

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

ERIC TUREAUD (EN 627796),
A Permanent Certificated Employee,

Respondent.

OAH No. 2015040235

DECISION

This matter was heard by Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings (OAH), State of California, on May 26-28, 2015, and June 16-18 and 23-25, 2015, in Los Angeles.

Pilar Morin, Liebert Cassidy Whitmore, represented the Los Angeles Unified School District (District).

Rosty G. Gore, Trygstad, Schwab & Trygstad, represented Eric Tureaud (Respondent).

Oral and documentary evidence was received, and argument was heard. The record was closed. Subsequently, on July 1, 8, and 10, 2015, the District lodged the transcripts of the hearing with OAH, after serving Respondent with notice of the lodging of the transcripts and the opportunity to file a written objection within 10 days. No objection was made by Respondent.

The ALJ issued an Order Re-Opening Record for Lodging of Hearing Transcripts on July 21, 2015, which was marked as Exhibit 29, and accepted the Notices of Lodging and Volumes I through VIII of the hearing transcript. The Notice of Lodging dated July 1, 2015, was marked as Exhibit 18. Volumes I through V of the transcript were marked as Exhibits 19 through 23, respectively. The Notice of Lodging dated July 8, 2015, was marked as Exhibit 24. Volumes VI and VII of the transcript were marked as Exhibits 25 and 26, respectively. The Notice of Lodging dated July 10, 2015, was marked as Exhibit 27. Volume VIII of the transcript was marked as Exhibit 28. The record was closed and the matter submitted for decision on July 21, 2015.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a permanent certificated employee of the District.
2. A Statement of Charges was filed with the District's governing board, which requested that the District's governing board give notice to Respondent of its intent to dismiss him within 30 days unless he demanded a hearing.
3. On April 1, 2015, Respondent filed a Request for Hearing and Notice of Defense. On April 9, 2015, the District served Respondent with an Accusation and other required documents. On May 7, 2015, the District served Respondent with an Amended Accusation. The Amended Accusation contains one cause for dismissal for egregious misconduct, pursuant to Education Code section 44932, subdivision (a)(1).

Respondent's Background

4. Respondent is 47 years old. He graduated from California State University, Dominguez Hills (CSUDH) in 1991 with a degree in liberal studies. He stayed one additional year and earned a master's degree in special education. He completed the dual credential program at CSUDH and received a combined special education and regular education credential. In 2007, Respondent completed a program through U.C. San Diego and earned a CLAD credential. Respondent's mother and grandmother worked for the District for a total of 60 years combined. They encouraged Respondent to pursue a teaching career. His grandmother earned a doctorate degree and became a school psychologist.

5. Respondent's first job with the District was as a teacher's assistant at Annalee Elementary School in Carson, which he did for six months. He next worked as a substitute teacher for the Compton Unified School District. After that, Respondent worked for 13 months at Rainbow Bridge, which is a nonpublic private school for special education students. Rainbow Bridge contracted with various school districts to educate the students that the school districts were not able accommodate, such as students with emotional disturbance. Respondent next worked for two years at Compton Unified School District as a special education teacher for learning handicapped students. He then worked at Zinsmeyer Academy in Long Beach for 13 months. After that, he was hired by the District to work at Meyler Elementary School (Meyler). Respondent worked at Meyler from 1997 until January 2012, when he was removed from his classroom.

Respondent's Classroom

6. At Meyler, Respondent taught a special day class for students in grades kindergarten through second grade. Students from all three grades were combined in the class. According to Respondent, the students were eligible for special education services on

the basis of autism, emotional disturbance, other health impairment, and/or learning disability. Some students were quiet while other students, who were verbal, could be disruptive and have outbursts during class. Testimony by Respondent and Sandra Loeb, who was a special education assistant at Meyler in the classroom next door to Respondent's classroom, established that placing students with behavioral issues in the same classroom with autistic students without behaviors may affect the dynamic in the classroom. In such a setting, autistic children tend to be impressionable and may pick-up on the misbehavior the other students.

7. Respondent had a disciplinary policy in his classroom. He did not yell at his students. He had a system of progressive discipline using colored clothespins, time-outs, and verbal warnings. The colored clothespins were red, yellow, and green. Each child started the day with a green clothespin. A yellow clothespin was given to warn a child about their behavior, such as being off task or disobedient. A red clothespin would result in a telephone call or letter to the child's parent. Respondent did not get frustrated or angry when his students acted out or misbehaved, as he was experienced in working with children with emotional disturbance and behavioral issues. In addition, if Respondent saw a mark or injury on a student, his practice was to call the nurse and the student's parent, even if the child was not hurt, to let the parent know about the situation.

8. Sandra Loeb was employed by the District as a special education assistant at Meyler from January 1992 until she retired in June 2015. From 2007 to 2012, Loeb was the special education assistant in the classroom next door to Respondent's classroom. She had previously worked with Respondent at Meyler during a summer session in 2000. At this hearing, Loeb testified credibly regarding all matters. Her demeanor was professional, and the substance of her testimony was clear and straightforward. She appeared cooperative and used her best efforts when answering questions from both parties.

9. Loeb's testimony established that one part of the Meyler campus had a row of bungalows, with each bungalow containing two classrooms separated by a wall with an intersecting door. Respondent's class was in room 41. Loeb worked in classroom 40, which was in the same bungalow as Respondent's class. The wall separating the two classrooms was so thin that one classroom could hear what was happening in the classroom next door. Loeb testified that she could hear Respondent and his special education assistant, Miss Lucy, when they spoke to their students. Loeb and the teacher of her class had to sometimes ask Respondent to quiet down his class. Similarly, Respondent had to ask Loeb's class to be quieter, for example, when his students were testing. Loeb testified that she would open the door between the two classrooms if she heard a child crying or anything raising a safety concern to see what was going on in Respondent's classroom. As an employee of the District, Loeb is a mandated reporter, which means that if she suspects there is abuse of any child, she is required to report it to the proper authorities. Loeb testified she would report any abuse of a child "in a heartbeat." During the time she worked next door to Respondent's classroom, Loeb never heard or saw anything she felt she had to report as a mandated reporter.

