presentation, he projected a blurry image of the Indian Removal that not all students could see. The video he played was inaudible. After playing over four minutes of the video, he turned it off, telling students he did not have speakers. Respondent told students they could watch the video on their own and continued to lecture about the PowerPoint presentation. Respondent's excuses for these technological problems were not credible. Moreover, given his long-standing history of problems using technology, Respondent at least should have had an alternate plan if he encountered glitches. He only had one class to prepare for, so he could have easily practiced with the equipment or made alternate preparations.

172. (Charge 114.) For the same reasons explained above regarding Charges 29, 38, 44, 50, 60, 72, 87, and 100, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27,

2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

173. (Charge 115.) For the same reasons explained above regarding Charges 61, 73, 88, 100, and 101, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; state the daily learning objective for the daily lesson; monitor student learning by not just circulating the classroom, but also asking students engaging questions; remind students of the behavior standards before class starts and redirect students who are not following the standards; provide protocols that encourage small group discussion to support the students' learning of content; and adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students (Principal Gamba's directive only).

174. (Charge 116.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

175. On February 12, 2018, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum the same day. During the meeting and in the conference memorandum, Principal Gamba provided

Respondent with 10 different points of assistance and guidance responding to the deficiencies noted above, many of which she had included in prior conference memoranda after informal observations. (Ex. 19, pp. 6-7.) She also gave him four handouts on effective teaching. (*Id.*, p. 7.)

MARCH 2, 2018 INFORMAL OBSERVATION

176. On March 2, 2018, Principal Gamba conducted an informal observation of Respondent teaching a lesson on Texas Independence to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

177. (Charge 117.) Respondent failed to plan and write on the board a learning objective that described what students would learn and why. Instead, he wrote a goal on the board that students would perform an activity, writing an essay in five paragraphs, with a score of 80 percent or better. Respondent's testimony that he had told students the learning objective for that day earlier in the week did not address Principal Gamba's concerns.

178. (Charge 118.) Respondent failed to plan and design the assessment criteria by which he intended to grade the essays he asked students to write. He did not list the assessment criteria in his lesson plans, did not write the criteria on the board, and did not share any criteria with students for grading the activity before he asked them to begin writing their essays. Respondent's proffered excuse that Principal Gamba did not tell him before the observation that his lesson plan was lacking a rubric for grading the essays was not valid justification. Principal Gamba had no responsibility to do so before her observation.

179. (Charge 119.) Respondent failed to satisfactorily review or have students complete the EQs that day to frame their learning. Instead, Respondent asked students to provide the answers to EQs from three prior days that week. As students provided those answers, Respondent wrote them on the screen but did not explain how those answers related to that day's learning. Respondent's testimony that he allowed students to answer the EQs for the day he was observed as homework after class did not address Principal Gamba's concern.

180. (Charge 120.) Before having students write the essay, Respondent had them do a graphic organizer activity. However, Respondent failed to gradually release the responsibility for completing the graphic organizer activity to students in order to assist them with writing their essays. Respondent only gave vague direction to the students so they were left to figure out on their own how to do the graphic organizer activity and how to connect the activity with their essay writing.

181. (Charge 121.) Respondent failed to ensure equitable participation in classroom discussions when he inconsistently used equity sticks for calling on students to provide answers to the graphic organizer. Respondent used the equity sticks five times during the instructional period. When two students Respondent called on using the equity sticks could not immediately answer, Respondent randomly called on other students. He inconsistently accepted answers from both students who called them out and those who raised their hands. Two of the 33 students dominated the discussion; Respondent called on student James approximately four times and student Srabon approximately three times. Principal Gamba had continually told Respondent to use the equity sticks. Respondent's testimony that she did not give him precise direction on how to use the equity sticks was not credible, as a teacher with his experience knew or should have known how to use them.

182. (Charge 122.) Respondent failed to create a safe, supportive environment for student Raffi when Raffi attempted to talk to another student about the essay. Respondent approached Raffi as he spoke to the student sitting next to him and asked him to stop talking. Raffi attempted to explain that he was "helping out" his classmate. Respondent interrupted Raffi, raised his voice, and said, "Well don't tell him anything, Raffi," then walked away without allowing Raffi to finish his thought.

183. A. (Charge 123.) Respondent failed to consistently implement his procedure for allowing students to use the restroom.

B. In particular, a female student asked to use the restroom and Respondent requested her agenda so that he could note on it the time she left. The student took her agenda with her and returned within a few minutes. That was Respondent's established restroom procedure. However, when student Jesse asked to use the restroom, Jesse never showed his agenda to Respondent. Jesse just left without his agenda and returned several minutes later. Then student Trevor asked to use the restroom. Respondent requested his agenda, but Trevor said he did not have it and Respondent allowed him to leave anyway. Trevor was away from the classroom for a long time, approximately 14 minutes.

C. Respondent's offered excuses for not consistently following his restroom procedure were not convincing. For example, he contended IEP students need to be treated differently. However, a follow up discussion with an IEP student or his or her parents still would be warranted if the student did not, or could not, consistently follow the restroom procedure. Respondent also contended that he could not interfere with a student who urgently needed to use the restroom. But neither Jesse nor Trevor urgently needed to use the restroom that day. Rather, these events show that Respondent failed to communicate his expectations to his students

regarding restroom visits, and he failed to consistently enforce the procedure, so students were confused about whether the restroom procedure would be followed. Many students simply chose to not follow it.

184. (Charge 124.) Respondent failed to introduce, teach, or reinforce a classroom management plan when he inconsistently addressed students' off-task behavior. For example, student Michael sat at his desk for approximately 38 minutes without any work. Respondent handed him a sheet of paper and asked him to write a summary of what he heard during class; however, Michael did nothing. Respondent then incited off-task conversation when he told Jesse he would call his parents if he continued talking. Students began commenting on Respondent's calls home as well as those of other teachers. Respondent's efforts to redirect those students by saying "Shhhhh," "No talking," or counting down "3, 2, 1," were ineffective.