10. From 2007 to 2012, the special education assistant for Respondent's class was Miss Lucy. Since they were both special education assistants, Loeb and Miss Lucy saw each other when they were getting children off the school buses in the morning, and periodically during other parts of the day. They had opportunities to interact. Miss Lucy told Loeb that she enjoyed working in Respondent's classroom. Loeb's opinion is that Miss Lucy, who is a born-again Christian, is a person of integrity and high moral and ethical standards. Loeb believes that Miss Lucy, like herself, would report any child abuse or misconduct "in a heartbeat." Loeb and Miss Lucy were members of the same employees' union, and Loeb was a site representative for the union. Loeb testified that Miss Lucy never came to her regarding any concerns she had about Respondent.

2011-2012 School Year

11. At the start of the 2011-2012 school year, three of the students in Respondent's special day class were A [REDACTED] R., A [REDACTED] R. (no relation to A [REDACTED] R.), and K [REDACTED] P [REDACTED]. Each of these students ended up transferring to Halldale Elementary School in the second part of the school year. The parents of these students reported or raised concerns regarding Respondent to Meyler's principal, Louis Carrillo.

12. On the morning of October 15, 2011, A [REDACTED] R.'s mother brought her son to the school office. Respondent happened to be in the office. The mother reported that she found marks on A [REDACTED]'s body the previous night. Respondent brought A [REDACTED] and his mother to principal Carrillo's office and had her repeat what she told him. The mother had A [REDACTED] show the marks to principal Carrillo and Respondent. Afterwards, principal Carrillo had Respondent return to his classroom. Respondent testified that, two weeks later, Miss Lucy reported to him that A [REDACTED] R.'s mother and K [REDACTED] P [REDACTED]'s mother approached her and asked about children being harmed in Respondent's classroom. Miss Lucy told them that no children were being harmed. In November 2011, Respondent attended an IEP meeting for A [REDACTED] R. where his mother reported that she heard students in Respondent's class were getting hurt. Respondent denied the allegation. In December 2011, the mother of K [REDACTED] P [REDACTED] reported that K [REDACTED] did not want to go to school because Respondent pulled K [REDACTED]'s ear and hit his hand. In January 2012, A [REDACTED] R.'s mother reported that A [REDACTED] had injuries to his lip and hip when he was picked up from school in December 2011. Also in January 2012, the parent of student L [REDACTED] H. made a report that Respondent grabbed L [REDACTED] arm during a lesson and made him cry.

13. On or about January 18, 2012, Respondent was removed from his classroom and reassigned to ESC South on paid administrative leave. Respondent was interviewed by law enforcement officers in March 2012 and June 2012. He was questioned about students A [REDACTED] R., A [REDACTED] R., K [REDACTED] P [REDACTED] and L [REDACTED] H. Following his interviews with the officers, Respondent was never arrested or charged with any criminal offense. Respondent remained assigned at ESC South.

The District's Investigation

14. On September 4, 2013, a conference was held at the ESC South offices with principal Carrillo, Respondent, and Respondent's union representative. Principal Carrillo prepared a conference memorandum which summarized the meeting. The September 4, 2013 memorandum summarized the complaints made by the parents of Respondent's students, including A■■■■R., A■■■■R., K■■■■P., and L■■■■H. Respondent provided a written response dated September 18, 2013.

15. Following the September 4, 2013 conference, principal Carrillo contacted the parents of several of Respondent's former students and obtained written statements regarding incidents occurring in Respondent's classroom in 2011. A written statement dated October 2, 2013 was obtained from L■■■■H.'s mother. A written statement dated September 5, 2013 was obtained from A■■■■R.'s mother. A written statement dated October 3, 2013 was obtained from A■■■■R.'s mother. A written statement dated September 6, 2013 was obtained from K■■■■P.'s mother. (Exh. 1, pp. 13-27A.)

16. On October 17, 2013, the District issued a notice of unsatisfactory performance and a notice of suspension to Respondent, notifying him of its recommendation to suspend him for 15 days without pay and to dismiss him from employment. On October 18, 2013, Respondent filed an appeal of the notice of suspension. In December 2013, a Skelly meeting was held, which resulted in a recommendation to the District's governing board that Respondent should be dismissed from employment. During the ensuing two years, Respondent remained assigned at ESC South.

17. The District filed and served Respondent with an Accusation dated April 9, 2015. Subsequently, the District filed and served an Amended Accusation dated May 5, 2015.

Charge 1 – Student S■■■■N.

18. It was not established that, during the period July 1, 2008, to June 30, 2009, Respondent, at least once, struck student S■■■■N. on his arm.

19. S■■■■N. was a kindergarten student in Respondent's class who had limited speaking ability. The District presented only hearsay evidence, no direct evidence, in support of Charge 1. The District relied on the September 4, 2013 conference memorandum by principal Carrillo, in which he wrote that S■■■■N.'s parents had reported to him in August 2013 that their son came home from school in February 2009 with a two to three inch scrape on his elbow; the parents claimed that Respondent caused the injury. The District also presented a letter by S■■■■N.'s parents. (Exh. 8.) Neither principal Carrillo nor S■■■■N.'s parents nor any other witness to the reported injury to Steven's elbow, testified at the hearing. The District's documentary evidence, without more direct evidence, is insufficient. Respondent denied the allegation of Charge 1. His unrefuted testimony established that he never received a complaint from S■■■■N. or his parents, and that he first learned of the

parents' allegations from the September 4, 2013 conference memorandum by principal Carrillo.

Charge 2 – Student M [REDACTED] J.

20. Student M [REDACTED] J. was a student in Respondent's class at Meyler during the period July 1, 2009, to June 30, 2010. Students A [REDACTED] G. and J [REDACTED] I. were also in Respondent's class with M [REDACTED].

21. Respondent testified that students A [REDACTED] G. and J [REDACTED] I. were autistic and M [REDACTED] was in special education on the basis of other health impairment (OHI). M [REDACTED] had behavioral issues. Respondent testified that M [REDACTED] would frequently drop himself to the floor and cry. When M [REDACTED] did not comply with Respondent's request to stand up, he told M [REDACTED] he would call his father. M [REDACTED] would stay on the floor and reach up to Respondent with his arms, pleading that Respondent not call his father. Respondent testified that A [REDACTED] G. tended to pick-up on M [REDACTED] misbehavior. Respondent testified that, before M [REDACTED] joined the class, A [REDACTED] did not have history of misbehavior or copying what M [REDACTED] was doing. Respondent believes that mixing autistic students with students who are OHI or have behavioral/emotional issues is not conducive to learning. Respondent feels that autistic students may not understand the behaviors of OHI students or the interventions used by teachers to address their behaviors.

22. Loeb testified that she knows M [REDACTED]. She was asked to observe him when he was having a hard time in his regular education classroom. Loeb saw that M [REDACTED] would have outbursts during instructional time, such as talking at inappropriate times, or saying things that were irrelevant and not pertaining to the lesson being presented by the teacher. Loeb also saw M [REDACTED] display fits of rage or anger. She also saw M [REDACTED] throw himself on the floor, crawl under a table, and burst out crying for no apparent reason. Loeb believes that M [REDACTED] behaviors continued after he moved to Respondent's class, based on what she heard coming from Respondent's classroom. For example, she heard M [REDACTED] having an outburst and saying something inappropriate, after which she heard Respondent direct him to stop talking, and then she heard what sounded like a chair moving and a body going to the floor. Loeb also heard M [REDACTED] crying in Respondent's classroom, which was generally after M [REDACTED] had an outburst. Loeb testified she only heard M [REDACTED] crying; she never heard any other students crying in Respondent's classroom.

23. Loeb testified that, on one occasion, she was in her classroom when she heard M [REDACTED] having an outburst in Respondent's classroom and Respondent asking several times that he stop. Loeb then heard Respondent telling M [REDACTED] that he needed to put down the chair. When she heard that, Loeb opened the connecting door between her classroom and Respondent's room. Loeb stood in the doorway and saw M [REDACTED] swinging the chair as if he was getting ready to throw it. There were other students in the classroom. Respondent went over to M [REDACTED] grabbed the chair, and told M [REDACTED] not to throw it. M [REDACTED] continued to wrestle the chair away. Respondent was able to take the chair away without touching M [REDACTED]. M [REDACTED] then fell to the floor and began crying and screaming. Loeb assisted Respondent in taking

the other students out of the room. Loeb and Respondent watched M [REDACTED] until he calmed down.

24. Loeb testified that, on another occasion, she saw Respondent use a District-approved technique in order to restrain M [REDACTED]. M [REDACTED] was upset and yelling profanities at Respondent. M [REDACTED] said he was going to leave the classroom. As M [REDACTED] moved towards the door, Respondent grabbed hold of the boy to keep him from going out the door. Loeb testified that Respondent took his one arm and placed it at M [REDACTED]'s waist from the front, and he placed his other arm around M [REDACTED]'s waist from the back, thereby encircling him and preventing him from going out the door. It was almost like a hug. M [REDACTED] eventually calmed down. Loeb testified that the physical restraint used by Respondent on M [REDACTED] was a District-approved technique. Loeb has attended District trainings where the technique was taught. Loeb testified she has seen other teachers, besides Respondent, use this technique. Loeb testified this was the only time she saw Respondent use the technique to restrain a student.

25. Student A [REDACTED] G. testified at this hearing. A [REDACTED] is presently 12 years old and in the sixth grade. A [REDACTED] is a special education student. He was in Respondent's class for first grade, second grade, and third grade. Student J [REDACTED] I. testified at this hearing. J [REDACTED] is presently 13 years old and in the seventh grade. He was in Respondent's class for second grade and third grade.

26. (A) It was not established that, during the period July 1, 2009, to June 30, 2010, Respondent, at least once, struck student M [REDACTED] J. with a ruler or a belt. Respondent denied these allegations.

(B) Student A [REDACTED] G. testified that Respondent hit M [REDACTED] and three other boys in the class on their hands with a ruler. He also testified that Respondent hit him on the back of his hand with a ruler at least once a month. A [REDACTED] testified that he saw Respondent take off his belt and hit M [REDACTED] with it, and M [REDACTED] cried. He also testified that Miss Lucy was present in the classroom all day, every day. The scenario described by A [REDACTED]'s testimony was not credible, given Miss Lucy's presence in the classroom, that Respondent's classroom and Loeb's classroom next door could hear each other, and the status of all teachers and assistants as mandated reporters.

27. (A) It was not established that, during the period July 1, 2009, to June 30, 2010, Respondent pushed student M [REDACTED] J. down to the ground, into a chair, or against a wall. Respondent denied these allegations.