185. (Charge 125.) For the same reasons explained above regarding Charges 29, 38, 44, 50, 60, 72, 87, 100, and 114, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

186. (Charge 126.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, and 115, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January

16, 2018: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; state the daily learning objective for the daily lesson; monitor student learning by not just circulating the classroom, but also asking students engaging questions; remind students of the behavior standards before class starts and redirect students who are not following the standards; use a consistent method for calling on students to give their answers; adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students (Principal Gamba's directive only); provide feedback to the students as they work independently and conduct frequent checks for understanding; and provide protocols that encourage small group discussion to support the students' learning of content.

187. (Charge 127.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

188. On March 12, 2018, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum the same day. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with nine different points of assistance and guidance responding to the deficiencies noted above, many of which she had included in prior conference memoranda after informal observations. (Ex. 20, pp. 5-6.) She also promised to take Respondent to observe Mr. An's United States History class. (*Id.*, p. 6.) She also gave him three new handouts on effective teaching. (*Id.*, p. 7.) Respondent testified that Principal Gamba never followed through on scheduling an observation of Mr. An's class. However, Respondent never followed up either.

APRIL 9, 2018 INFORMAL OBSERVATION

189. On April 9, 2018, Principal Gamba conducted an informal observation of Respondent teaching a lesson on the slave trade to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

190. (Charge 128.) Respondent failed to plan differentiated activities or accommodations for the various types of learners in the class. For example, he failed to accommodate the four students in his classroom with IEPs with any activity differentiated to their needs. Moreover, Respondent presented a PowerPoint slideshow on the Middle Passage to the class, but his style of lecturing while students idly listened did not allow opportunities for engagement during his lecture, which deprived the visual and kinesthetic learners.

191. (Charge 129.) Respondent failed to engage students with standards-based learning activities by lecturing for extended periods without allowing opportunities for active student engagement. During the PowerPoint presentation, Respondent lectured about each slide. Although he asked questions throughout the lecture, only a couple of students offered answers while the rest of the class sat idly in their seats. When he called on students to answer the questions, rather than allow students to elaborate on their peers' responses, he elaborated on them himself and continued lecturing. Principal Gamba observed there were three to seven students at any given time with their heads down. Respondent did not attempt to redirect them.

192. (Charge 130.) Respondent failed to circulate the classroom and monitor students to ensure they copied the notes from the PowerPoint presentation. Instead, he stood in the center of the classroom by the document reader and lectured so

students inconsistently copied notes from the slides. According to the lesson plans Respondent had previously submitted to Principal Gamba, students that day would be able to complete a Cornell notes worksheet about the Middle Passage with a score of 80 percent or better. However, Respondent did not collect the students' packets to check for completion. Respondent's excuse that he did not circulate because he did not have a clicker to operate the remote control for the PowerPoint presentation was not convincing; for example, he could have had a student operate the machine for him while he circulated.

193. (Charge 131.) Respondent failed to assess student understanding of the Middle Passage lesson. He called on three students to read aloud each of the three points from a "summary" slide at the end of the PowerPoint presentation, but then provided the summary for them to copy onto their packets. After students read aloud, he lectured about each point and encouraged them to write what he said. Respondent did not allow students to demonstrate their understanding of the Middle Passage by discussing the key points themselves, or writing their own conclusions.

194. (Charge 132.) Respondent failed to ensure equitable student participation in the discussion about the Middle Passage. He used equity sticks only three times when calling on students to share their answers. He otherwise called on students randomly, or allowed them to call out the answers. This demonstrated that Respondent does not know how to lead a discussion in the classroom.

195. (Charge 133.) Respondent failed to enforce established procedures for students to use the restroom. Reed's student restroom procedure required teachers to sign the student's agenda each time they leave the classroom. This also was Respondent's established restroom procedure. On this day, a few students left the classroom for the restroom without Respondent signing their agendas.

196. A. (Charge 134.) Respondent failed to create a safe, supportive classroom environment for student Raffi. Specifically, Respondent asked the class, "Imagine that you are cleaning the ships after the journey. . . ." Raffi offered comments, which veered toward scatological, prompting other students to comment. Rather than allow students to continue the discussion, Respondent said, "Shhh," approximately three times. When students did not respond, Respondent turned to Raffi, raised his voice, and said, "Rafael." This immediately shut down any discussion about the conditions of a slave ship during a voyage.

B. The Commission agrees this lesson is not easy, for several reasons. However, a good teacher should know how to manage this discussion without shutting it down because it is going in the wrong direction. Respondent should have redirected the discussion to keep it going instead of squelching it because he was unable to handle the situation. This could have been an excellent teachable moment for Raffi and the entire class.

197. (Charge 135.) For the same reasons explained above regarding Charges 29, 38, 44, 50, 60, 72, 87, 100, 114, and 125, Respondent's performance described above demonstrated that he willfully refused to comply with Principal Wiltz's January 27, 2016 and March 17, 2016 verbal and written directives for him to: a) provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; and b) deliver bell-to-bell teacher-directed lessons daily and for all classes.

198. (Charge 136.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, 115, and 126, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or

Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018; plan differentiated activities for students with IEPs; provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; monitor student learning by not just circulating the classroom, but also asking students engaging questions; remind students of the behavior standards before class starts, such as the restroom procedure, and redirect students who are not following the standards; use a consistent method for calling on students to share their answers; adhere at all times to the Board Resolution on the Respectful Treatment of All Persons, as well as the District's Code of Conduct with Students (Principal Gamba's directive only); and provide feedback to the students as they work independently and conduct frequent checks for understanding.

199. (Charge 137.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

200. On April 13, 2018, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum on April 17, 2018. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with 10 different points of assistance and guidance responding to the deficiencies noted above, including many of which she had included in prior conference memoranda after informal observations, as well as her reminder for him to continue working with his PAR coach on his areas of deficiency. (Ex. 21, pp. 4-5.) She also gave him one new handout on effective teaching. (*Id.*, p. 6.)

2018 FINAL EVALUATION

201. A. (Charge 138.) On April 23, 2018, Principal Gamba issued to Respondent a Below Standard performance evaluation in his Final Evaluation.