(B) Student A [REDACTED] G. testified that he saw Respondent commit these alleged acts against M [REDACTED]. Student J [REDACTED] I. testified that Respondent hit and pushed M [REDACTED] and that he hit M [REDACTED] a lot. The students' narratives were not credible, given Miss Lucy's presence in the classroom, that Respondent's classroom and Loeb's classroom next door could hear each other, and the status of all teachers and assistants as mandated reporters. Furthermore, Respondent's testimony sufficiently refuted the testimonies of A [REDACTED] and J [REDACTED]. Respondent was continually addressing M [REDACTED] behaviors in the classroom. Those

behaviors included dropping himself to the floor while crying and screaming, sometimes for no apparent reason. Respondent was familiar with M■■■■ behaviors. Respondent credibly explained that J■■■■ and A■■■■ were misreading or misconstruing the situation and/or Respondent interventions to address the situation. For example, when the boys saw M■■■■ on the ground, they mistakenly thought Respondent put him on the ground when, in fact, M■■■■ dropped himself to the floor and cried for no reason, which he was prone to do.

28. It was not established that, during the period July 1, 2009, to June 30, 2010, Respondent threw student M■■■■ J.'s shoes into the trash can. Respondent denied this allegation. The testimony of student A■■■■ G. regarding this incident was not clear as to how M■■■■ shoes ended up in the trash can, whether Respondent put them in the trash can or the shoes fell into the trash can after Respondent had placed the shoes on a cabinet. Student J■■■■ I. testified that Respondent threw M■■■■ shoes in the trash can. Respondent's testimony was the more persuasive evidence regarding this charge. Respondent had put M■■■■ in time-out. M■■■■ began repeatedly kicking one spot in the wall. Respondent was not aware of what M■■■■ was doing because he did it without making a lot of noise. A hole began to develop in the wall where M■■■■ was kicking. When Respondent saw what happened, he asked M■■■■ to take off his shoe. Respondent thought M■■■■ would not continue to kick the wall with his bare toes. M■■■■ took off his shoe, became upset, and then threw his shoe into the trash can. Respondent retrieved the shoe from the trash can and placed it on top of a cabinet, out of M■■■■ reach. Respondent returned the shoe to M■■■■ at lunchtime.

Charge 3 – Student M■■■■ C.

29. It was not established that, during the period July 1, 2010, to June 30, 2011, Respondent violently grabbed the back of the shirt collar of student M■■■■ C. Respondent denied this allegation. The testimony of M■■■■ C.'s father regarding this incident was refuted by the credible testimonies of Respondent and Loeb regarding the morning routine at Meyler and the layout of campus, which would have made it difficult to see.

30. During the 2010-2011 school year, M■■■■ C. was a six-year-old first grader in Respondent's class. M■■■■ was diagnosed with autism and was not verbal. Respondent was M■■■■'s teacher for one year. Respondent found M■■■■ to be a sweet boy.

31. M■■■■'s father, S■■■■ C., testified about an incident he observed. M■■■■ and his father arrived at the school gate between 7:30 and 8 a.m. School started at 8 a.m. M■■■■'s father was standing outside of the school gate at 223rd Street. He saw M■■■■ walk inside the school gate but then he suddenly froze when he saw Respondent. M■■■■'s father testified that he saw Respondent grab M■■■■ by the collar of his shirt and he pushed and dragged M■■■■ to walk towards his classroom. M■■■■'s father testified that he saw Respondent take six to eight steps while grabbing M■■■■'s shirt collar. M■■■■'s father estimated that he was standing 25 to 30 feet from Respondent and M■■■■. M■■■■'s father assumed that Respondent grabbed M■■■■'s collar all the way to the classroom, although he only saw a few seconds of Respondent and M■■■■ together. M■■■■'s father testified he was

too far away to hear if M[REDACTED] said anything. M[REDACTED]'s father testified that a janitor prevented him from entering the campus through the gate, and directed him to go to the main office. M[REDACTED]'s father spoke to an assistant principal. He did not make any written statement. He did not call the police. M[REDACTED]'s father picked up M[REDACTED] afterschool that same day. He saw Respondent but did not speak to him about seeing him grab M[REDACTED] by the shirt collar. M[REDACTED]'s father did not mention the incident during subsequent times that he saw Respondent.

32. Respondent testified credibly that it was impossible for M[REDACTED]'s father to see M[REDACTED] and Respondent walking to the classroom from outside the school gate at 223rd Street. The morning routine at Meyler Elementary School was that the teacher's aides received the children off the school bus starting at 7:30 a.m. Pursuant to the principal's order, the teachers' work day started at 7:40 a.m. and the teacher aides' work day started at 7:30 a.m. Respondent stayed in his classroom until 8 a.m. When the children arrived at school, they lined up on the playground according to the room numbers painted on the asphalt. At 8 a.m., Respondent and the other teachers went to the playground to meet their students and walk them to the classroom. All of the students and teachers used one of two paths to walk from the playground to their classrooms in the bungalows. Respondent estimated that the distance from the gate at 223rd Street, where M[REDACTED]'s father was standing, to the bungalows where Respondent's classroom was located was 250 to 500 feet. A person standing outside of the gate must look across a busy parking lot to see the bungalows. Respondent contends that it was impossible for M[REDACTED]'s father to clearly see what was happening when Respondent's students walked from the playground to the classroom. Many adults and teachers are present for the morning routine of walking the students from the playground to their respective classrooms. Respondent testified that, when M[REDACTED] was in front of him and began to wander, Respondent would sometimes drape his arm over M[REDACTED]'s shoulder to keep the boy walking in a straight line with the rest of the class.

33. Loeb testified regarding the morning routine. All students are received by their teachers at 8 a.m. at the playground in the back of the campus. From 223rd Street, there are five buildings of bungalows between the playground and the gate at 223rd Street. Loeb and Miss Lucy had the same morning routine. They would meet students coming off the school bus, and escort the students through the main office and out to the playground, where they would line up by classrooms. Loeb testified she would meet her students at the 223rd Street gate. If Miss Lucy was not there, Loeb would meet the students from her class and Respondent's class. The teachers would never meet students at the 223rd Street gate. All teachers stayed in their classrooms until the school bell rang at 8 a.m. Loeb testified that a person standing outside of the gate at 223rd Street would be unable to see Respondent collecting his students from the playground in the morning. There was a set route and routine of how the students and their teachers walked from the playground to their classrooms. There is also a parking lot at the 223rd Street gate, which was typically busy with teachers and staff arriving between 7:30 a.m. and 8 a.m. Loeb estimated the distance from the gate at 223rd Street to the bungalow with Respondent's classroom was at least 150 feet.

Charges 4 - 7, 13, and 14 – Student A ■■■ R.

34. Student A ■■■ R. was a six year old first grader in Respondent's class at the start of the 2011-2012 school year. He has a diagnosis of autism. Respondent was A ■■■'s teacher for kindergarten during the prior school year.

35. (A) A ■■■'s mother, R ■■■ N., testified at this hearing. She testified that A ■■■ had limited speaking ability and only said a few words. A ■■■'s mother noticed that A ■■■'s behavior started to change in the early part of the 2011-2012 school year. The mother testified that A ■■■ expressed fear about going to school. When she woke him up to go to school, A ■■■ indicated he did not want to go by saying "mommy, please no." On other occasions while at home, A ■■■ said, "no school." A ■■■'s mother testified that when she brought A ■■■ to school, he would hide behind her and say, "mommy home." A ■■■'s mother took her son's words, and his fearful body language, to mean that he was afraid to go to school.

(B) A ■■■'s mother testified that A ■■■ completed the fall semester of the 2011-2012 school year in Respondent's class. A ■■■'s mother testified that the last day of school was December 15, 2011. When she picked up A ■■■ afterschool that day, she saw that A ■■■ was crying and he had a red bump on his lower lip. She took a picture of A ■■■'s face at that time. A ■■■'s mother contends that Respondent struck A ■■■ and caused the bump on his lip. There was no bump on his lip when she dropped him off at school that morning. A ■■■'s mother did not take A ■■■ to the doctor. A ■■■'s mother also testified that, on the morning of December 14, 2011, she saw a bruise on A ■■■'s thigh. She testified she did not see the bruise the previous night when she got him ready for bed. A ■■■'s mother asked him about the bruise. The mother testified that A ■■■ tried to explain, but since he has no well-defined language, she was unable to understand him. In January 2012, A ■■■'s mother met with the principal and requested that he transfer A ■■■ to another school. Subsequently, in or about February 2012, A ■■■ was transferred to Halldale Elementary School.

36. Respondent denied the charges in the Amended Accusation regarding student A ■■■ R. Respondent found Angel to be a good-natured boy who enjoyed school in first grade the same as he did in kindergarten. Respondent felt his relationship with A ■■■ was fine. Respondent found that A ■■■ simulated speech and the tonality of speech. Thus, for example, if A ■■■ attempted to say three sentences, the listener would only be able to make out one or two words he was trying to say or the sound he was attempting to make.

37. It was not established that, during the period September 7, 2011, to January 31, 2012, Respondent hit student A ■■■ R. on at least two occasions. The District presented no direct evidence to support this charge.

38. It was not established that, during the period September 7, 2011, to January 31, 2012, Respondent threatened student A [REDACTED] R. that he would call the police on him.¹ Respondent denied threatening to call the police on A [REDACTED] R. or any of this other students. A [REDACTED] did not have the verbal ability to state that Respondent threatened to call the police on him. At the IEP meeting held in November 2011, A [REDACTED]'s mother did not raise any concern about Respondent threatening to call the police on her son. The mother never mentioned this concern until two years later, in her written statement dated September 5, 2013. This charge was not supported by a preponderance of the evidence.

39. It was not established that, during the period September 7, 2011, to December 13, 2011, Respondent caused so much fear in student A [REDACTED] R. that, when he was to return to school in January 2012, A [REDACTED] did not want to go to school, each day crying and resisting more and more, causing his parents to pull him out of school. The preponderance of the evidence did not support this charge. The testimony of A [REDACTED]'s mother that Respondent caused A [REDACTED] to fear going to school was speculative.

40. It was not established that on December 14, 2011, Respondent struck A [REDACTED] R., causing a bruise on his hip. The District failed to present sufficient evidence to establish this charge. The testimony of A [REDACTED]'s mother that Respondent caused the bruise was speculative.

41. It was not established that on December 15, 2011, Respondent struck A [REDACTED] R., causing a red bump on his lower lip. The District failed to present sufficient evidence to establish this charge. The testimony of A [REDACTED]'s mother that Respondent caused a red bump on A [REDACTED]'s lower lip was speculative. No discernible bump or injury to A [REDACTED]'s lower lip is shown on the photograph taken by A [REDACTED]'s mother.

Charges 8 and 12 – Student A [REDACTED] R.

42. Student A [REDACTED] R. was a first grade student in Respondent's class during the period September 7, 2011, to October 14, 2011. A [REDACTED] is diagnosed with autism. Respondent found A [REDACTED] was the quietest student he has ever taught. A [REDACTED]'s vocabulary was very limited and he rarely spoke. A [REDACTED] did not know how to hold a pencil or write letters. Respondent had him trace along dotted lines to form his letters.