B. The rating was based, in part, on Principal Gamba's determinations that Respondent, among other things, failed to use instructional time effectively; integrate technology effectively; engage students in cognitively challenging activities aligned to the History-Social Studies Content Standards; demonstrate history content knowledge; check for students' understanding; plan a learning objective that described what students would be learning and why; and introduce, teach, or reinforce a classroom management plan to support student learning.

C. Principal Gamba testified Respondent showed minimal growth and mixed results. He kept repeating the same mistakes despite being given targeted and specific feedback in those areas. Principal Gamba felt Respondent's formal observation done in October 2017 and the various informal observations that school year showed he was an ineffective teacher.

202. (Charge 138A.) The parties stipulated that Respondent participated in the PAR Program from November 2, 2017, through April 26, 2018.

203. On May 25, 2018, Principal Gamba issued to Respondent a Notice of Unsatisfactory Service or Act, suspended him for 15 days, and recommended his dismissal of employment from the District, based on the results of her informal observations conducted that school year. Principal Gamba believed Respondent should be dismissed because he had shown inadequate improvement over the course of the school year. At this time, Respondent was advised by the District that he would

not return to Reed and that he would be suspended indefinitely due to the recommendation that he be dismissed.

AUGUST 22, 2018 INFORMAL OBSERVATION

204. Over the summer the District decided not to proceed with Respondent's dismissal. The District reassigned Respondent to Reed for the following school year, but Respondent was not advised of this until just before the school year began.

205. Principal Gamba again assigned Respondent to teach only one class, the period 1 eighth grade United States History class that he had taught the prior school year. Respondent served as a pool history teacher for periods 2 through 6.

206. On August 22, 2018, Principal Gamba conducted an informal observation of Respondent teaching a lesson on the Great Awakening and development of revolutionary fervor in the American colonies to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

207. (Charge 139.) Respondent failed to adequately plan and prepare for his class. In particular, he posted a vague and confusing two-column agenda on the board, but did not follow it during the lesson. The posted agenda noted there were students with IEPs in the class; however, other students did not need to know about their fellow students' educational needs and the agenda note potentially invaded the confidentiality of the IEP process. The posted weekly learning objective had nothing to do with content standards; instead, it was about classroom procedures and routines. In addition, although Respondent specified two EQs, neither was aligned to content standards.

208. (Charge 140.) Respondent failed to differentiate activities to support four Long Term English Learners (LTELs). In addition, Respondent failed to incorporate into the lesson the accommodations listed in the IEPs of eight students.

209. (Charge 141.) Respondent failed to have legible weekly packets for all students to ensure they had access to the curriculum. During the hearing, Respondent tried to minimize this situation by testifying that all students had packets and only two students had one blurry page in their packets. But Principal Gamba credibly testified not all students had packets and Respondent's classroom screen projection included one blurry page, indicating all students had the blurry page in their packets.

210. (Charge 142.) Respondent failed to effectively deliver instruction. In particular, he used approximately 38 minutes to review six pages of information from the students' current and future weekly packets while they sat idly at their seats. He projected and reviewed steps for writing a paragraph from a handout. But then he provided as an oral example of a writing topic a trip to Disneyland, and failed to have students write a sample paragraph on their own or complete the paragraph about Disneyland using the topic sentence he provided. In summary, this lesson had no history content.

211. (Charge 143.) Respondent failed to effectively engage students. Specifically, he projected the handout *Historical Thinking Chart* and called on several students to read aloud the close reading questions from it. After each student read the question aloud, Respondent lectured about the topic for several minutes while students sat quietly at their seats. He then reviewed a graphic organizer that students would use to take notes in future lessons, and passed it around for them to review, while students sat and waited for the handout to be passed around. He projected a visual of eight Thinking Maps and lectured about the importance of using them to

help memorize things faster and organize their thoughts. He then spoke at length on adjectives the students contributed using a Bubble Map while students sat passively. He used eight minutes to review sections of the class syllabus while students sat and listened. He displayed a three-column KWL chart, provided a topic, and called on students to share what they knew or wanted to learn about it, but then proceeded to elaborate on each student's response rather than encourage students to expand on it.

212. (Charge 144.) Respondent failed to provide students with sufficient uninterrupted time to engage in independent writing after a teacher-directed activity so that, by the end of the class, none of the students had completed their paragraphs. In sum, Respondent did not give students enough time to finish, because he had consumed so much time lecturing on trivial points.

213. (Charge 145.) Respondent again failed to implement and enforce procedures for allowing students to leave the classroom. In particular, student Kelsey was sent to the counseling office, but Respondent failed to sign her agenda and ask her to take it with her when she left. As a result, Kelsey left the classroom with no pass. Respondent's explanation that this happened because he was not sure whether he or the counselor was supposed to sign the agenda was not credible. By that time, Respondent should have known the school procedures for passes to the counselor's office. If he had a question, Respondent could have easily contacted the counselor's office for clarification. The Commission believes this was a convenient excuse for Respondent's continuing pattern of not enforcing classroom or school procedures.

214. (Charge 146.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, 115, 126, and 136, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or

Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018; plan differentiated activities for students with IEPs; provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; monitor student learning by not just circulating the classroom, but also asking students engaging questions; and provide feedback to the students as they work independently and conduct frequent checks for understanding.

215. (Charge 147.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

216. On September 6, 2018, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum on September 11, 2018. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with 11 different points of assistance and guidance responding to the deficiencies noted above, many of which she had included in prior conference memoranda after informal observations. (Ex. 25, pp. 6-7) She also gave him two handouts on effective teaching. (*Id.*, p. 8.)

NOVEMBER 1, 2018 INFORMAL OBSERVATION

217. On November 1, 2018, Principal Gamba conducted an informal observation of Respondent teaching a lesson on the Federalists and Anti-Federalists to his period 1 eighth grade United States History class. Her observations, conference memorandum, and testimony established the following.