43. (A) A [REDACTED]'s mother, E [REDACTED] M., testified that, while giving A [REDACTED] a bath on October 14, 2011, she found red marks on his body that looked to her like A [REDACTED] had been struck. The mother testified that when she asked A [REDACTED] how he got the marks, he started to cry and did not want to tell her. A [REDACTED]'s mother continued to try to get him to tell her. The mother testified that A [REDACTED]'s hands started to shake and he said that he

¹ Charges 5 and 7 both allege that Respondent threatened to call the police on student A [REDACTED] R. The relevant time period for both charges starts on September 7, 2011. However, the relevant period for Charge 5 ends on January 31, 2012, and the relevant period for Charge 7 ends on December 16, 2011. Charge 7 is duplicative of Charge 5.

did not want to go to jail, and that Respondent had said that if he said something, Respondent was going to send him to jail. The mother further testified that A ██████ told her that Respondent grabbed him with his hands and pulled him. A ██████'s mother called the police. Police officers came to the home and interviewed A ██████ and his mother. The next day (October 15, 2011), A ██████'s mother met with principal Carrillo and Respondent and showed them the markings on A ██████'s body and reported that A ██████ said that Respondent had smacked him. She also told them that she had called the police and made a report. A ██████ did not return to school at Meyler after October 15, 2011. His parents transferred him to Halldale Elementary School.

(B) On cross-examination, A ██████'s mother admitted she did not see A ██████ get the marks on his body. She believes Respondent caused the marks because that's what A ██████ told her. When asked how Respondent caused the marks, the mother responded, "I'm sure he grabbed him real hard to cause the marks." (Transcript, Vol. II, p. 294.) The mother testified that she asked Miss Lucy about the marks, but Miss Lucy told her she was not in classroom at the time. However, A ██████'s mother admitted that A ██████ told her that Miss Lucy was present in the classroom.

44. Respondent denied that he caused any marks on A ██████'s body, or that he threatened to call the police on A ██████ if he said anything. Respondent testified that he had a good relationship with A ██████. The boy was obedient and quiet. A ██████ played in the classroom, he was never afraid, and he smiled. Respondent points out that the first time A ██████'s mother mentioned an allegation about threatening to call the police on her son was in her letter dated October 3, 2013, which principal Carrillo obtained after the September 4, 2013 conference. The mother did not mention any allegation about threatening to call the police when she came to the school on October 15, 2011 and reported finding marks on A ██████'s body the night before.

45. It was not established that, during the period September 7, 2011, to October 14, 2011, Respondent, on at least one occasion, threatened A ██████ R. with calling the police and that the police would take him to jail if A ██████ said something. The testimony of A ██████'s mother regarding this charge is not sufficient to establish this charge. A ██████'s limited verbal abilities undercut the credibility of his mother's testimony that he told her Respondent threatened him with calling the police. Also significant is that A ██████'s mother never mentioned this allegation in October 2011, but first mentioned it two years later in the letter she wrote at principal Carrillo's request.

46. It was not established that, on or about October 14, 2011, Respondent caused first grade student A ██████ R. multiple bruises to his neck, arm, and back. The testimony of A ██████'s mother that Respondent caused the marks she found on A ██████'s body was speculative and, therefore, insufficient to establish this charge.

Charges 9, 10, and 11 – Student K■■■P■

47. Student K■■■P■ is nine years old and will be entering the fifth grade. K■■■P■ was six years old when he was a student in Respondent's class at Meyler. K■■■P■ is diagnosed with autism. Both Respondent and Loeb testified that K■■■P■ was in Respondent's class for both kindergarten and first grade. K■■■P■'s mother, C■■■P■, testified that Respondent was her son's teacher only for first grade.

48. K■■■P■ testified that, on one occasion, Respondent grabbed and slapped the back of his left hand. K■■■P■ testified he started crying, and that his hand started to look reddish. K■■■P■ testified that, on a second occasion, Respondent hit him on both of his hands. K■■■P■ testified he was sitting at his table when Respondent grabbed his hand and slapped it. K■■■P■ testified that Miss Lucy was present in the classroom on the two occasions Respondent hit his hands. K■■■P■ did not go to the principal to complain that Respondent hit his hands. His mother did not take him to the doctor.

49. C■■■P■ testified that when K■■■P■ was in first grade during the 2011-2012 school year, his speech ability was very limited. The mother testified that K■■■P■ used very few words and he would express himself using signals. During the fall of 2011, K■■■P■ expressed that he did not want to go to school, first to his siblings and then to his mother. K■■■P■'s mother testified that K■■■P■ would hold her hand, his eyes filled with tears, and he told his mother not to take him to school. In or about November 2011, during an IEP meeting, C■■■P■ reported that K■■■P■ had told his sister that Respondent was hitting him, and that Respondent also said he loved to see blood. She did not mention any concern about Respondent threatening K■■■P■ with calling the police on him. The week prior to this IEP meeting, C■■■P■ spent a few days observing Respondent's classroom to help K■■■P■ feel protected. During that week in Respondent's classroom, K■■■P■'s mother did not mention to anyone at the school that K■■■P■ had said the teacher was hitting him or the teacher made comments about seeing blood. The mother testified that, on the day of the IEP meeting, the police came to her house and interviewed her and then K■■■P■. Principal Carrillo had called the police, not K■■■P■'s mother. In or about January 2012, K■■■P■ transferred from Meyler to Halldale Elementary School.

50. It was not established that, during the period September 7, 2011, to December 16, 2011, Respondent pulled first grade student K■■■P■'s ear not less than two times, causing K■■■P■ to not want to go to school or go to his classroom anymore. Respondent denied this allegation. The testimony of K■■■P■'s mother was insufficient to establish this charge. The mother testified that she saw an injury to K■■■P■'s ear but offered no further details about the nature of the injury or even which ear was involved.

51. It was not established that, during the period September 7, 2011, to December 16, 2011, Respondent hit student K■■■P■ on his hand not less than two times, causing K■■■P■ to not want to go to school or go to his classroom anymore. Respondent denied this allegation. The scenario described by K■■■P■ was not credible, given Miss Lucy's

presence in the classroom, that Respondent's classroom and Loeb's classroom next door could hear each other, and the status of all teachers and assistants as mandated reporters.

52. It was not established that, during the period September 7, 2011, to December 16, 2011, Respondent threatened student K■■■■P■■■ that he would call the police on the student, causing K■■■■P■■■ to fear Respondent and not want to go to school. The testimony of K■■■■P■■■'s mother is insufficient to establish this charge. K■■■■P■■■'s limited verbal abilities during the relevant time period makes it less credible that, in 2011, he complained of Respondent threatening to call the police on him. Notably, K■■■■P■■■'s mother never raised this allegation with anyone at Meyler during 2011, and only first mentioned this allegation in the letter she wrote at principal Carrillo's request two years later in September 2013.

Charge 15 – Student L■■■■H.

53. (A) It was not established that, during the period July 1, 2011, to June 30, 2012, Respondent grabbed second grade student L■■■■H.'s arm, causing L■■■■ to cry while he was doing math at his desk. The District's evidence for this charge was a letter dated October 2, 2013, by L■■■■H.'s mother. (Exh. 1, p. 13.) In the letter, L■■■■H.'s mother wrote that the incident that is the basis for this charge occurred in September 2011. L■■■■H.'s mother did not testify at this hearing. The District's evidence also included the conference memorandum dated September 4, 2013, by principal Carrillo, which states that L■■■■H.'s father reported that Respondent grabbed L■■■■ arm during a math lesson because the boy was not listening, and caused L■■■■ to cry. Neither principal Carrillo nor L■■■■H.'s father testified at this hearing. The District's documentary evidence is uncorroborated hearsay and insufficient to establish this charge.

(B) Respondent denied this allegation. Respondent's testimony established that he was working on math lessons with L■■■■H. in the classroom. L■■■■ was having difficulty with math, so Respondent had him come to the board to work through some problems. L■■■■ finally got the problems correct. L■■■■ was happy and agreed to go back to his desk and finish working at his desk. A few minutes later, Respondent saw L■■■■ was just staring at his workbook. When Respondent asked him what was wrong, L■■■■ shrugged his shoulders and started to cry. Respondent told him to take a break. L■■■■ came back five minutes later and finished his math homework at his desk. Respondent had never seen L■■■■ cry before. Loeb testified that, while in her classroom next door, she heard Respondent teaching a math lesson to L■■■■. Loeb testified that it sounded like L■■■■ was having a hard time with the lesson, as Respondent kept going back over the lesson and asking L■■■■ if he understood. Loeb testified that Respondent's voice did not sound angry. Finally, after several times, Respondent asked L■■■■ to come up to the board and do a problem. L■■■■ said no. When Respondent asked him why, L■■■■ did not respond. Loeb recalled this incident because she was alone in her classroom doing paperwork and she could hear everything in Respondent's classroom.

54. It was not established that, during the period July 1, 2011, to June 30, 2012, Respondent hit student L■■■■H. on the fingers with a large ruler. Respondent denied this

allegation. Respondent testified that the first time he heard of this allegation was from the Amended Accusation in May 2015. The letter by L [REDACTED] H.'s mother does not mention this allegation. Nor does the September 4, 2013 conference memorandum by principal Carrillo. No evidence was presented to establish this charge.

Charge 16 – Student A [REDACTED] G.

55. (A) It was not established that during the period from July 1, 2009, to June 30, 2011, Respondent, at least once, struck student A [REDACTED] G. on his arm and/or hands with a large ruler. Respondent denies the charge. Respondent testified that he has never used a ruler to strike a child or tap a child.

(B) A [REDACTED] testified that Respondent used two rulers during class, a small one and another that was approximately 36 inches long with a metal tip on one end. A [REDACTED] testified that Respondent hit the following students on their hands with a ruler: K [REDACTED] P [REDACTED] B [REDACTED] J [REDACTED] S [REDACTED] and M [REDACTED]. A [REDACTED] also testified that Respondent hit the back of his left hand with a ruler, at least once a month. The incident described by A [REDACTED] is not credible. Miss Lucy, the teacher's assistant, was present in the classroom and a mandated reporter. Also, the classroom next door could hear what was going on in Respondent's classroom. If, as A [REDACTED] claimed, Respondent was using a ruler to hit students in the class, it could reasonably be expected that some other adult (such as Miss Lucy or Loeb) would have heard something to draw their attention to the situation.

56. It was not established that Respondent grabbed and forcibly squeezed student A [REDACTED] G.'s arm and/or hands. But it was established that Respondent used a District-approved technique to restrain A [REDACTED] to prevent him from throwing things in the classroom, such as a chair or book. Student A [REDACTED] G. testified that Respondent grabbed him by his left wrist and "squished" his hand. A [REDACTED] did not see Respondent grab or squeeze any other student. Student J [REDACTED] I. testified that, one time, he saw Respondent grab A [REDACTED]'s arms. The evidence tends to show that what A [REDACTED] perceived was Respondent using a District-approved behavioral intervention. Respondent testified A [REDACTED] was his student for two years. He had to physically restrain A [REDACTED] on 6 to 8 occasions because A [REDACTED] was throwing things or getting ready to throw things (such as a chair, book, or supply box). Respondent needed to restrain A [REDACTED] for the safety of others in the classroom. Respondent used the same restraint technique he used on M [REDACTED]. For example, when A [REDACTED] grabbed a chair, Respondent restrained him in order to prevent him from grabbing something else.

57. It was not established that Respondent threw A [REDACTED] G.'s shoes into the garbage can, forcing A [REDACTED] to wade through the garbage to retrieve them. Respondent denies the charge. A [REDACTED] testified that Respondent never put his shoes in the trash can. He testified that Respondent put the shoes on a cabinet, from where they afterwards fell into the trash can.