218. (Charge 148.) Respondent did not state a proper objective for the day. Instead, he listed as the objective of the lesson activities students would complete

rather than a statement of what students would learn, how they would learn it, and how they would demonstrate their mastery of the learning.

219. (Charge 149.) Respondent did not clearly communicate the purpose of the first learning activity done during the lesson in order to give the students a context for their learning. Instead, he began the activity by projecting the EQ ("Explain one reason you believe that Anti-Federalists feared a strong government?") and asked the students to answer it without making connections to the standard of the lesson (8.2.3.) or to any previous learning.

220. (Charge 150.) Respondent failed to effectively deliver instruction regarding Federalists and Anti-Federalists. For example, after projecting the EQ, Respondent did not provide activities regarding the Federalists and Anti-Federalists that would allow students to participate in active engagement or intellectual learning. Instead, he had them complete two low-level activities: they copied information he wrote for a Double Bubble Map and a sheet of six questions aligned to two documents concerning the Constitutional Convention.

221. (Charge 151.) Respondent failed to check for students' understanding of Federalists and Anti-Federalists by not ensuring the whole class understood the responses to his questions before he moved on. For example, Respondent asked the class what happened at the Constitutional Convention; when student George responded, Respondent told him that his response was from a discussion the class had weeks prior and moved on to the Double Bubble Map activity. Respondent later called on student Kaitlyn to explain why Anti-Federalists were opposed to a strong government. When her response was inaudible, Respondent did not share her contribution with the class; he simply said, "Thank you," and continued to lecture. Similar events happened with at least two other students, Abril and Rah.

222. (Charge 152.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, 115, 126, 136, and 146, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; state the daily objective for the daily lesson; monitor student learning by not just circulating the classroom, but also asking students engaging questions; and provide feedback to the students as they work independently and conduct frequent checks for understanding.

223. (Charge 153.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform his regular assignments as prescribed by the District without reasonable cause.

224. On November 15, 2018, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum on the same day. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with seven different points of assistance and guidance responding to the deficiencies noted above, many of which she had included in prior conference memoranda after informal observations and most of which were basic points more apt to be given to a new teacher. (Ex. 26, pp. 4-5.) She also gave him two basic handouts on effective teaching. (*Id.*, p. 6.)

JANUARY 11, 2019 INFORMAL OBSERVATION

225. On January 11, 2019, Principal Gamba conducted an informal observation of Respondent teaching a lesson on early American territorial expansion to his period 1 eighth grade United States History class. This was soon after return from winter break. By this time, Mr. An had left Reed, so Principal Gamba also had assigned Respondent to teach Mr. An's periods 2 through 6 classes for six weeks until Mr. An's position was filled.

226. (Charge 154.) Respondent failed to deliver standards-based learning activities aligned with Standard 8.4.1. involving the Louisiana Purchase. Instead of engaging students, Respondent had them complete two low-level activities. Specifically, Respondent instructed students to answer questions about the Louisiana Purchase that required short phrases or sentences. He also directed students to a map in their textbooks to answer a question ("What is this map teaching you about?") by using the basic Schaeffer paragraph format of Topic Sentence, two Concrete Details, and a Concluding Sentence.

227. (Charge 155.) Respondent did not use intentional discussion techniques to ensure all students shared their thinking around the Louisiana Purchase questions. For example, he did not ask students to repeat themselves when their answers were inaudible to allow their peers to participate in a discussion around the topic. Or when a "manager" from a table group was not forthcoming with answering a question from a Graphic Organizer handout Respondent did not open up the discussion for the rest of the students, some of whom were calling out answers.

228. (Charge 156.) Respondent failed to provide clear directions on how to use the map from the textbook to write a paragraph. Some students thought he

referred to page 335 in the textbook, while others thought he meant page 325, while still others thought the paragraph was supposed to address the question, "What is the map teaching you about?" None of the students could provide a Topic Sentence for the map without much prompting by Respondent. In fact, none of the students at one table were able to complete any work on their maps because they did not understand the assignment.

229. (Charge 157.) Respondent failed to monitor student off-task behavior when he allowed students to put their heads down on their desks or talk with each other when they should have been engaged in class-work.

230. (Charge 158.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, 115, 126, 136, 146, and 152, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; monitor student learning by not just circulating the classroom, but also asking students engaging questions; provide feedback to the students as they work independently and conduct frequent checks for understanding; remind students of the behavior standards before class starts, such as sitting up in their chairs, and redirect students who are not following the standards; and provide protocols that encourage small group discussion to support the students' learning of content.

231. (Charge 159.) As demonstrated by his performance in this lesson, Respondent was aware of but willfully failed to perform these regular assignments as prescribed by the District without reasonable cause.

232. On February 1, 2019, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum on the same day. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with eight different points of assistance and guidance responding to the deficiencies noted above, many of which she had included in prior conference memoranda after informal observations and most of which were basic points more apt to be given to a new teacher. (Ex. 27, pp. 3-4.) She also gave him two basic handouts on effective teaching. (*Id.*, p. 5.)

RESPONDENT'S COMMENTS TO HIS PAR COACH

233. Arielle Miller Cohen was Respondent's PAR coach for the 2018-2019 school year. She began working with Respondent in mid-August 2018. The two generally met three hours each week. Ms. Miller Cohen would observe Respondent teach his period 1 eighth grade United States History class and then meet with him later in the week to debrief, usually on Thursdays. Because PAR is a confidential program, the two would always meet alone in Respondent's classroom.

234. (Charge 160.A.) It was not established as alleged that Respondent made unsolicited comments about Ms. Miller Cohen's appearance. Instead, the Commission finds both Respondent and Ms. Miller Cohen each made comments about the other's appearance. While Respondent was probably the first to make such comments, that probably was the result of Ms. Miller Cohen telling him about her interests in body-building and yoga, as well as showing him photographs of herself engaged in those

interests. Nonetheless, the Commission finds both parties acted unprofessionally by discussing each other's appearance in the context of a PAR relationship. Both parties had an obligation to end the discussion no matter who initiated it in order to maintain appropriate professional boundaries.

235. (Charge 160.B.) In the context of the above findings, Respondent occasionally told Ms. Miller Cohen she was a "beauty" and that her husband was a lucky man. While Respondent's comments were not completely unsolicited, they were unprofessional, as discussed above.

236. (Charge 160.C.) Ms. Miller Cohen mentioned a trip she and her husband took to the Mayan Riviera of Mexico. Respondent told Ms. Miller Cohen his wife's family owned a ranch in another part of Mexico. Respondent told Ms. Miller Cohen that she and her husband could visit the ranch if they wanted. However, it was not established as alleged that during these discussions Respondent told Ms. Miller Cohen that "God told me that we would be together." Nonetheless, the Commission finds Respondent probably said something awkward enough for Ms. Miller Cohen to misinterpret him making such a comment.

237. (Charge 160.D.) It was not established as alleged that on January 25, 2019, Respondent told Ms. Miller Cohen, "Wow, it's not every day there's a beautiful woman waiting for me outside of my classroom." Respondent and Ms. Miller Cohen gave different versions of this event in their testimony. There was insufficient evidence to determine who said what.

238. (Charge 160.E.) However, on January 25, 2019, Respondent told Ms. Miller Cohen that she would look very nice in a police uniform. Respondent testified he probably said this, but only after Ms. Miller Cohen showed him a picture of her

standing with police officers during the District's teacher strike that year. In light of their relationship discussed above, the Commission finds Respondent's comment, though awkward and unprofessional, was meant to be friendly and not flirtatious.

239. (Charge 160.) Based on the circumstances discussed above, the Commission finds Respondent's various comments to Ms. Miller Cohen were not flirtatious or with sexualized undertones. However, Respondent's comments were unprofessional and demonstrated poor judgement given his circumstances. In a sense, both parties are to blame for this situation. Nonetheless, Ms. Miller Cohen interpreted the comments as flirtatious or sexualized and so she became uncomfortable.

240. Ms. Miller Cohen ultimately made a formal complaint about Respondent soon after January 25, 2019. She was told to have no further contact with Respondent. Respondent no longer had a PAR coach for the rest of the Spring semester.

241. Principal Gamba was advised of Ms. Miller Cohen's complaint in late January 2019. She met with Respondent in March 2019 to discuss the matter. Principal Gamba concluded that Respondent had violated a number of District policies and Board resolutions. However, she entirely believed Ms. Miller Cohen's version of events that Respondent had sexually harassed her, and she completely disregarded Respondent's version of events. Based on the various findings above concerning Charge 160, the Commission finds Principal Gamba's conclusion was not valid that Respondent violated District policies or Board resolutions with regard to his behavior with Ms. Miller Cohen.

MARCH 4, 2019 INFORMAL OBSERVATION

242. On March 4, 2019, Principal Gamba conducted an informal observation of Respondent teaching a lesson on Texas Independence to his period 1 eighth grade

United States History class. Her observations, conference memorandum, and testimony established the following.

243. (Charge 161.) Respondent failed to deliver standards-based activities to his class. In particular, Respondent failed to effectively monitor students' learning as they worked on the EQ ("Explain why Texas's land was so desirable?"); he did not look at students' work, check for understanding, or provide feedback during the activity as he walked around the classroom. He next wrote student responses to the What I Know section of a low-level KWL chart activity and had students copy what he wrote instead of giving them time to think about the topic and write their own statements. He used the same process when students were asked to share questions for the What I Want to Know section. Without bringing closure to the KWL chart activity, Respondent had students turn to a Book Report Vocabulary handout, and copy three words he had written on the handout and the corresponding definitions from the textbook, but did not explain how their questions from the KWL chart or the vocabulary words would help their understanding of the Texas Revolution.

244. (Charge 162.) Respondent failed to correctly use equity sticks during a question and answer sequence, so there was no equitable participation by all students. Instead, two students, Rah and David, dominated the discussion. Specifically, instead of pulling another student's name on a stick when the first student could not answer a question, Respondent continued to call on Rah or David for the answers.

245. (Charge 163.) Respondent did not have or enforce a routine or procedure to ensure all students had a textbook. During this lesson, it did not appear that Respondent noticed 12 of the 32 students did not have a history textbook. Eight of those 12 students got up on their own to retrieve textbooks while Respondent talked. Without any guidance from Respondent on returning the books at the end of the

lesson, the eight students who had retrieved books got up and returned them to the shelf while Respondent was still talking, thus disrupting the attempted closure of the lesson for students in the back.

246. (Charge 164.) For the same reasons explained above regarding Charges 61, 73, 88, 100, 101, 115, 126, 136, 146, 152, and 158, Respondent's performance described above demonstrated that he willfully refused to comply with the following of Principal Helm-Torres's verbal directives of April 17, 2017, and written directives of April 20, 2017, or Principal Gamba's verbal directives of August 31, 2017, December 1, 2017, and January 16, 2018, and written directives of September 5, 2017, December 5, 2017, and January 16, 2018: provide instruction that is well planned, appropriate for the level of students' achievement, and engages students in active and meaningful learning; monitor student learning by not just circulating the classroom, but also asking students engaging questions; remind students of the behavior standards before class starts, and redirect students who are not following the standards; use one consistent method for calling on students to share their answers; provide feedback to the students as they work independently and conduct frequent checks for understanding; and provide protocols that encourage small group discussion to support the students' learning of content.

247. (Charge 165.) As demonstrated by his performance in this lesson, Respondent was aware of but failed to perform his regular assignments as prescribed by the District willfully and without reasonable cause.

248. On March 12, 2019, Principal Gamba met with Respondent to discuss the informal observation. She gave him a conference memorandum on the same day. During the meeting and in the conference memorandum, Principal Gamba provided Respondent with seven different points of assistance and guidance responding to the

deficiencies noted above. (Ex. 29, pp. 5-6.) She also gave him two handouts on effective teaching. (*Id.*, p. 6.)

249. At or about this time, Principal Gamba met and conferred with Respondent concerning the complaint made by Ms. Miller Cohn. Respondent was removed from the classroom and Reed by no later than March 19, 2019, which is when the Board decided cause existed to dismiss Respondent's employment with the District. (Ex. 30, p. 1.)

RESPONDENT'S CONTENTIONS

250. Respondent's primary evidence was his written responses to many of the conference memoranda described above, as well as his testimony. Neither source was convincing. Many of the written responses were vague or obfuscated actual events. Over time the responses became more defensive and contained personal attacks on the involved principals. The Commission did not find the responses to be a reliable source of information. Respondent's testimony was the same. Many times Respondent prefaced an answer by saying something "probably" happened. The Commission was left with the impression that Respondent was guessing in many of his answers. Moreover, Respondent called no witness to corroborate any of his evidence.

251. The closest Respondent came to attempting to corroborate his version of events were three letters of recommendation from fellow teachers at Byrd. (Exs. 211-213.) Interestingly, one of the letters is from Mr. White, who Respondent denigrated to Principal Wiltz when the two observed Mr. White teach his Magnet class. However, the letters have little probative value because, as Respondent admitted during his cross-examination, none of the three teachers came to Respondent's classroom to observe him teach.

252. Respondent blamed some of his performance problems on being assigned to four different schools over a four-year period. The Commission does not find that is a convincing excuse. A trained teacher does not need much time to get acclimated to a new school. For example, the state standards have not changed since 1998, and the District's lesson plan template has not changed in a long time. All four of the schools in question were in the District's Northeast Local District, so each school had common and shared expectations. In Respondent's case, each principal gave him easy assignments when he first arrived at a new school. Much of the time he only had one class to teach. In many respects, the four principals treated him as if he were a new teacher, not a long-time veteran of the District.

253. Respondent also blamed some of his performance problems on the timing of many informal observations done early in a new school year or after returning from winter break. The Commission does not find this is a convincing excuse either. A good teacher will provide a good lesson regardless of its timing. Respondent had advance notice of each observation, so he had sufficient time to prepare. Not all of the informal observations were close to breaks, but all of them showed performance deficiencies. In any event, the principals' observations did not depict unruly or restless students because of a new school year or the return from winter break; rather, the students were disinterested in non-engaging instruction. Even if students were having problems with attention caused by coming back from a break, it is the teacher's responsibility to set the tone of instruction and take control of behaviors.

254. Respondent also blamed some of his misfortune on his long commute. However, Respondent had requested being assigned in the Northeast Local District, which is where all four of the involved schools were located. In any event, a long commute does not prevent one from performing in the classroom.

255. Respondent points to the fact that this case involves no evidence of injuries, major incidents in the classroom, the need for student discipline, or parent complaints. Respondent also contends there was no evidence presented of lack of learning such that a student was transferred to another class, withheld from advancing, unable to perform in subsequent school years, etc. Respondent is generally correct, although there was evidence of a couple of parent complaints.¹¹ Nonetheless, evidence of lack of learning in this case was established by the frequent informal observations by three different principals. Those observations showed that students had their heads down, were not engaged, or were talking among themselves. Also, Respondent's testimony that he would not start using depth of knowledge (DOK) question levels 3 or 4 until later in the semester showed he did not think his students could handle engaging lessons for most of the semester. Finally, the observations portrayed a poor quality of interaction between Respondent and his students. All of this evidence showed a lack of teaching by Respondent and learning by his students.

256. Respondent defended letting a few students dominate a lesson by arguing the children in question were either "on fire" for the lesson or did not otherwise participate in class. However, the pattern of inequitable participation did not support Respondent. If he were correct, one would expect to see a pattern of entire class participation, with an occasional instance of one or two students getting "on fire" and dominating the discussion. Instead, the observing principals frequently saw one or two students dominate a class without much participation from the other students.

¹¹ See Factual Findings 25.C. and 25.D. In addition, Respondent admitted on cross-examination that by or before March 2019, one or more students and/or parents complained about comments Respondent made in class while teaching at Reed.

Even if a student like Raffi or Michael gets “on fire,” an effective teacher does not let the student dictate the tone for the class and stifle other students from participating. An effective teacher can find creative ways to harness that “on fire” energy, such as telling the student he or she can pick on other students to answer questions and make notes on the board.

257. Respondent blamed his technological hiccups in class on faulty equipment provided by the District. The Commission is dubious. Respondent had an electronics degree from a community college. Given his technical background, it is unclear why he was not able to address the technological problems. In addition, Respondent was an experienced District teacher. He was aware of the scheduled observations, and he had time to either practice with the equipment or find “work-arounds” if any of the equipment was not functioning. If the equipment had been faulty, the Commission expected to see evidence of requests from Respondent to his principals for new or repaired equipment but Respondent offered no requests into evidence. Under the circumstances, the Commission believes Respondent’s testimony was self-serving and that Respondent never took the initiative about the technology or equipment used in his classroom.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The District has the burden of proving the charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means “the evidence on

one 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.)

Cause for Termination

2. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in Education Code sections 44932, subdivision (a), 44939, and 44942¹² are established by a preponderance of the evidence.

IMMORAL CONDUCT

3. A. Certificated employees are subject to dismissal for immoral conduct pursuant to section 44932, subdivision (a)(1).

B. 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.)

C. In this case, it was not established by a preponderance of the evidence that Respondent engaged in immoral conduct pursuant to section 44932, subdivision (a)(1). Respondent's behavior during the History Department meeting in 2015 was awkward and inappropriate, as was his later interactions in 2018 and 2019 with his PAR coach, Ms. Miller Cohen. However, none of his behavior was sexually motivated,

¹² Further undesignated statutory references are to the Education Code.

harassing, indecent, corrupt, or intended to offend others. The Commission cannot conclude that Respondent's conduct was extreme enough to be deemed immoral, as that term is defined in the case law.

UNPROFESSIONAL CONDUCT

4. A. Certificated employees are subject to dismissal for unprofessional conduct pursuant to section 44932, subdivision (a)(2).

B. Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming a member of the profession in good standing. (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 overruled, on another ground, by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575.)

C. In this case, the District established by a preponderance of the evidence that Respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(2). In 2015, Respondent threatened to take pictures of students in his classroom, which escalated an emotional situation, was an improper form of discipline, and could have invaded the students' privacy. Respondent's comments during the 2015 History Department meeting were also unprofessional, as they offended one colleague and made his other colleagues uncomfortable. Respondent's interactions in 2018 and 2019 with his PAR coach, Ms. Miller Cohen, were also unprofessional, especially given the remedial and confidential setting of the interactions. Complaints were made to the involved principals about all those incidents. The principals viewed Respondent's conduct to be unbecoming of a teacher and directed him to not repeat it, thus indicating they too believed Respondent had acted unprofessionally. (Factual Findings 15, 19-30, 233-235, and 238-239.)

UNSATISFACTORY PERFORMANCE

5. A. Certificated employees are subject to dismissal for unsatisfactory performance pursuant to section 44932, subdivision (a)(5).

B. The term "unsatisfactory performance" is not specifically defined in the Education Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in section 44932, as discussed above, and it is not to be presumed that the Legislature intended to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that "unsatisfactory performance" does not include any other cause for dismissal specified in section 44932.

C. While unprofessional conduct can be determined by analyzing a teacher's conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by his or her employing school district. This is demonstrated by section 44938, which requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, which refers to section 44660 et seq. Those provisions establish guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs in a manner unsatisfactory to his employing school district.

D. However, it has been observed that the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves

properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed in an unsatisfactory manner.

E. In this case, it was established by a preponderance of the evidence that Respondent's performance from late 2015 through March 2019 was consistently unsatisfactory to the District pursuant to section 44932, subdivision (a)(5). The District had expressed reasonable expectations in its policies and Board Resolutions. Respondent consistently failed to uphold the District's expectations, as well as the CSTPs. Respondent's performance in the classroom was consistently deficient, as determined by three different principals who conducted many informal observations. Respondent also received Below Standard performance ratings in his Final Evaluations in 2016, 2017, and 2018. Respondent was consistently given the same assistance and guidance in response to his poor teaching performances from the three involved principals, which were reasonable. Yet, Respondent continually ignored or refused the assistance and guidance, and continually failed to meet the District's expectations and standards. Respondent's poor behavior before students in 2015 at Vista, his antics during the Vista History Department meeting in 2015, and his improper interactions in 2018 and 2019 with his PAR coach were also unsatisfactory to the District, and reasonably so. (Factual Findings 1-68, 70-240 & 242-249.)

EVIDENCE UNFITNESS FOR SERVICE

6. A. Certificated employees are subject to dismissal for evident unfitness for service pursuant to section 44932, subdivision (a)(6).

B. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "'Evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*)

C. In this case, it was established by a preponderance of the evidence that Respondent is evidently unfit for service as a teacher pursuant to section 44932, subdivision (a)(6).

D. Over the four-year period in question, Respondent taught at four schools for four different principals. Each principal, particularly the last three, gave Respondent opportunities to co-teach with other good teachers, to teach Honors students who were not a behavior problem, to have access to PAR coaches, and countless instances of assistance and guidance. Despite all of that, Respondent continued to engage in the same or similar poor performance in the classroom, and showed little to no improvement.

E. Respondent also acted inappropriately and unprofessionally before students and with colleagues at Vista, after having been previously directed to not do so when he was at East Valley High School; and he again acted unprofessionally with Ms. Miller Cohen at Reed, after having been directed not to do so when he was at Vista.

F. The fact that Respondent is a veteran teacher of the District with more than 18 years of teaching experience is particularly troubling. Under these circumstances, it is clear that Respondent has a fixed character trait preventing him

from following assistance, guidance, and directives. Instead, Respondent simply decided to teach as he wanted and to disregard his supervisors' directives. During the hearing, Respondent failed to accept responsibility for his poor performance, and instead blamed his principals or allegedly defective District equipment. After all of this, the Commission can think of no other way to improve his performance as a teacher. (Factual Findings 1-68, 70-240 & 242-249.)

PERSISTENT VIOLATION OF SCHOOL LAWS

7. A. Certificated employees are subject to dismissal for 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, pursuant to section 44932, subdivision (a)(8).

B. Cause for dismissal here may be based on the violation of school rules or district policies. (*San Dieguito Union High School Dist. v. Commission On Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) However, there must be a "showing of intentional and continual refusal to cooperate." (*Id.*, p. 1196.) The violation 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.)

C. In this case, it was established by a preponderance of the evidence that Respondent persistently violated, and refused to obey, the school laws of the

state and reasonable District rules and policies, pursuant to section 44932, subdivision (a)(8). (Factual Findings 13-14, 31-68, 70-232 & 242-249.)

D. For four years Respondent persistently violated CSTPs, as demonstrated by the numerous informal observations, in which three different principals documented that Respondent repeatedly failed to engage and support student learning, create and maintain an effective environment for teaching, understand the subject matter and organize it for students to make it understandable to them, plan instruction for all students and differentiate it when necessary, and check with students for understanding in order to assess their learning.

E. Over a four-year period, Respondent repeatedly violated the various directives given to him by all four principals, as well as the District's Code of Conduct with Students and the Board's Resolution on the Respectful Treatment of All Persons.

WILLFUL REFUSAL TO PERFORM A REGULAR ASSIGNMENT

8. A. Certificated employees are subject to dismissal for willfully refusing to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of an employing school district, pursuant to section 44939.

B. The willful refusal of a teacher to obey the reasonable rules and regulations of the employing school district is tantamount to insubordination. (*Board of Educ. of City of Los Angeles v. Swan, supra*, 41 Cal.2d at p. 552, overruled, on another ground, by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575.) Although there are no cases interpreting the term "willful refusal to perform regular assignments without reasonable cause" under section 44939, case law from related settings reflects that the term "willful" "carries a volitional coloration which excludes the notion of accidental or even negligent conduct." (*Coomes v. State Personnel Bd.* (1963) 215

Cal.App.2d 770, 775.) Declining to obey an employer's directions, without reason, is sufficient to establish willful refusal. (See, e.g., *Wilbur v. Office of City Clerk of City of Los Angeles* (1956) 143 Cal.App.2d 636, 642 [observing an employee who "did not attribute his refusals to illness" and made "no showing before the hearing examiner of willingness to comply with the reasonable orders of his superiors," demonstrated "wilful refusal to obey the reasonable orders of an employer"].)

C. In this case, it was established by a preponderance of the evidence that Respondent willfully refused to perform his regular assignments prescribed by the District without reasonable cause, in violation of section 44939, subdivision (b). As the District argued in closing, Respondent was continually advised and directed to clearly specify and enforce classroom procedures (like restroom breaks or adjourning class), post rubrics for students, present cognitively challenging lessons, practice technology before using it during lessons to avoid wasting time, use equity sticks or otherwise fairly implement equitable participation of students, etc. Respondent persistently failed to follow those directives. Given Respondent's time teaching at the District and the numerous opportunities and guidance he was given, the Commission finds Respondent's failure to carry out those assignments was willful. (Factual Findings 13-14, 31-68, 70-232 & 242-249.)

Analysis of the *Morrison* Factors

9. A. In deciding whether cause for dismissal exists under the amorphous concepts of immoral conduct, unprofessional conduct, and evident unfitness for service, it also must be established that a teacher's misconduct relates to his fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227–230. The *Morrison* analysis does not apply to causes for dismissal for unsatisfactory performance, willful refusal to perform regular assignments, or persistent violation of school rules, laws

or policies, because such theories, by definition, have a direct nexus with teaching. (*Id.*, pp. 227-230).

B. With regard to the two identified causes for dismissal that were established in this case that must be analyzed (unprofessional conduct and evidence unfitness), all of the factors suggested by *Morrison* were considered and applied to the Factual Findings. Not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

C. In this case, the Commission has analyzed the *Morrison* factors and concludes they establish by a preponderance of the evidence that Respondent's misconduct makes him unfit to teach and supports the conclusion that he acted unprofessionally. (Factual Findings 1-68, 70-240, 242-249 & 250-257.) Generally, we note that all of his misconduct occurred at school with activities directly related to teaching and the school environment. Specifically, as to the *Morrison* factors we find:

i. The likelihood the conduct may adversely affect students or fellow teachers. Respondent's students suffered the most. They were not learning what they needed to learn. Respondent's failure to engage his students led to their off-task behavior. Respondent mostly taught below the students' grade and cognitive levels, which may have falsely led students to believe that history is easy or uninteresting. Respondent's behavior during the History Department meeting and with PAR coach Miller Cohen also made other employees feel uncomfortable and therefore adversely affected them as well. Respondent's four supervising principals had to spend an

inordinate amount of time supervising and providing him with assistance and guidance that a teacher with his level of experience should not have required.

ii. The degree of such adversity. Students suffered the greater amount of adversity. The degree of students' adversity was substantial. They essentially wasted a semester or full school year of learning. The adversity to colleagues was moderate. The History Department meeting was an isolated event with Ms. Harper and the other members of the History Department. PAR coach Miller Cohen felt uncomfortable enough to complain about Respondent and stop coaching him, but she also engaged in some inappropriate actions and invited some of Respondent's behaviors. The adversity to the four principals was significant. Respondent consumed their time with supervision and repetitive assistance and guidance that he rarely followed.

iii. The proximity or remoteness in time of the conduct. Respondent's misconduct is fairly recent, in that it spanned from October 2015 and continued consistently through March 2019 with no let up.

iv. The type of teaching certificate held by the party involved. Respondent's credential put him in contact with middle school students just beginning their introduction to senior social sciences. He was unable to teach history. His poor teaching undercut his students' ability to gain a solid foothold in history, which undoubtedly impaired their performance in future history classes.

v. The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. Respondent established no extenuating facts. In aggravation, Respondent demonstrated a poor attitude about his situation, in that he failed to accept responsibility for his actions, and usually blamed others for his

problems. He created excuses for his deficiencies that were not credible or justified. Although his flaws were easily correctable, he willfully refused to correct them by complying with clear and reasonable directives. He demonstrated continuous misconduct for four years.

vi. The praiseworthiness or blameworthiness of the motives resulting in the conduct. The Commission finds Respondent engaged in the blameworthy motivation of refusing to accept input, advice, and assistance from any other source. He flagrantly disregarded four principals. He had two years of PAR coaching that he failed to utilize. Even when Respondent was able to observe Mr. White, Respondent told Principal Wiltz that he learned nothing from it and ultimately made insulting comments to her.

vii. The likelihood of recurrence of the questioned conduct. If Respondent is returned to the classroom, the Commission has no questions that he will engage in the exact same misconduct as before.

viii. The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. The Commission does not see how discipline will have such an effect upon properly exercised constitutional rights.

Disposition

10. A. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still

has broad discretion to determine whether such discipline is actually warranted.

(*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 222.)

B. After teaching for 18 years at the District, Respondent still is not able to teach history. He has been given plentiful assistance, guidance, and resources, as well the benefits of co-teaching and light teaching loads. The Commission cannot devise any other remedial action the District can take to help Respondent improve. The District should not be required to provide Respondent with continuous directives, assistance, and guidance, that he will only disregard. Respondent takes no ownership or responsibility for his problems and therefore will continue to engage in it. His teaching deficiencies have harmed his students who did not learn from him. The dismissal of Respondent's employment with the District is therefore warranted.

(Factual Findings 1-68, 70-240, 242-249 & 250-257; Legal Conclusions 1-9.)

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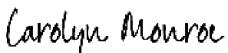
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ORDER

Respondent Carlos Polanco is dismissed from employment with the Los Angeles Unified School District.

DATE: September 23, 2020

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Dr. CAROLYN MONROE
Commissioner

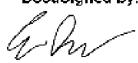
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ROBERT EARL
Commissioner

DATE: September 23, 2020

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ERIC SAWYER
Commissioner
Administrative Law Judge
Office of Administrative Hearings