Charge 17 – Student K ■ P ■

58. It was not established that, during the period July 1, 2009, to June 30, 2011, Respondent pulled out a chair from underneath student K ■ P ■ and caused him to fall. Respondent denied this allegation. The District presented the testimony of student A ■ G. in support of this charge. A ■'s testimony, however, did not establish that Respondent pulled out K ■'s chair from underneath him and caused him to fall. According to A ■'s testimony, K ■ was in his chair and trying to get his pencil back from Respondent, when his chair fell back and K ■ hurt his head. Andrew testified that K ■'s chair fell back by itself, and that Respondent tried to stop the chair but then let it go. Charge 17 was not established by the evidence.

Charge 18 – Student B ■ L.

59. It was not established that, during the period July 1, 2009, to June 30, 2011, Respondent hit student B ■ L. on the fingers. Respondent denies this charge. The first time Respondent heard about this allegation was when he read the Amended Accusation dated May 5, 2015. Student A ■ G. testified that Respondent hit B ■ on the hands with a ruler. A ■ also testified that B ■ was unable to speak. Student J ■ I. testified about B ■ but only that B ■ could barely talk and would only talk to certain people. J ■ did not testify about Respondent hitting B ■ on his fingers. The testimony of A ■ G., that Respondent hit B ■ on his hands with a ruler is not sufficient to establish this charge. Given Miss Lucy's presence in the classroom, that Respondent's classroom and Loeb's classroom next door could hear each other, and the status of all teachers and assistants as mandated reporters, the scenario described by A ■'s testimony was not credible.

LEGAL CONCLUSIONS

1. Jurisdiction to proceed in this matter is established pursuant to Education Code section 44944 and Factual Findings 1-3.²

2. The grounds for the dismissal of a teacher in this state are enumerated in Education Code section 44932. In this case, the District seeks dismissal solely on the basis of egregious misconduct under section 44932, subdivision (a)(1).

3. Education Code section 44932, subdivision (a)(1), defines egregious misconduct as follows: "For purposes of this chapter, 'egregious misconduct' is defined exclusively as immoral conduct that is the basis for an offense described in Section 44010 or 44011 of this code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal Code. Education Code section 44010 defines "sex offense" according to certain specified

² All further statutory references are to the Education Code unless otherwise indicated.

provisions of the Penal Code, including but not limited to Penal Code sections 288 (lewd or lascivious act), 647.6 (annoying or molesting a child), and 243.4 (sexual battery). Penal Code sections 11165.2 to 11165.6 define the following offenses against children: section 11165.2 (child neglect), section 11165.3 (willful harming or endangering a child), section 11165.4 (unlawful corporal punishment or injury), section 11165.5 (abuse or neglect in out-of-home care), and section 11165.6 (child abuse or neglect).

4. "Immoral conduct" has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is 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 Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal. App.2d 808, 811 (*Weiland*).)

5. The ALJ considered the factors enumerated in Evidence Code section 780 in determining the credibility of witness testimony. Those factors are: (a) his demeanor while testifying and the manner in which he testifies; (b) the character of his testimony; (c) the extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies; (d) the extent of his opportunity to perceive any matter about which he testifies; (e) his character for honesty or veracity or their opposites; (f) the existence or nonexistence of a bias, interest, or other motive; (g) a statement previously made by him that is consistent with his testimony at the hearing; (h) a statement made by him that is inconsistent with any part of his testimony at the hearing; (i) the existence or nonexistence of any fact testified to by him; (j) his attitude toward the action in which he testifies or toward the giving of testimony; and (k) his admission of untruthfulness. (Evid. Code, §780, subs. (a)-(k).)

6. The District has the burden of proof in this matter, and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

7. It was not established by a preponderance of the evidence that Respondent engaged in egregious misconduct, pursuant to Education Code section 44932, subdivision (a)(1). (Factual Findings 1-59.)

8. In this case, the charges in the Amended Accusation were not established by a preponderance of the evidence. Respondent had been working as a special education teacher at Meyler for about 14 years when parents of some students reported complaints to the school in the 2011-2012 school year. Those reports were the primary basis for the charges in the Amended Accusation. The District presented documentary evidence and testimony by students and parents that was either not sufficient and/or not persuasive to establish the charges. The student witnesses, who were in special education, testified to matters that occurred when they were in kindergarten or first grade and approximately six years old. The students' testimonies described scenarios that could not have plausibly occurred in the school setting at Meyler, especially with the presence of a special education assistant in


Respondent's classroom and the room next door, where each room could hear sounds from the other room, and the teachers and assistants being mandated reporters obligated to report actual or suspect abuse or misconduct with children. Additionally, Respondent testified persuasively that the students misconstrued or misunderstood when he used proper or appropriate behavior intervention techniques to address behaviors by M [REDACTED] (who was prone to throwing himself to the floor and crying for no reason) or A [REDACTED] (who had a tendency to throw chairs and books). Respondent used District-approved techniques in managing the students in his class. The charges against Respondent involved some students who were non-verbal or had limited speaking abilities at the time they were in Respondent's class. The testimony of parents regarding their belief that Respondent harmed their child was speculative and uncorroborated by other valid, objective evidence.

9. Based on the foregoing, cause does not exist to dismiss Respondent from employment with the District, on the basis of egregious misconduct, pursuant to section Education Code section 44932, subdivision (a)(1), 44934.1, and 44944.1.

ORDER

The Amended Accusation against Respondent Eric Tureaud is hereby dismissed and he shall remain employed with the Los Angeles Unified School District.

DATED: August 21, 2015


ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings