

**BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA**

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

OAH No. 2015020642

HSIAO YUAN WANG,  
A Permanent Certificated Employee,

Respondent.

**DECISION**

This matter was heard by the Commission on Professional Competence in Los Angeles on November 2 - 3, 9 – 10, and 12 – 13, 2015, and January 4 – 7, 2016, under the authority of Education Code sections 44932 and 44939. The Commission on Professional Competence was comprised of the following members: Kristi Harabedian, teacher, Los Angeles County Office of Education; Francine Buschel-Gomez, retired teacher, Los Angeles Unified School District; and Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings.

Complainant Los Angeles Unified School District was represented by Ellen Wu, Attorney at Law, and Lynn I. Ibara, Attorney at Law. Respondent Hsiao Yuan Wang was present throughout the hearing and he represented himself during the hearing days in November 2015 and was represented by Ronald C. Lapekas, Attorney at Law, during the hearing days in January 2016.<sup>1</sup>

During the hearing, complainant presented documentary evidence and the testimony of several administrators and staff. Complainant also moved to amend the Accusation and Statement of Charges to conform to the proof that was presented during the hearing. Complainant's motion was granted. However, complainant's motion to add a new cause for discipline for dishonesty was denied by the Administrative Law Judge in the interests of fairness and due process. Subsequently, complainant filed the Amended Accusation and

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<sup>1</sup> Respondent's prior counsel, Peter O. Tong, Attorney at Law, withdrew as his counsel of record on the first day of the hearing.

Statement of Charges. Respondent testified and presented documentary evidence and the testimony of witnesses.

On his own motion, the Administrative Law Judge hereby marks the Accusation, Amended Accusation, and Notice of Defense, collectively, as Exhibit 66 and admits the exhibit into evidence for purposes of jurisdiction only.

Oral and documentary evidence having been received and oral argument heard, the Commission on Professional Competence submitted this matter for decision on January 7, 2016, conducted deliberations on January 8, 2016, and finds as follows:

#### FACTUAL FINDINGS

1. On March 5, 2015, the Accusation, Case Number 2015020642, was made and filed by Justo H. Avila in his official capacity as the Chief Human Resources Officer of complainant Los Angeles Unified School District, State of California (District). On March 17, 2015, respondent filed a Notice of Defense, requesting a hearing on the allegations of the Accusation. On December 22, 2015, the Amended Accusation was made and filed by Justo H. Avila in his official capacity as the Chief Human Resources Officer of the District. With administrative offices located at 333 South Beaudry Avenue in Los Angeles and schools throughout the Los Angeles area, the District is one of the largest and most diverse comprehensive school districts in the nation.

2. (A) At all times relevant herein, respondent has been employed as a permanent certificated employee of the District. Respondent was born and educated in China. He attended Teachers' College and then taught for eight years in that country. In 1969, during the Cultural Revolution, he was required by the Chinese government to work in the countryside for five years. In 1982, respondent came to the United States as a foreign student and attended the University of California at Davis and the University of Houston. He attained a master of art degree in English and/or linguistics. In 1990, respondent began working for the District and taught at Garfield, San Fernando, North Hollywood, and Monterey High Schools. Respondent holds a credential or credentials which allow him to teach in continuation and educational option schools of the District.

(B) During the 2007-2008 school year, respondent was recruited by Principal Janet Seary to apply for the job of technology coordinator, an out-of-classroom position, at her school site, Central High School and Tri-C. At that time, respondent was a teacher at Monterey High School, which is a continuation high school. Seary had met respondent at meetings of the Western Association of Schools and Colleges (WASC), a school accreditation organization, and was impressed with his experience in teaching at a continuation high school and his expertise in WASC and technology.

(C) On February 28, 2008, respondent submitted a Teacher-Initiated Transfer Application. On April 1, 2008, respondent was allowed to transfer to Central High School

and began teaching at its Pico Union classroom site. In the fall semester of the 2008-2009 school year, respondent was hired as the technology coordinator or advisor for Central High School and Tri-C. As technology coordinator, respondent was responsible, in part, for installing and replacing computers and related software and helping teachers to use the computers and software in their classrooms. He attended technology meetings, worked on websites and at the computer laboratory, and kept inventory of the school computers. Respondent was hired as the technology coordinator pursuant to a one-year contract that was renewable for up to five years. On an undetermined date, respondent was also chosen to be the testing coordinator for Central High School and Tri-C.

### Central High School and Tri-C

3. (A) Central High School and Tri-C are schools within the District's Educational Options Program. Central High School is a continuation high school for students in grades nine through 12 who have not earned enough credits to graduate with their class and are at risk of dropping out of school. The students range in age from 16 to 22 years. Central High School offers educational opportunities to its students in self-contained classrooms which are usually taught by a single teacher and have a low student-to-teacher ratio. Students at Central High School attend class for four periods each school day from 8:00 a.m. until 12:45 p.m. Tri-C is a community day school for younger students in grades seven through 12, many of whom have serious personal and family problems and are further behind in accumulating graduation credits. Tri-C also has self-contained classes with small numbers of students. Students at Tri-C attend class for six periods each school day from 8:00 a.m. until 2:45 p.m.

(B) The educational programs and operations at Central High School and Tri-C are overseen by one principal and two assistant principals who work from administrative offices located at San Pedro Street and 14th Street in downtown Los Angeles. The administrative offices are comprised of a main two-story building and a one-story bungalow. The bungalow has a large, open area that was used as a classroom. The classes at Central High School and Tri-C are held at 27 different sites throughout the District ranging from San Pedro to Pacoima. The classroom sites are located in the community in such places as shopping centers, a church, a bank building, a senior citizen center, an occupational center, and District offices. Because they are located in the community, the classroom sites do not have facilities usually found in schools, such as areas for physical education, or on-site administrators. Instead, the principal and two assistant principals share responsibility for visiting the classroom sites each week so that they may review the performance and needs of teachers and students and to manage and assist teachers in handling school and classroom issues, including student discipline. Within the 27 classroom sites, Central High School has 24 teachers and Tri-C has 16 teachers. Each classroom site has no more than one to three teachers who may be assisted by aides and resource teachers. The teachers come to the main administrative offices to pick up supplies and to attend professional development training and faculty and staff meetings.

4. (A) Central High School has an enrollment of 270 to 500 students and Tri-C has an enrollment of 275 to 325 students. The students at Central High School and Tri-C present with a different set of challenges than students found at traditional or comprehensive high schools. Many of the students are long-time English language learners, need special education services and supports, have behavioral problems or disciplinary histories, and have been exposed to abuse and drug and alcohol use. Students at Tri-C typically have been expelled from their schools, have serious disciplinary or attendance problems, live in foster or group homes, or have been referred by the county probation department due to contacts with law enforcement. The students at both Central High School and Tri-C often feel overwhelmed or out of place in traditional school settings and have not succeeded there. They tend not to participate in class and miss school altogether. Due to their personal backgrounds and experiences, the Central High School and Tri-C students are considered at risk for dropping out of school and may be emotionally fragile. They require redirection, smaller learning environments, one-to-one assistance and support, and more resources in order to stay in school and to learn.

(B) Teachers at Central High School and Tri-C often have prior experience in teaching at-risk students or at continuation schools and have an interest in teaching outside of the traditional school setting. The teachers must be comfortable teaching by themselves in one- to three-classroom sites located in community settings and must be willing to teach subjects other than in their credentialed subject areas. The teachers must be willing to engage and help the students to learn, be successful, and earn graduation credits. The teachers are expected to implement District educational standards, curriculum, and disciplinary guidelines and to follow the rules, regulations, and policies of both the school and the District. Moreover, despite the behavioral and disciplinary problems that may be presented by the students, the teachers at Central High School and Tri-C are nevertheless expected to create classroom environments that are safe and conducive to learning and to maintain professional relationships with the students and their colleagues and administrators.

(C) As part of their classroom duties, teachers at Central High School and Tri-C are expected to manage their classrooms and maintain order and discipline among the students in keeping with the school disciplinary plan. The teachers must follow the steps outlined in the school disciplinary plan, including the development and posting of their own progressive disciplinary plans that inform their students of the classroom rules, a system of rewards, and the consequences for violating the rules. The teachers are expected to enforce and implement their disciplinary plans in a consistent and fair manner. In recognition of not only the District's policies but perhaps also the fragile psyches of the students at Central High School and Tri-C, the teachers receive training in professional development classes and in individual counseling sessions with the administrators and school advisor about the proper way to maintain discipline in their classrooms.

(D) Teachers are trained that it is not appropriate to yell at or to argue with the students or to confront them in an aggressive manner. The students are often defensive, sensitive, and easily provoked. They do not react well to teachers belittling or criticizing them in front of their peers. The teachers must inform the students when their behavior is

inappropriate or disruptive but they are also trained to take students aside and to talk to them discreetly or after class to offer them alternatives and suggestions. If the students do not improve their behaviors, the teacher may then have conferences with the students and their parents and refer them to the school counselors or assistant principals. Central High School and Tri-C teachers are trained in the importance of establishing patterns of appropriate behavior, remaining calm, talking to the students in a respectful and positive tone, and setting rules, consequences, and structure in the classrooms. The teachers must recognize cues exhibited by the students, avoid confrontations with them, prevent altercations among the students, and maintain a proper perspective. If the students' behaviors are not disruptive to instruction, the teachers have the discretion of ignoring the conduct and speaking to the students about their conduct at a later time.

5. (A) At the beginning of each school year, and early in the fall semester, Central High School and Tri-C in conjunction with the District provide teachers with mandatory professional development training on District policies and the school disciplinary plan. The teachers are given copies of the District policies. In addition, District policies and disciplinary issues are reviewed with the teachers at monthly faculty meetings and in individual advisory sessions.

(B) As a certificated employee at Central High School and Tri-C, respondent attended the professional development training sessions and received copies of the District policies. The District policies, which respondent is expected to know and to follow in performing his daily tasks as a certificated employee and teacher, are summarized below.

#### District Policies

6. In September 1998, the District adopted an Employee Code of Ethics. The District revised the Employee Code of Ethics in December 2000 and February 2003. Under the Employee Code of Ethics, the District is committed to three core ethical principles: commitment to excellence, district and personal integrity, and responsibility. For the core ethical principle of commitment to excellence, the District and its employees are committed to being the best school district and to educating students to their maximum potential. The Employee Code of Ethics provides that everything employees do has an impact in the classroom. Employees must be committed to creating an environment of trust, care, and respect. Discriminatory or harassing behavior of students or colleagues is not tolerated. For the core ethical principle of integrity, the District and its employees are committed to ensuring that employee-student relationships are positive, professional, and non-exploitative. For the core ethical principle of responsibility, the District and its employees are responsible for their performance. The District and its employees must ensure that power and authority are used in an appropriate and positive manner that enhances the public interest and trust. The goal of the Employee Code of Ethics is, in part, to create a culture that fosters trust, a commitment to excellence and responsibility, and personal and institutional integrity.

7. In a Policy Bulletin dated May 18, 2009, entitled, "Ethics Policies" (Ethics Policy Statement), the District stated that all certificated and classified employees are to be knowledgeable about the District's ethics policies and must take an active role in promoting an organizational culture that encourages ethical conduct. The District has four ethics policies approved by the Board of Education, including the Employee Code of Ethics. Each District employee is responsible for setting a good example of ethical conduct in his or her work, being familiar with the ethics policies and participating in annual training activities, contributing to a proactive and transparent management of potential ethics concerns, seeking guidance from a supervisor or other trustworthy source if unsure of the most ethical and responsible course of action, and recognizing that he or she is a role model to peers but, equally important, to the students of the District.

8. In a Resolution adopted on October 10, 1988, the Board of Education of the District (Board) adopted a Resolution to Enforce the Respectful Treatment of all Persons. The Board reaffirmed its policy that students and adults in both schools and offices should treat all persons equally and respectfully and should refrain from the willful or negligent use of slurs against any person on the basis of race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief. The Board further resolved that a school-wide code of discipline regarding name-calling be developed at each school and enforced by teachers, administrators, and other staff members.

9. (A) On July 15, 2008, the District promulgated a Code of Conduct with Students in which the District resolved that the most important responsibility of all District employees is to ensure the safety of its students. While the cultivation of positive relationships with students is encouraged, employees, and all individuals who work with or have contact with students, are expected to use good judgment and are cautioned to avoid situations, including engaging in any behaviors with students or in the presence of students which are unprofessional, unethical, illegal, immoral, or exploitative. District employees are also cautioned against making statements or comments in the presence of students which are not age-appropriate, unprofessional, or sexual in nature, harassing, or demeaning.

(B) On July 1, 2010, the District issued Bulletin Number 5167.0 entitled "Code of Conduct with Students—Distribution and Dissemination Requirement," in which the District emphasized that it is obligated to investigate allegations of inappropriate conduct or behavior and, if warranted, take appropriate administrative and/or disciplinary action. In this bulletin, the District also delineated responsibilities of administrators to provide notice and guidance to employees and individuals who work with or have contact with students regarding the Code of Conduct with Students. For example, administrators are to provide the Code of Conduct with Students to each individual who works with or has contact with students on an annual basis at the beginning of the school year and to discuss and stress the policy at a meeting of employees.

10. (A) In a Policy Bulletin dated March 27, 2007, entitled "Discipline Foundation Policy, School-Wide Positive Behavior Support" (Discipline Foundation Policy), the District established a framework for developing and implementing a culture of discipline conducive

to learning and teaching by requiring a consistent school-wide positive behavior support and discipline plan. School-wide positive behavior support is based on research that indicates the most effective discipline system uses proactive strategies designed to prevent discipline problems. A school-wide positive behavior support and discipline plan is to include teaching school rules and social-emotional skills, reinforcing appropriate student behavior, and using effective classroom management and positive behavior support strategies that provide for early intervention for misconduct and appropriate use of consequences.

(B) The implementation of the Discipline Foundation Policy contemplates participation by every person in the District. For example, students are expected to learn and follow all school and classroom rules and to demonstrate appropriate social skills when interacting with both adults and peers. When behavioral expectations are not met, students are expected to work to improve behavior. Students are also encouraged to take leadership roles in modeling appropriate behaviors and attitudes for peers. Under this policy, teachers have a fundamental role in supporting a positive classroom and school, including utilizing effective classroom management strategies to create an environment that is conducive to learning and prevents misconduct. Teachers are required, in part, to acknowledge and reinforce appropriate student behavior, provide corrective feedback and re-teaching of behavioral skills when misconduct occurs, and report behavior to the school administrator or person responsible for disciplining a student who engages in ongoing misconduct.

11. In a Policy Bulletin dated February 23, 2010, entitled, "Abolition of Corporal Punishment," the District reaffirmed its policy prohibiting the use of corporal punishment, in any form, as a disciplinary option or measure at any grade level and with any student. Corporal punishment is defined as the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. Under this policy, corporal punishment refers to the intentional application of physical pain as a method of changing behavior. In this Policy Bulletin, the District encourages the use of positive approaches to discipline and classroom management to ensure that students conform to proper and expected standards of behavior so that they may derive greater benefits from the educational program.

12. In a Policy Bulletin Number 5798 dated July 16, 2012, entitled, "Workplace Violence, Bullying and Threats (Adult-to-Adult)," the District affirmed its policy prohibiting violence, bullying, and threats by or against any employee, parent, or persons doing business with or for the District. Under this policy, the District further affirmed its commitment to providing a safe and civil working environment and to ensure that all employees be able to work in an environment that is free from acts of intimidation, threats of violence, or actual violence. Under this policy, any individual who commits acts of violence or threatening or disruptive behavior in the workplace may be subject to removal from the premises, disciplinary action, and/or criminal penalties. The policy defines bullying, in part, as any severe or pervasive physical or verbal act or conduct, including electronic communications, committed by an individual towards another adult, and which has, or can be reasonably predicted to have, the effect of causing reasonable fear of harm, substantial detriment to physical or mental health, or substantial interference with work performance.

13. (A) On December 24, 2009, the District issued Bulletin Number 3630.1 entitled, "Drug, Alcohol and Tobacco-Free Workplace," which states that it is the policy of the District to maintain a drug- and alcohol-free workplace. The District prohibits the unlawful manufacture, sale, distribution dispensing, possession, or use of illicit drugs and alcohol by its employees in all District workplaces.

(B) On January 22, 2009, the District issued Bulletin Number 3277.1 entitled, "Preventive Measures and Mandatory Procedures for Students Who Violate Laws Regarding Drugs, Alcohol, Tobacco, and Other Intoxicants." The bulletin provides school administrators and other school personnel with information about federal and state laws requiring schools to be maintained free of drugs, alcohol, and tobacco, and information about the dangers and ease of access to intoxicants by school-aged children. The bulletin sets forth a policy that the District does not tolerate the use, possession, or sale of drugs, alcohol, tobacco, or any other intoxicants by students on school campuses or at school-sponsored activities. Under this policy, school administrators are required to take immediate action to prevent, discourage, and eliminate the use or possession of drugs, alcohol, tobacco, and other intoxicants on campus and at school activities by such measures as education, intervention, and discipline.

14. Under the "Child Abuse and Neglect Reporting Requirements" (Bulletin No. 1347.2 dated July 1, 2011), it is the policy of the District that all employees shall report instances of suspected child abuse or neglect by telephone immediately, or as soon as practically possible, to an appropriate child protective agency, and shall prepare and send a written report to the same child protective agency within 36 hours of receiving information concerning the incidents of child abuse or neglect. This policy makes clear that all District employees are mandated reporters of suspected child abuse or neglect and must make a telephone and written report when they have actual knowledge or reasonable suspicion of child abuse or neglect. The failure to comply with the mandated suspected child abuse reporting requirements may subject a District employee to personal civil and criminal liability as well as professional discipline. The policy defines child abuse, in part, as the infliction of willful cruelty or unjustifiable physical pain or mental suffering upon a child and the infliction of mental suffering or endangerment of emotional well-being of a child.

15. The District's policies and bulletins, summarized in Findings 6 – 14 above, constitute reasonable regulations prescribed by the governing board of the District for the governance of its schools. As a permanent certificated employee of the District, respondent is required to abide by these policies or regulations of the District. As established, in part, by the testimony of administrators in this matter, respondent received annual training in these District policies and is expected to be familiar with and abide by these District policies at all times.

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## 2010-2011 School Year

16 (A) During the 2010-2011 school year, respondent volunteered to help Assistant Principal Janine Antoine with the graduation ceremony for Central High School and Tri-C. On June 16, 2011, respondent went to Garfield High School to pick up the graduation programs from the print shop. The fee for printing the graduation programs was \$400. Respondent called Rosie Achar, a senior office technician at the administrative offices of Central High School and Tri-C. He told Achar that the print shop would not release the graduation programs until he gave them a check for \$400 and asked if there was enough money in the school account. Achar replied that there was enough money in the school account but that the principal had to sign the check and that the principal would not be back to sign a check until the next morning.

(B) On June 16, 2011, Achar called Principal Seary and left her a voice message that she had to come into the office the next morning to sign a check so that respondent could bring back the graduation programs from the print shop. Achar repeated what respondent told her, namely that the print shop would not release the graduation programs to him until he gave them a check. The graduation ceremony was scheduled for the next day.

(C) Later that same day, respondent returned to the administrative offices with the graduation programs. He went to see Achar and asked her for a check again. Achar reminded respondent that the principal had to sign the check and that she would not be back in the main office until the next day. Achar had respondent sign a purchase order for the graduation programs. Respondent did not tell Achar, or make clear to her, that he had already picked up the graduation programs from the print shop.

(D) The next morning on June 17, 2011, Principal Seary came into the administrative offices to sign the check for the graduation programs. She had planned to visit Central High School and Tri-C classroom sites in Gardena and East Los Angeles that morning but changed her plans. On arrival at the administrative offices that morning, Principal Seary signed the check but then she learned that respondent had already picked up the graduation programs. The graduation programs were in the assistant principal's office. The principal was not happy because she had changed her plans to come into the office just to sign the check so that respondent could bring the graduation programs back to the office.

(E) At approximately 11:30 a.m. on June 17, 2011, Principal Seary summoned respondent to her office. She informed respondent that she had come into the office for the sole purpose of signing the check for the graduation programs. Principal Seary asked respondent about his immediate need for a check and why he did not tell Achar that he had already brought the graduation programs back to their administrative offices. Respondent replied that Achar was a "liar." He said that he had walked by Achar's office yesterday carrying the box of graduation programs and that he had told Achar that he had the graduation programs when he asked her for a check. Principal Seary said she was not happy that she had to come into the office and that Achar did not know that respondent had already

picked up the graduation programs. Respondent became upset and angry. He said to the principal that she had "been angry with [him] the last three days and [he] did not know why." Principal Seary replied that she was not angry with him. Respondent became more agitated and yelled at her, "You are the principal so you are always right and I am nothing." The principal advised respondent to calm down. Respondent told the principal that she needed to calm down. The principal stated that respondent was becoming rude and disrespectful. Respondent replied in a loud voice, "No, you are being rude and disrespectful." At this point, Principal Seary became upset and told respondent to leave her office. When he did not leave right away, the principal opened her office door and told respondent to leave and go home because he was out of control. Respondent left the principal's office.

17. (A) Several minutes later, Principal Seary gave a signed check to respondent and asked him to deliver it to the print shop at Garfield High School. Respondent delivered the signed check to the print shop and then returned to the administrative offices to attend the graduation ceremony. At 12:30 p.m., during the lunch break, respondent approached Achar and said he wanted to talk to her about their conversation from the day before. Achar asked respondent to follow her to the conference room where she sat down to eat her lunch.

(B) While standing at the door of the conference room, respondent accused Achar of lying when she told the principal that the print shop would not release the graduation programs to him without a check. He asked her to confirm that he was carrying a box of graduation programs when he had come into the office the day before and asked her for the check. Achar replied that she recalled respondent asking for a check but she did not see him with the box of graduation programs and did not recall him telling her that he had the graduation programs. In a loud voice, respondent called Achar "a liar."

(C) Assistant Principal Antoine heard a loud voice in the conference room. She went to the conference room and heard respondent yell at Achar that she was a "liar." He was visibly upset and angry. Achar was speaking in a normal conversational tone. Antoine intervened and told respondent that his conversation was inappropriate. The assistant principal said the issue was over, that he "should leave it alone," and that he should stop talking. Antoine had Achar leave the conference room and she walked away as well. As Antoine started to walk away, respondent tried to explain his side of the story. Antoine replied, "I don't want to hear it." Respondent then yelled at Antoine in a loud voice, "You are all a bunch of liars."<sup>2</sup> Other employees heard respondent's yelling and came out of their offices. Antoine reported this incident to the principal.

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<sup>2</sup> Roy Smith, a technology and field services technician, testified and wrote a statement. He overheard the conversation between respondent and Assistant Principal Antoine on June 17, 2011, and thought that Antoine was rude to respondent and unprofessional because she interrupted respondent and did not let him explain. Smith stated that he heard respondent talking in a calm and polite manner to Antoine. Smith admitted, however, did not observe the interaction between Antoine and respondent and he offered no testimony or statement on whether he heard respondent confronting Achar and calling her a liar. Accordingly, less probative weight was assigned to Smith's testimony and statement.

18. (A) Later, after the graduation ceremony, on June 23, 2011, Principal Seary held a conference with respondent to discuss his conduct and statements to her, Achar, and the assistant principal with regard to the graduation programs, as set forth in Findings 16 – 17 above. Respondent was present for the conference along with Tony Osumi, the chapter chair of the teachers' association. Assistant Principal Antoine was also present.

(B) During the conference, Principal Seary reviewed and discussed respondent's conduct and statements. Respondent indicated that a lot of the things that the principal mentioned in the conference were not true and he would respond in writing. The principal reviewed two prior incidents in 2010 when respondent had become stressed and an incident when he became angry with another employee, said the employee was the most dishonest person he had known, and did not talk to the employee for several weeks. Regarding the latter incident, the principal had advised respondent that his conduct at that time had been unprofessional and would not be tolerated in the workplace.

(C) At the conference on June 23, 2011, Principal Seary directed respondent to always conduct himself in a professional manner, not to call people names, treat other persons with respect, and never take his anger and stress out on others by yelling and being disrespectful to them. The principal also directed respondent to see a doctor and take sick leave days if he becomes too stressed to work. Following the conference, Principal Seary prepared a two-page Conference Memorandum to memorialize the discussion at the conference and sent a copy to respondent.

19. On July 14, 2011, respondent submitted his written response to the Conference Memorandum. In his written response, which was 11-pages in length, respondent recounted his view of the events during the week of June 13, 2011, and characterized Principal Seary as angry and hostile, adding that her "anger erupted uncontrollably" on June 14th. He did not acknowledge that he engaged in any wrongdoing or made any inappropriate statements. He indicated that it had been a "morally challenging year because [the principal had] gone out of [her] way to thwart productive efforts and [to] sabotage progress." He shared "anonymous recommendations" of Principal Seary, which were actually criticisms of her. Respondent recalled that the principal had yelled at him two and one-half years ago when he borrowed a computer. Respondent accused the principal of having a vision in which "lying is a virtue and telling the truth becomes taboo" and that she should carry out her duties professionally and stop lying to the staff. Respondent described himself as a "patient, kind, honest, helpful and calm person" and suggested that the principal should apologize for yelling at him.

20. Tony Osumi accompanied respondent to the conference on June 23, 2013, in his capacity as chapter chair of the teachers' association. He is a teacher with the District. He was a teacher at Central High School from 2002 through 2013 and the chapter chair of the teachers' association at Central High School and Tri-C for one year during the 2010-2011 school year. At Central High School, Osumi observed respondent interact with administrators over the years and saw him teaching in the classroom on a few, brief

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occasions during the 2012-2013 school year. Osumi never heard any complaints about respondent or observed respondent to have any negative interactions with administrators or students. He heard Principal Seary praise respondent for his work with WASC and with students during the 2012-2013 school year. Osumi noted that the principal became agitated at a couple of faculty meetings.

21. Based on Findings 1, 2(A), 5 – 8, and 15 – 19 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct when, in June 2011, he yelled at the principal and called her “rude and disrespectful”, called the senior office technician a “liar,” yelled out at the assistant principal, “You are all a bunch of liars,” and accused the principal, among other things, of having a vision “where lying is a virtue,” in response to the June 23, 2011 conference.<sup>3</sup> Respondent’s conduct constituted violations of the District’s Employee Code of Ethics and Ethics Policy Statement as well as the Board Resolution to Enforce the Respectful Treatment of All Persons.

#### 2011-2012 School Year

22. (A) During the 2011-2012 school year, respondent worked with Santos Robles, a classified employee, in providing computer and technology services for Central High School and Tri-C. While he was the technology coordinator, respondent did not supervise Robles. Robles was supervised by Assistant Principal Gary Martinez. Both respondent and Robles reported to the assistant principal.

(B) On an undetermined date during the 2011-2012 school year, respondent and Robles had a disagreement in the workplace. Although he did not supervise Robles, respondent felt that he was responsible for tracking the classified employee’s attendance and job performance. Their relationship became strained. As a result, Robles became unhappy with his job and complained to Assistant Principal Martinez. The assistant principal met with respondent to resolve the situation. He reminded respondent that he did not supervise Robles. Respondent became agitated and angry. Respondent left the meeting, saying the principal was trying to get rid of him. Nevertheless, after the meeting with the assistant principal, respondent continued to work with Robles for the remainder of the school year without incident.

23. During the 2011-2012 school year, respondent spoke with Assistant Principal Martinez in informal meetings approximately twice a week. Respondent confided in the assistant principal. He spoke about his job as technology coordinator. On three or four occasions, however, respondent engaged in inappropriate conversations with the assistant principal about the school counselor and the principal. Respondent said that the counselor was speaking badly about the assistant principal. Respondent also stated that the principal

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<sup>3</sup> For purposes of this Decision, “inappropriate conduct” refers to conduct that is not appropriate in the working environment of the District’s schools.

was “power hungry” and “trying to destroy” respondent. Assistant Principal Martinez listened but did not place any credence or weight on respondent’s comments. He thought that respondent was only trying to befriend or ally himself with the assistant principal. On the other hand, the assistant principal did not stop respondent or caution him about talking inappropriately about fellow administrators either.

### 2012-2013 School Year

24. (A) At the end of the 2011-2012, the governing council of Central High School and Tri-C determined to eliminate the position of technology coordinator. As a result, respondent’s contract was not renewed. Beginning in the fall semester of the 2012-2013 school year, respondent was returned to a teaching position and he was placed in a classroom site at the East Los Angeles Occupational Center, which was part of Central High School and Tri-C, to teach business and computer skills. Central High School and Tri-C had received a “Perkins Grant” and was able to offer a business class at the occupational center. Respondent was familiar with the occupational center because he had installed computers there.

(B) During that fall semester, the District learned that respondent’s credential to teach vocational business had expired. Under the Perkins Grant, a business credential was required to teach the business class at the occupational center. Principal Seary contacted respondent and encouraged him to renew his credential. The credential was easily renewed by filing a renewal application with payment of a \$60 fee. Respondent informed Seary that he decided not to renew his business credential because he planned to retire. Seary informed respondent that he had to transfer to another teaching position. She provided him with options at different classroom sites within Central High School. Respondent chose to take the teaching position for a new orientation class which was to be started in the spring semester and held in the open room in the bungalow at the administrative offices of Central High School and Tri-C.

(C) The orientation class was created by Assistant Principal Martinez who envisioned that new students would be placed in the class for a short time in order to be introduced to the curriculum and resources of Central High School and Tri-C. At the same time, the teacher in the orientation class was expected to evaluate the new students’ aptitudes, skills, and credits. Based on its original purpose, the orientation class was meant to be a temporary placement and the students would stay there until transferred to a permanent classroom within Central High School and Tri-C. However, some students could remain in the orientation class if the teacher agreed and recommended their placement there after having discussions with the assistant principal.

(D) During the fall 2012 semester, respondent looked forward to teaching the orientation class. He went to a District warehouse, found student chairs, and asked that the chairs be moved to the classroom in the bungalow. The classroom had desks and a whiteboard. School equipment, such as computers, was stored there. Respondent organized

and decorated the classroom, which was an open space and not a self-contained or closed classroom.

(E) The orientation class was the only Central High School or Tri-C class located at the administrative offices. Assistant Principal Martinez and other administrative staff had offices near or around the room where the orientation class was held in the bungalow. Assistant Principal Martinez was respondent's direct supervisor. Principal Seary's office was located in the main, two-story building. Administrators and school staff members had to walk through the classroom to find their way to other offices in the bungalow.

25. During the first two months of the 2013 spring semester, Assistant Principal Martinez received reports that respondent was doing a good job as the teacher of the orientation class. For the first three weeks of the semester, there were only three students placed in the orientation class. Respondent was able to provide one-to-one instruction about computers to the three students. He took an interest in the students whom he found were interested in learning and well-behaved. He counseled them about their academics, career choices, and work habits. The assistant principal observed that the students were performing academic work in the class. Respondent was pleased with the students' progress. As the spring semester proceeded, respondent's orientation class also became known as an intervention class.

26. (A) Early that spring semester, respondent began to have problems in his relationships with staff members at the administrative offices of Central High School and Tri-C. On February 5, 2013, Counselor Ileana Battle entered respondent's classroom during instructional time to talk with a student. The counselor did not advise respondent of the purpose of her visit or ask for his permission to talk to the student. The counselor asked the student for his name several times. In front of the students in his class, and in a loud voice, respondent questioned the counselor why she had to ask for the student's name. He stated that she had already spoken with the student a number of times before. The counselor became embarrassed and upset by respondent's questioning. She said, "Excuse me," several times to respondent before she left the classroom. The counselor complained to the assistant principal that respondent had spoken to her in a disrespectful and inappropriate manner in front of his students.

(B) Later that same day, February 5, 2013, Assistant Principal Martinez held a conference with respondent who appeared with a teachers' association representative. A second administrator was also present. The assistant principal discussed the incident that respondent had with the counselor that morning. Respondent responded by saying that he did not like the way the counselor spoke to the student. Respondent stated that the counselor was disrespectful to the student and she should have asked for his permission first before talking to the student. The assistant principal advised and directed respondent to avoid correcting another employee's behavior, especially in front of students, and to inform an administrator if he had any concerns about an employee's behavior. Respondent was directed to avoid raising his voice or arguing with another employee in front of students.

Respondent was further advised that his failure to follow an administrative directive could lead to disciplinary action. The assistant principal prepared a conference memorandum and gave a copy to respondent. Respondent's conduct and comments to the counselor were inappropriate, disrespectful, and unprofessional.

27. (A) Beginning in late January 2013, the number of students placed in respondent's orientation class gradually increased until there were approximately 11 students in the class by the end of February. A few of the students were from other schools or classroom sites and were serving "in-school suspensions." Some of the students were disruptive and their behaviors became problematic for respondent. Respondent found it increasingly difficult to acclimate the new students while providing instruction to the class. There arose a change in the way that respondent managed the dynamics and discipline in his class. He began to raise his voice to correct the students' behaviors and to argue with them. He told students to sit down in a loud voice. Respondent questioned students' inappropriate behaviors in front of their peers, which caused the students to react in an aggressive manner. The assistant principal began receiving reports about the behavior of students in respondent's class. The students were talking in class and not paying attention to respondent's instruction. From his office or while walking by respondent's classroom, the assistant principal heard respondent arguing with his students during instructional time.

(B) At the end of February 2013, respondent went to Assistant Principal Martinez and lamented that his students were talking in his class, not doing school work, and not following his directions. Assistant Principal Martinez advised respondent to develop a disciplinary plan and to post it in his classroom. He told respondent the classroom rules and consequences for violating the rules that should be placed in his disciplinary plan. The assistant principal gave materials on classroom management to respondent and recommended that he read the literature. During two or three meetings after school, the assistant principal sat down with respondent and helped him to develop a disciplinary plan. Afterwards, respondent posted the disciplinary plan in his classroom in the bungalow of the administrative offices. However, despite instruction from the assistant principal to implement the disciplinary plan, respondent did not do so on a consistent basis. He continued to argue with students. He begged students to obey him.

(C) In February and March 2013, respondent also asked Hector Martinez, the school advisor or dean at Central High School and Tri-C, for help in managing the students in his orientation class. Advisor Martinez enrolled and placed students in respondent's class and assisted teachers in dealing with disciplinary issues. On several occasions, respondent called Advisor Martinez and asked him to come to his class to talk with his students. On one occasion, Advisor Martinez walked by respondent's classroom and saw students arguing with respondent and not letting him have the last word. Advisor Martinez tried to defuse the classroom and redirect the students. He took respondent aside and gave him advice on how to manage the students.

28. (A) On or about March 4, 2013, respondent was having difficulty in redirecting student E█ A. to follow the classroom rules outlined in his disciplinary plan.

E [REDACTED] A. refused to do any assignments and was antagonizing his peers. Respondent called Advisor Martinez for assistance. The advisor came to respondent's classroom and saw that respondent was continuing to argue with E [REDACTED] A. and the student was not letting up or allowing respondent to have the last word. The other students in the class were amused by the argument. Advisor Martinez told respondent to handle the student in a different way. In response, respondent said in a loud to the advisor, "You should try to be in this classroom for a change." Respondent also accused Advisor Martinez of not supporting him. Students in the classroom heard respondent's comments to the advisor. Respondent was angry and frustrated. His comments to the advisor were inappropriate, disrespectful, and unprofessional.

29. On or about March 4, 2013, respondent "exchang[ed] words" with student E [REDACTED] A. in the orientation class. Respondent lost his patience and told E [REDACTED] A. to leave the classroom. Respondent, however, apparently did not want E [REDACTED] A. to have the last word and followed the student out of the bungalow. Respondent told E [REDACTED] A. that he was the teacher. E [REDACTED] A. responded by speaking in an aggressive manner. Advisor Martinez came to the area outside of the bungalow. He tried to defuse the situation by telling respondent that he would handle the matter with the student and suggested that respondent return to his classroom. The evidence demonstrated that respondent acted in a negative manner towards the student and put himself in an unsafe position by following and continuing to confront the student.

30. (A) In March 2013, respondent had difficulties with student W [REDACTED] B. who was enrolled in his classroom for approximately two weeks. W [REDACTED] B. was known as a difficult student due to her behaviors. Her parents were engaged in divorce proceedings. She had been referred to Central High School because she was serving an "in-school suspension." She refused to sit in her assigned seat. She frequently challenged and undermined respondent's authority and was able to get other students, particularly the boys, to take her side during arguments with respondent. Boys in the classroom implored respondent not to pick on W [REDACTED] B. and to leave her alone.

(B) From his nearby office, Assistant Principal Martinez heard respondent arguing with W [REDACTED] B. and spoke to respondent about his conduct. Respondent confided in Assistant Principal Martinez and told him that he was unable to convince W [REDACTED] B. to do anything and was losing control of his classroom. He complained that the student would not sit in her assigned seat. The assistant principal suggested to respondent that he implement his disciplinary plan. Respondent spoke to Principal Seary about the student. He told the principal that W [REDACTED] B. was uncooperative, refusing to do any school work or to follow his directions. She walked around the classroom and did not sit in her assigned seat. She told other students what to do.

(C) Respondent's classroom situation with student W [REDACTED] B. came to a head on March 5, 2013. On that date, he had a protracted argument with W [REDACTED] B. about her seating assignment. The argument took place during instructional time in front of other students. Respondent wanted W [REDACTED] B. to sit in the front row because she had talked too much when she sat in the back the day before. Respondent called Assistant Principal

Antoine for assistance. The assistant principal talked with W [REDACTED] B. and told respondent to let her sit in any one of three seats. The student still refused to sit down. Rather than ignoring where W [REDACTED] B. was sitting or standing and working instead with the other students in his classroom, respondent chose to continue to argue with the student for over 10 minutes. Respondent told W [REDACTED] B. that she should learn to follow his instructions because he was the teacher. W [REDACTED] B. became upset, called her mother on her telephone, and asked respondent to talk to her mother. W [REDACTED] B. asked another student to get up from his seat but respondent stopped him. W [REDACTED] B. left the classroom and went outside. Respondent then called the student's mother and the administrative office. The principal came to respondent's class and told respondent to call the District police about W [REDACTED] B. unauthorized departure from the classroom and school site.

(D) Two days later, on March 7, 2013, W [REDACTED] B. returned to school. She arrived late and refused to sit in her assigned seat or do any academic work. A male student arrived late and gave W [REDACTED] B. a hug. Respondent told the male student to sit down and said, "This is a classroom and not a place to socialize." The male student started arguing with respondent and W [REDACTED] B. joined him. Respondent realized that he had lost control of his classroom and called the administrative office and requested assistance. Shortly thereafter, W [REDACTED] B. was suspended and removed from respondent's class. As was his custom, respondent wrote an email memo to the principal and assistant principal to document his difficulties with student W [REDACTED] B.

31. At the end of the school day on March 13, 2013, respondent became embroiled in a dispute about bus tokens with student R [REDACTED] N. and another student. Students received tokens from Central High School and Tri-C so that they could transport themselves to and from school. On this date, respondent did not want to give bus tokens to R [REDACTED] N. and the other student because he believed that they both had Transit Access Pass (TAP) cards and did not need any bus tokens. He asked the students to accompany him to the office to check if they had received TAP cards. R [REDACTED] N. became furious and started yelling at respondent. Assistant Principal Antoine heard the argument when she walked into the bungalow. A teacher came out of an office. R [REDACTED] N. paced around and hit a wall with his fist. It appeared to the assistant principal that the student wanted to physically attack or hit respondent. The assistant principal tried to calm R [REDACTED] N. who stated that respondent was not treating him fairly. Respondent kept talking to the student in a loud voice, saying he was the teacher and that R [REDACTED] N. was the student. Respondent's comments only served to further antagonize the student. Assistant Principal Antoine directed respondent to leave and told a staff member to call Advisor Martinez. Respondent left the scene. The advisor come down to the bungalow and walked the student out to the street to calm him down.

32. The next day, March 14, 2013, respondent had a particularly bad day. He became upset when three or four students did not listen to him or follow his directions. He yelled at them in a loud voice and pointed his finger at them. He told them to sit down and shut up. The students ignored respondent or laughed at him. Principal Seary happened to be walking by respondent's class. As observed by Principal Seary, respondent's face became red and he was breathing hard. He said something about his heart and appeared dizzy and

short of breath. Believing respondent was having a heart attack, the principal escorted respondent from his classroom and down the hallway. She told staff to call 911. Respondent refused medical attention. The principal directed respondent to go home and said she would take care of his class. She offered to drive him home but respondent left school on his accord. He drove off in his car but then stopped on the street. He sat in his car for two hours in order to calm down. Respondent then drove home. He went to a physical therapy appointment and called his doctor.

33. In the evening of March 14, 2013, respondent sent an email to Principal Seary and thanked her for "taking care of [his] class." He informed the principal that he had two medical appointments the next day. He also asked the principal if he could attend a meeting of WASC that was scheduled for four days in the next week at a high school in Orange County. Principal Seary sent an email reply to respondent and stated that she was glad that respondent was "taking care of [him]self" and suggested that they talk when he returned to school. The principal approved respondent's request to attend the WASC meeting. She indicated that the meeting would give respondent the opportunity to "get some distance from the classroom" and "to think things through."

34. (A) The next week, respondent went to the WASC meeting in Orange County. Shortly thereafter, he took leave and went to China for three weeks to visit his ill father. While respondent was on leave, Principal Seary assigned Jesse Williams, a substitute teacher to teach respondent's class. Williams had assisted respondent earlier in the semester. Williams had good rapport with the students who listened and were receptive to him. Williams was able to deal with students who tried to disrupt the class, like W [REDACTED] B., by speaking to them privately. He tended to speak to the students in a quiet but firm manner.

(B) When respondent returned to school on April 15, 2013, after his overseas trip, Principal Seary permanently assigned Williams to be a co-teacher in respondent's orientation or intervention class. Williams had been able to teach the class by himself without asking the administrators for help while respondent was away. Respondent was not happy with Williams' presence in his classroom. On one occasion, respondent told Williams to leave and complained to the principal that Williams should not be in his classroom.

35. (A) On or about May 7, 2013, student Raul N. arrived late to class. Respondent thought he detected the odor of marijuana emanating from R [REDACTED] N.'s clothing and asked the student why his clothing smelled of marijuana. R [REDACTED] N. replied that, when he was getting on the bus, a man at the bus stop was smoking marijuana. Respondent was skeptical of R [REDACTED] N.'s explanation.

(B) Later in the school day, R [REDACTED] N. became upset because his friend was expelled. Respondent was aware of R [REDACTED] N.'s mood and that the student was on probation to the juvenile justice system. Nevertheless, at the end of the school day when R [REDACTED] N. asked respondent for bus tokens, respondent refused to give any bus token to R [REDACTED] N. He told the student that he would not get any bus tokens because he had a TAP card. Respondent believed that R [REDACTED] N. was selling or trading the bus tokens for marijuana or other contraband.

As he testified in the hearing, respondent professed that it was against his beliefs and moral standards to give any bus tokens to the student. R█ N. became angry and upset when respondent did not give him any bus tokens. The student began yelling at respondent and respondent spoke to the student in a loud voice.

(C) From his nearby office, Assistant Principal Martinez heard loud voices and arguing coming from respondent's classroom. He found respondent and R█ N. standing six or seven feet apart near the teacher's desk and arguing in loud voices. The assistant principal intervened and told respondent that he wanted to talk to R█ N. separately. The assistant principal led the student to the conference room and had the student sit down. R█ N. explained that respondent would not give him any bus tokens. After five minutes, R█ N. calmed down and was able to speak in a normal tone of voice.

(D) Unexpectedly, respondent came into the conference room. He began talking with R█ N., who became agitated and angry. R█ N. stood up, clenched his fists, and leaned towards respondent. Respondent's posture became rigid and his face became flushed. Assistant Principal Martinez feared that the student might physically attack respondent and told respondent to "just step outside" of the conference room and to let him talk to the student. Respondent left the conference room.

(E) In the view of Assistant Principal Martinez, respondent had not conducted himself in a professional manner with respect to this incident with R█ N. First, respondent did not act appropriately when he refused to give bus tokens to student R█ N. The bus tokens are given to students at no cost so that they can come to school and go home. A teacher is responsible to obtain bus tokens from the office and to give them to students. Second, respondent should have terminated the argument with R█ N. when the student became angry and upset. Instead, respondent escalated a volatile situation by entering the conference room and continuing to confront the student, thereby endangering himself and the student.

36. (A) During the spring semester of the 2012-2013 school year, respondent continued his custom of talking on a weekly basis with Assistant Principal Martinez in the latter's office after the school day was over at 2:45 p.m. Respondent used these informal sessions with the assistant principal to talk about his students or events that had occurred in his classroom. On May 10, 2013, while meeting with the assistant principal, and for undetermined reasons, respondent told Assistant Principal Martinez that, on two occasions, Principal Seary had sent "people" to his house to "kill" him. Respondent told the assistant principal that he and his wife were so afraid that they hid under their bed all day or all night long.

(B) Assistant Principal Martinez became concerned by respondent's accusation that the principal had sent people to his house to kill him. Respondent's accusation caused Martinez to begin to question respondent's mental health or stability. The assistant principal reported respondent's comment to the principal who was shocked. The principal thought that respondent's comment was "too crazy" and made respondent appear

that he "had lost his mind." The principal became concerned about the safety of the school site. She had not sent anybody to respondent's house to kill him. Principal Seary immediately called the District's Operations Coordinator for the Educational Options Division, who advised the principal not to do anything and that he would come to the administrative offices of Central High School and Tri-C on Monday after the ensuing weekend.

(C) On Monday, May 13, 2013, Dr. Vincent Carbino, Operations Coordinator, came to the administrative offices and met with Principal Seary. The principal explained that she had sent two administrative staff members to respondent's home to pick up documents and had not sent people there to kill respondent. Carbino asked why there was another teacher in respondent's classroom. The principal explained that, although he had been given directives and advice on how to manage his classroom, respondent tended to escalate arguments with students and to lose control of his classroom. The principal said that the second teacher, Williams, was able to manage the students' behaviors and could handle any situations in the classroom.

(D) Operations Coordinator Carbino next met with respondent in a small room while Williams was left in charge of respondent's classroom. There were five students in respondent's class that day. Carbino informed respondent that teachers and staff were concerned by his comment. Respondent reiterated that the principal had sent people to his house and that he had hid under the bed for several hours. Respondent expressed his belief that Principal Seary was "out to get him" and trying to kill him. He stated that the principal had put spies in his classroom, namely the co-teacher Williams. Carbino asked respondent what strategies or techniques he used to manage the students in his classroom. Respondent blamed the principal, adding that the principal had placed students in his classroom who did not belong in school with the intention of making sure that he would fail as a teacher. He blamed the students, saying the students were the worst pupils in the District, belonged to gangs, and used drugs.

(E) On May 13, 2013, Operations Coordinator Carbino found that respondent had no insight into what strategies or skills he could use to manage his classroom and de-escalate potentially volatile situations with students. He did not take any responsibility for his actions that caused students to get upset at him and did not acknowledge that he could have handled situations better. Instead, respondent blamed the students and the principal. He told the Operations Coordinator that he had a good career with the District until the principal interfered with his job. On a personal note, respondent acknowledged having a high level of stress and taking medication to get to sleep. He indicated that his father's illness was a contributing factor to his stress. On May 13, 2013, respondent talked with Operations Coordinator Carbino for 60 to 90 minutes. Carbino was surprised by respondent's candor.

37. A short time later, respondent learned that Assistant Principal Martinez had reported his statement about the principal sending people to his house to kill him. Respondent confronted the assistant principal and told him, "I hope you're happy. You have

achieved your goal of destroying my career." Respondent was upset and trembling when he spoke to the assistant principal. In response, Assistant Principal Martinez told respondent that he was not trying to destroy his career. Respondent's comment to the assistant principal was inappropriate, disrespectful, and unprofessional.

38. Based on Findings 1, 2(A), 5 – 10, 15, and 27 – 35 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct with three students. Respondent followed and continued to argue with student E [REDACTED] A. until the student became aggressive. He argued with student W [REDACTED] B. for 10 minutes, causing the student to leave the classroom site. Twice, he argued with student R [REDACTED] N. about bus tokens in a loud voice and, on the second occasion, antagonized student R [REDACTED] N. until he became so angry that it appeared that he was about to physically attack respondent. Respondent's conduct constituted violations of the District's Employee Code of Ethics, Ethics Policy Statement, Board Resolution for the Respectful Treatment of all Persons, and Code of Conduct with Students. In addition, respondent's manner of trying to discipline the three students was not positive or conducive to learning inasmuch as he failed to employ effective classroom management and positive behavioral support strategies, in violation of District's Discipline Foundation Policy

39. Based on Findings 1, 2(A), 5 – 10, 12, 15, 28, and 36 above, respondent engaged in inappropriate, disrespectful, and unprofessional conduct when he loudly questioned Counselor Battle in front of his classroom, told Advisor Martinez in a loud and angry manner that the advisor should try being in his classroom and was not being supportive, falsely accused Principal Seary of sending people to his house to kill him, and accused Assistant Principal Martinez of trying to destroy his career. Respondent's conduct constituted violations of the District's Employee Code of Ethics, Ethics Policy Statement, and the Board Resolution to Enforce the Respectful Treatment of all Persons. In addition, respondent's statements to the counselor and advisor constituted threatening or disruptive behavior that had, or can be reasonably predicted to have, a substantial detrimental effect on those employees' mental health or work performance, in violation of the District's Workplace Violence, Bullying, and Threats Policy.

40. It was not established that, during the 2013 spring semester, respondent failed to properly supervise students or allowed the students to smoke marijuana while respondent and the students took walks around the school as a physical education activity. No probative evidence was presented to demonstrate that students smoked marijuana or that respondent allowed students to smoke marijuana during the physical education walks. Nor was it established that respondent ignored students who smoked marijuana during the physical education walks. The District's evidence largely consisted of the uncorroborated hearsay statements of students which did not constitute probative evidence of these allegations.

#### Temporary Housed Status

41. (A) After meeting with respondent on May 13, 2013, Operations Coordinator Carbino directed Assistant Principal Martinez and others to submit statements describing

other recent incidents involving respondent at Central High School and Tri-C. Carbino returned to the District offices and conferred with the Executive Director of Educational Options. On May 15, 2013, Carbino received statements from Assistant Principal Martinez, Administrative Assistant Courtney Ramsay, and Advisor Martinez.

(B) On May 15, 2013, the Executive Director of Educational Options for the District, removed respondent from the classroom at Central High School and reassigned him to "Employee Temporary Housed Status" pending investigation of an allegation of misconduct. Respondent was directed to meet with Operations Coordinator Carbino at the District offices on South Beaudry Avenue.

(C) On May 15, 2013, respondent met with Carbino who provided an orientation for his Temporary Housed Status. Respondent was directed to report every "contract day" to work at a designated area of a cubicle behind a network printer on the 11th floor of the District offices on South Beaudry Avenue. Carbino was named as respondent's immediate supervisor. Respondent's assigned hours were 8:00 a.m. until 2:30 p.m. daily. He was barred from contacting any students or their families and from working in any capacity for the District.

42. (A) Subsequently, Carbino scheduled an appointment for respondent to meet with the District's Medical Director in the Employment Assistance department. The appointment was scheduled for June 3, 2013. Carbino asked respondent to attend the appointment so he could receive help with his stress and anxiety and be able to better manage students and reduce arguments in the classroom. Respondent declined to attend the appointment with the Medical Director.

(B) It was not established that, on or about June 3, 2013, respondent twice failed to meet with the District's Medical Director after being directed to do so. No probative evidence was presented to demonstrate that the Operations Coordinator or any other District administrator directed respondent, or issued a formal or written directive to respondent, to attend an appointment or meeting with the Medical Director.

43. (A) On June 10, 2013, Operations Coordinator Carbino scheduled a conference to be held in his office at the District and gave notice of the conference to respondent. Carbino planned to discuss with respondent the following incidents during the 2013 spring semester: on March 4 when he told Advisor Martinez that he should teach respondent's class; on March 5 when he had a prolonged argument with student Wendy B. who left the school; on March 14 when he became red-faced and complained about his heart and had to leave school after arguing with students; on May 7 when he had a "shouting altercation" with student R [REDACTED] N.; on May 9 when he claimed that the principal sent people to his house to kill him; and on June 3 when he failed to attend the appointment with the Medical Director. The Operations Coordinator also wanted to discuss with respondent the many occasions when Assistant Principal Martinez counseled him about his "loud and contentious interactions with students and [his] inability to follow the Central High

School/Tri-C behavior plan.” Respondent failed to appear for the June 10, 2013 conference with Carbino, claiming that he was ill.

(B) On June 10, 2013, Operations Coordinator Carbino prepared a Conference Memorandum in which he offered assistance and guidance to respondent. Carbino advised respondent that it is inappropriate and dangerous to escalate interactions with students; he had a professional responsibility to use appropriate disciplinary techniques and to follow the disciplinary policy of Central High School; he was required to follow the District’s policies regarding corporal punishment, the respectful treatment of others, and ethics. Carbino advised respondent that he may contact his health care provider for assistance with any anger management issues. In addition, Carbino directed respondent not to escalate interactions with students into loud and contentious interactions; to use appropriate disciplinary techniques and follow the disciplinary policy of the high school; to follow the District policies; to seek administrative assistance; to meet with the Medical Director on June 17; and not to retaliate against students, parents, or staff members who may have provided information about the District’s investigation.

(C) In the June 10, 2013 Conference Memorandum, Carbino further advised respondent that his failure to follow the directives could lead to disciplinary action. Carbino indicated that he was continuing to conduct an investigation and that the results of the investigation could lead to disciplinary action. Carbino sent a copy of the Conference Memorandum to respondent. He did not receive a response from respondent.

#### 2013-2014 School Year

44. (A) For the 2013-2014 school year, respondent remained on Temporary Housed Status at the District offices on South Beaudry Avenue. His supervisor was changed to Robert Eiseman, Director of Educational Options. At the beginning of this school year, Eiseman directed respondent to stay on the 11th floor of the District offices. Respondent signed a form acknowledging the rules of his Temporary Housed Status.

(B) On or about October 7, 2013, Eiseman received a report that respondent had been in the copy room on the 18th floor of the District offices. On October 7, 2013, Eiseman wrote a letter to respondent and directed respondent “to stay on the 11th floor during [his] assigned time.” Eiseman directed respondent “not to wander around the building during [his] duty-free time except to areas previously discussed (i.e. cafeteria).” Respondent was further directed to use the restrooms on the 11th floor.

(C) Subsequently, in October 2013, respondent disobeyed the directive to stay on the 11th floor of the District offices. He went to the 18th floor on several occasions. He was seen on the 18th floor in the copy room and in the company of another employee. On one of those occasions, respondent left some materials that he had copied on the desk belonging to Director Eiseman.

45. Based on Finding 1, 2(A), 5 – 7, and 44 above, respondent's conduct in October 2013, while he was on Temporary Housed Status, in failing to abide by the administrator's directive to remain on the 11th floor of the District's offices and in going up to the 18th floor on more than one occasion, where District administrators have offices, constituted inappropriate, disrespectful, and unprofessional conduct. Respondent's flagrant disregard of the administrator's directive likewise constituted violations of the District's Ethics Policy and Ethics Policy Statement, which require employees to be respectful and responsible, and have personal integrity.

46. In October 2013, Director of Educational Options Eiseman met with respondent and a teachers' association representative to discuss the information and documentation that the District had obtained in its investigation of respondent's alleged conduct at Central High School. Respondent complained that the investigation was unfair and that administrators were not telling the truth. Respondent stated that he would reply in writing to the allegations but it was not established that he submitted a response to the District or that the District received a written reply from him.

47. (A) On or about November 14, 2013, Director of Educational Options Eiseman directed respondent to attend an appointment with a psychologist for a fitness for duty evaluation. The psychologist's office was located in Torrance. The written directive contained a typographical error in that respondent was told to report to the psychologist's office on a certain date at "11:30 p.m." Respondent went to the psychologist's office at 11:30 p.m. and found the office was closed.

(B) On December 4, 2013, after respondent underwent a psychological evaluation, the psychologist issued an Employee/Patient Mental Health Clearance in which the psychologist found respondent was fit for duty and did not need any work restrictions or accommodations. The psychologist also found that respondent did not present a danger to himself or to others in an occupational or work setting. The mental health clearance was forwarded to the District.

48. On November 22, 2013, the District reassigned respondent to the Educational Service Center (ESC) East effective on December 2nd and provided him with written notice of the rules and directives of his temporary reassignment. Respondent's supervisor at ESC East was Davie Devereaux, Operations Coordinator. Respondent was directed to report to ESC East for work in the afternoons from 12 noon until 3:00 p.m. and to remain in an assigned work area. Respondent was informed that he was relieved from duty of his regular assignment at Central High School and was directed, in part, to refrain from going to the high school without prior written administrative approval and to refrain from contacting any students at Central High School. At ESC East, respondent was informed that he could be assigned work at the discretion of the District and was directed to bring appropriate work with him such as designing lesson plans and reviewing training materials. In the mornings, respondent was directed to stay at home. The District advised respondent that his failure to follow the rules and directives of his temporary reassignment could result in disciplinary action.

49. (A) On January 28, 2014, Director of Educational Options Eiseman held a conference with respondent. A second District administrator and a teachers' association representative were also present. During this conference, Eiseman gave respondent a Notice of Unsatisfactory Act of Certificated Employee (Notice of Unsatisfactory Act) and a Notice of Suspension of Certificated Employee (Notice of Suspension) pursuant to Education Code section 44938. Under the Notice of Suspension, the District suspended respondent for 15 days without pay. Both the Notice of Unsatisfactory Act and the Notice of Suspension contained the same causes for discipline, charges, and assistance and guidance. Respondent acknowledged receipt of the notices.

(B) The Notice of Unsatisfactory Act and the Notice of Suspension alleged that respondent committed 11 charges or violations as a teacher at Central High School and Tri-C from November 29, 2010, through May 13, 2013. The notices alleged that the charges constituted causes for discipline as immoral conduct, unprofessional conduct, and persistent violation of or refusals to obey reasonable regulations prescribed by the governing board of the District.<sup>4</sup> Specifically, the notices alleged that respondent's conduct violated seven District policies. As assistance and guidance, Eiseman attached, in part, copies of three conference memoranda and four District policies. The specific language of the charges, causes for discipline, and assistance and guidance are set forth in the Notice of Unsatisfactory Act and the Notice of Suspension (Exhs. 32 and 33), which are incorporated into and made a part of this Decision by this reference.<sup>5</sup>

50. (A) On March 14, 2014, Eiseman in his capacity as the Director of Educational Options held another conference with respondent and a representative from the teachers' association to discuss statements filed by students. The students had alleged that respondent had permitted students to smoke marijuana during physical education walks and in class and committed other misconduct.<sup>6</sup> Respondent's supervisor at ESC East, Operations Coordinator Devereaux, was also present. During the conference, respondent denied the new charges and stated, in part, "This is the way they treat people in China and Korea. They fabricate false stories." Respondent also complained that he had gone to see the psychologist "at midnight", was cleared to return to work, and was not paid for his time and mileage. On March 17, 2014, Eiseman prepared a Conference Memorandum in which the director summarized the discussion at the conference, including the assistance, guidance, and directives given to respondent. Eiseman advised and directed respondent, in part, to read,

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<sup>4</sup> The Amended Accusation does not allege immoral conduct as a cause for dismissal in this matter.

<sup>5</sup> The charges and causes for discipline contained in the Notice of Unsatisfactory Act and the Notice of Suspension are different than the charges and causes for discipline set forth in the Amended Accusation, which is the governing pleading in this matter.

<sup>6</sup> It was not established that respondent allowed students under his supervision to smoke marijuana during physical education walks, in class, or otherwise.

review, and adhere to a number of District policies that had been provided to all teachers at Central High School and Tri-C. Respondent received a copy of the Conference Memorandum.

(B) As set forth in Finding 40 above, it was not established that respondent permitted students to smoke marijuana, or failed to properly supervise students during physical education walks.

51. (A) During the conference on March 14, 2014, in response to the new charges, respondent proffered a new allegation of his own. On March 15, 2014, respondent sent an email to so that he could make a written record of his allegation.

(B) On March 14 and 15, 2014, respondent reported to Eiseman that, back on May 7, 2013, in the preceding school year, he witnessed a suspected child abuse incident involving Assistant Principal Martinez. Respondent claimed that, while he was teaching, he heard a “loud commotion” in the conference room next to his classroom in the bungalow at the administrative offices of Central High School and Tri-C. He reported that he saw a student run out of the conference room and then saw Assistant Principal Martinez running after the student while “screaming” at him. Respondent asserted that the student appeared “very scared” and sought ‘refuge’ from the assistant principal in his classroom. Respondent claimed that the students in his class were “shocked and scared” by the assistant principal’s action. Respondent stated that Assistant Principal Martinez stopped chasing the student when he saw that respondent and the students were watching him, and he returned to the conference room.

52. (A) After the March 14, 2014 conference, Director Eiseman assigned Operations Coordinator Devereaux to check whether respondent had properly filed a child abuse report in accordance with District policy. As summarized in Finding 14 above, the District’s Child Abuse and Neglect Reporting Requirements requires that a District employee, each of whom is considered a mandated child abuse reporter, call the appropriate law enforcement department serving the school or the Department of Children and Family Services (DCFS) immediately, or as soon as practically possible, after the employee has actual knowledge or a reasonable suspicion of child abuse. The District employee is also required to file a written report entitled “Suspected Child Abuse Report” to the law enforcement agency within 36 hours of receiving such knowledge of suspected child abuse.

(B) More specifically, the District’s child abuse reporting policy provides that an employee, who has a question or is unsure about whether or not certain conduct or incident should be reported as suspected child abuse, may call a child protective agency, such as DCFS or LAPD, or a local law enforcement agency serving the employee’s school. However, the policy further provides that, regardless of any discussion with a child protective agency representative, the employee who reasonably suspects child abuse, must make the telephone call and submit a written report of suspected child abuse. Under the policy, reasonable suspicion means that it is objectively reasonable for a person to contemplate a suspicion, based upon facts that could cause a reasonable person in a like

position, drawing when appropriate on his or her training and experience, to suspect child abuse or neglect. Reasonable suspicion does not require proof or investigation by the reporting party or employee.

(C) As established by the testimony of Director of Educational Options Eiseman, the District provides training to all employees on the District's Child Abuse and Neglect Reporting Requirements two times per year, including on-line training through a video entitled, "Child Abuse Awareness Training." Employees must certify that they have knowledge of the reporting requirements and procedures and will comply with the requirements. Employees are given a certificate for completing the training. In addition, the District provides its employees with a list and telephone numbers of local law enforcement agencies that serve the District schools as well as access to an on-line form that can be used to electronically report actual or suspected child abuse to the law enforcement agencies and DCFS.

(D) Operations Coordinator Devereaux learned that, on July 19, 2012, respondent completed the 2012-2013 Child Abuse Awareness Training offered by the District and received a certificate of completion. Devereaux called the Los Angeles Police Department, the law enforcement agency serving Central High School, and neither found nor was he given any information that respondent had filed a child abuse report with the law enforcement agency at any time on or after May 7, 2013, when respondent claimed that he saw the assistant principal commit suspected child abuse. Devereaux and/or Eiseman also checked the District's I-Star system and found no evidence that respondent had used the system to report suspected child abuse.

53. (A) Since 2008, respondent has received twice yearly training on the District's Child Abuse and Reporting Requirements. Respondent confirmed his receipt of the training. During the 2012-2013 school year, respondent received training each semester at faculty meetings as well as on-line training on child abuse reporting. Respondent also acknowledged that he is a mandated child abuse reporter and that he knew the requirements for reporting child abuse and suspected child abuse under the District's policy. In fact, respondent filed a written report of suspected child abuse with respect to a different incident on March 1, 2013, which demonstrated that he knew the procedure for properly reporting child abuse.

(B) Following the alleged incident on May 7, 2013, between the assistant principal and the student, respondent testified that he called DCFS to report an incident of suspected child abuse. He acknowledged that he did not file a written report with DCFS. Respondent testified that he did not file a written report because DCFS told him that the incident did not constitute child abuse and that he did not have to file a report. He stated that he called DCFS again later and obtained a reference number that confirms that he made an oral report of suspected child abuse. However, respondent never gave the reference number to the District. Respondent also claimed that he told Principal Seary of the incident of suspected child abuse involving the assistant principal and that he had called DCFS. The principal did not recall any such conversation with respondent.

(C) Respondent admitted that he did not consult the District's policy on Child Abuse Reporting Requirements before or after calling DCFS. Respondent further testified that he was not aware of the District's requirement that an employee must still complete and submit a written report to the agency even if the agency advised the employee that there will be no investigation and that the school should handle the matter administratively.

(D) After meeting with Operations Coordinator Carbino on May 13, 2013, respondent sent a number of complaints by email to the District's Superintendent. On August 19, 2014, respondent sent an email entitled "Report Suspected Child Abuse" to the Superintendent. In this email, respondent advised the Superintendent of the suspected child abuse that he saw committed by the assistant principal at Central High School on May 7, 2013. In response, the Superintendent asked respondent whether he had filed a written report, as required by state law. Respondent did not demonstrate that he had filed a written report of suspected child abuse with DCFS or another agency.

54. Based on Findings 1, 2(A), 5, 14, and 51 – 53 above, on May 7, 2013, respondent violated the District's Child Abuse and Neglect Reporting Requirements by failing to submit a written report to DCFS or to the LAPD within 36 hours of having purportedly observed an incident of suspected child abuse committed by an assistant principal at Central High School. On or about March 14, 2014, after reporting the suspected incident of child abuse to the District, respondent failed to file a written report with DCFS or the LAPD. Respondent claimed that he called DCFS but admitted that he did not submit a written report to DCFS on May 7, 2013, or on any date thereafter.<sup>7</sup> Respondent's conduct violated the District's Child Abuse and Neglect Reporting Requirements and also constituted unprofessional conduct.

55. (A) Subsequently, Director of Educational Options Eiseman scheduled a conference with respondent for March 19, 2014, to discuss his allegation that he witnessed suspected child abuse committed by Assistant Principal Martinez and respondent's failure to file a report of suspected child abuse. On March 19, 2014, respondent was present at his temporary assignment at ESC East but he failed to appear for the conference. Eiseman re-scheduled the conference for April 2, 2014. However, respondent was out of the country in China and did not appear at the re-scheduled conference either.

(B) On April 2, 2014, Eiseman prepared a Conference Memorandum in which he wrote that, if respondent had been present for the conference that day, Eiseman would have discussed the following: respondent's allegation of suspected child abuse that he made at the March 14, 2014 conference; respondent's failure to make a suspected child abuse report within 36 hours of witnessing the incident on May 7, 2013; and respondent's failure to

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<sup>7</sup> The Commission on Professional Competence does not find that the assistant principal committed child abuse on a student on May 7, 2013. Because respondent told District administrators on March 14, 2014, that he saw and had a reasonable suspicion of child abuse, respondent was required under the District's policy to make an immediate telephone call to an agency and submit a written report within 36 hours.

file a suspected child abuse report after making his written report of suspected child abuse in his March 15, 2014 email. Eiseman informed respondent that, if he had been present for the conference, he would have been able to respond and that he could still file a written response within five days of receipt of the Conference Memorandum.

(C) In the April 2, 2014 Conference Memorandum, Eiseman gave respondent the following assistance and guidance: report suspected child abuse immediately because it was his professional responsibility and read, review, and adhere to the District's Child Abuse and Neglect Reporting Requirements and the Employee Code of Ethics. Eiseman directed respondent to follow the terms of the assistance and guidance.

56. (A) On April 2, 2014, Director of Educational Options Eiseman issued a Notice of Unsatisfactory Act and a Notice of Suspension to respondent pursuant to Education Code section 44938. Under the Notice of Suspension, respondent was suspended for 15 days without pay. Both the Notice of Unsatisfactory Act and the Notice of Suspension contained the same causes for discipline, charges, and assistance and guidance. Eiseman indicated on the notices that respondent was not present for a conference to receive the notices and that the notices would be mailed to him by certified mail with return receipt. Respondent received the Notice of Unsatisfactory Act and the Notice of Suspension at home after he returned from China.

(B) The Notice of Unsatisfactory Act and the Notice of Suspension set forth four charges, including the charge that respondent failed to file a suspected child abuse report within 36 hours of having knowledge of suspected child abuse on May 7, 2013, and that respondent failed to file a suspected child abuse report after making a report of suspected child abuse in his email on March 15, 2014. The two notices alleged that the charges constituted causes for discipline as immoral conduct, unprofessional conduct, dereliction of duty, and persistent violation of or refusals to obey reasonable regulations prescribed by the governing board of the District. The notices alleged that respondent's conduct violated eight District policies. As for assistance and guidance, Eiseman attached, in pertinent part, copies of his March 14, 2014, and April 2, 2014 Conference Memoranda.

57. On or about May 9, 2014, respondent filed a written response to the April 2, 2014 Conference Memorandum and the Notice of Unsatisfactory Act and the Notice of Suspension. He acknowledged receipt of the Conference Memorandum and notices after returning on May 4, 2014, from a family emergency abroad. In the written response that he sent to Eiseman, respondent addressed various issues raised by the District in Conference Memorandum and notices.

58. On March 5, 2015, the District issued the Accusation. Thereafter, respondent filed a Notice of Defense and requested an administrative hearing on the charges contained in the Accusation. This matter ensued. On December 22, 2015, the District filed the Amended Accusation.

## Respondent's Contentions and Evidence

59. In his May 9, 2014 response to the April 2, 2014 Conference Memorandum and Notice of Unsatisfactory Act and Notice of Suspension, respondent contended, in part, that his classroom in the bungalow at the administrative offices of Central High School and Tri-C was appalling and nothing more than "some space in the hallway, surrounded by abandoned furniture and electronic equipment with several passes and doors for people to come and go that [made] learning near impossible." Respondent stated that his students' needs were "neglected" by the school and District administrators but that, nevertheless, he managed to teach and help students to improve their behaviors and academic achievement, including student W█████ B. Respondent complained that school and District administrators had told lies about him, were "dubious" moral leaders, and had committed "crimes," such as eating lunches meant for students under a federal lunch program.

60. With regard to his alleged failure to file a written report of suspected child abuse, respondent insisted that he had timely filed a child abuse report about the incident involving the assistant principal and that he had always followed the District's rules and policies. He argued that Assistant Principal Martinez told lies and that the assistant principal, Principal Seary, and Operations Coordinator Carbino had conspired to cover up an incident of child abuse and to remove him from the classroom after he made a suspected child abuse report.<sup>8</sup> Respondent contended that Eiseman as the Director of Educational Options had predetermined to dismiss him from the District when he was removed from the classroom and that Eiseman only needed time to "fabricate and forge stories" to achieve his goal of dismissing respondent. Respondent stated that he had been a successful teacher for the District for 24 years and that the District needed to examine the administrators' motives to determine the basis of "their atrocious accusations." Respondent did not present any evidence to corroborate his claims or contentions. He admitted that he did not file a written child abuse report with the proper agency.

61. (A) In addition to the testimony of Osumi and Smith, respondent presented several other witnesses. David Keith Wiseman has been an employee of the District since 2001 and has known respondent for several years. He was a special education coordinator for Central High School from 2001 through 2015 and had an office in the main building next to the bungalow where respondent's classroom was located during the spring semester of the 2012-2013 school year. While he never formally observed respondent teaching, Wiseman walked by respondent's classroom a number of times and saw respondent relating well to students. He never saw respondent act inappropriately with students. Wiseman did not see respondent interact with school administrators but noted that respondent did not argue or raise his voice at faculty meetings.

(B) Camere Solis is a former teacher at Central High School. Respondent came to her school site in performing his duties as technology coordinator. Solis also saw

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<sup>8</sup> It was not established which suspected child abuse report respondent was referring to in his May 9, 2014 response.

respondent in his classroom when she went to the main administrative offices for meetings and other business. Solis testified that respondent is mild-mannered and that he interacted well with students and never disrupted a faculty meeting. Solis added that she thought respondent and Principal Seary got along well together before the 2013 spring semester.

(C) A [REDACTED] M. is a former student at Central High School where he was assigned to respondent's classroom in the 2013 spring semester. He found respondent was understanding, helpful, and a good teacher. Respondent sat next to him, answered his questions, and showed him how to build a computer. On one occasion, respondent stopped a fight from starting between A [REDACTED] M. and another student. On another occasion, respondent stated in class that, before he retired, he wanted to go to China to visit his family. Respondent also told A [REDACTED] M. that he did not retire because he was removed from the classroom. Since leaving Central High School, A [REDACTED] M. has become good friends with respondent and he wrote a letter in support of respondent.

62. With respect to his management of the orientation or intervention class at Central High School during the 2013 spring semester, respondent posted his disciplinary plan in his classroom. He stated that his classroom rules included no talking during class, and that he listed consequences for misbehavior, such as calling parents and making referrals for suspension. Respondent claimed that he had no difficulty with his students and that the students followed his classroom rules. If students did not abide by a rule, respondent asserted that he took the students aside and counseled them about their behaviors. Respondent claimed that the students usually stopped their disruptive behaviors after one or two warnings and thus "changed right away." He further claimed that no student, including Wendy B., was ever out of control in his class. Respondent's testimony was not corroborated by other staff members and did not comport with his own reports to the assistant principal and the testimony and reports of the principal, assistant principals, and advisor. Accordingly, respondent's claims that he had no difficulty with students and that none of his students were ever out of control in his classroom were not credible.

63. Respondent denied telling Assistant Principal Martinez on May 14, 2013, that the principal had twice sent "hit men" to his house to kill him. Assistant Principal Martinez testified and reported that respondent stated to him that, on two occasions, the principal sent "people" to his house to kill him. The testimony and report of the assistant principal were consistent and credible. Greater probative weight was assigned to the assistant principal's testimony and report than to the denial by respondent of his own statement.

64. Respondent confirmed that he went to the psychologist's office in Torrance at 11:30 at night. When asked why he did that, respondent stated that he thought it was possible that the psychologist would be present in his office at that late hour. Respondent added that he went to the appointment at night to show the District that he could obey its directives. Respondent emphasized that the psychologist examined him at a subsequent appointment and found him to be fit for duty.

65. Respondent wants to continue teaching but, as he testified, he does not want to return to the District or be a teacher for the District. He enjoys relating to students and helping and encouraging them to go to college. Respondent believes that he has been a good teacher for the District, the disciplinary process is unfair, and he wanted to tell his side of the story and vindicate himself. Respondent was adamant that he did nothing wrong. He did not express or demonstrate any remorse for any of his conduct.

66. It was not established that respondent violated the District's policy for the Abolition of Corporal Punishment or the District's policy for Preventive Measures and Mandatory Procedures for Students Who Violate Laws Regarding Drugs, Alcohol, Tobacco, and other Intoxicants.

67. Allegations contained in the Amended Accusation and Statement of Charges or raised during the hearing for which there are no specific findings in this Decision were deemed unproven or considered irrelevant or surplussage upon consideration of all of the evidence.

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

#### LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter because the District is seeking to dismiss respondent from his employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) Complainant has met its burden of proof in this matter.

2. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(7), for his persistent violations of or refusals to obey reasonable regulations prescribed for the governance of the schools of the District by its governing board, based on Findings 1 – 15, 21, 38 – 39, 45 and 54 above.

Under Education Code section 44932, subdivision (a)(7), 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.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

In this matter, the preponderance of the evidence demonstrated that respondent persistently violated several of the District's policies. In the 2011 spring semester, respondent yelled at the senior office technician, principal, and assistant principal in the aftermath of respondent's handling of the graduation programs. Respondent's conduct was inappropriate and disrespectful, and was not conducive to creating a workplace environment of trust, care, and respect, in violation of the Employee Code of Ethics, Ethics Policy Statement, and the Board Resolution to Enforce the Respectful Treatment of all Persons. At a conference following the incident, the principal directed respondent to treat other persons with respect and not to yell at them.

In the spring semester of the 2012-2013 school year, respondent inappropriately questioned a counselor in a loud voice in front of his class which embarrassed and upset her. Respondent also told the school advisor, who was trying to help respondent, that he should try to be in his class and accused the advisor of not supporting him. Later in the semester, respondent accused the principal of sending people to his house to kill him when, in fact, she had dispatched two employees to respondent's house only to pick up documents from him. When the assistant principal reported his accusation, respondent said to the assistant principal, "I hope you're happy. You have achieved your goal of destroying my career." The aforementioned conduct violated the District's Employee Code of Ethics, Ethics Policy Statement, and the Board Resolution to Enforce the Respectful Treatment of all Persons, which require respect among employees and prohibit harassing behavior in the workplace. Respondent's statements to the counselor and advisor also violated the District's anti-bullying policy.

During the 2013-2014 semester, after he was placed on Temporary Housed Status at the District offices, respondent violated the Employee Code of Ethics and Ethics Policy Statement when he repeatedly and flagrantly disobeyed an administrator's directive to stay on the 11th floor of the District offices. In March 2014, respondent reported that he had witnessed an incident of suspected child abuse involving the assistant principal and a student that purportedly occurred in May 2013. However, respondent failed to file a written report of suspected child abuse with DCFS or LAPD and thus violated the District's policy for Child Abuse and Neglect Reporting Requirements. His failure to abide by this policy is considered a very serious violation, for teachers are mandated reporters of child abuse and receive yearly training on the policy.

Moreover, on four occasions during the spring semester of the 2012-2013 school year, while he was the teacher of the orientation class at the main offices of the Central High School and Tri-C, respondent violated the District's Employee Code of Ethics, Ethics Policy Statement, Code of Conduct with Students, Discipline Foundation Policy, and the Board Resolution to Enforce the Respectful Treatment of all Persons in connection with

his interactions and attempts to discipline or direct three students. Respondent continued to argue with student E [REDACTED] A. and followed the student outside. The student became angry and the advisor had to intervene. Respondent had a protracted argument with student W [REDACTED] B. about her seating assignment. The student became upset and left the school grounds. Respondent twice upset student R [REDACTED] N. by refusing to give him bus tokens and arguing with the student. The second incident nearly led to a physical altercation when respondent followed the student and an administrator into a conference room and resumed his argument with the student. The student became enraged. Respondent's conduct with these three students endangered the safety of the students and respondent, did not constitute positive behavior support and discipline, and was not conducive to creating an environment of trust and learning.

On the other hand, the evidence did not show that respondent violated the District's policy against corporal punishment or policy for a drug-free and alcohol-free workplace or school environment. No probative evidence was presented to show that respondent violated these two policies.

Respondent's violations of the aforementioned policies and regulations of the District were persistent in that he committed violations of policies over the course of several school semesters. He continued to disregard and violate these policies despite having received annual training and professional development on the policies. For his part, respondent did not admit that he committed any violations of the District's policies and did not show any remorse or present any evidence of his rehabilitation from his persistent violations.

3. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(1), for unprofessional conduct, based on Findings 1 – 15, 21, 38 – 39, 45, and 54 and Conclusions of Law 2 above.

Here, the preponderance of the evidence showed that respondent engaged in unprofessional conduct by persistently violating various policies and regulations of the District, as set forth in Conclusion of Law 2 above, and by confronting and arguing with the three students in his orientation class. In addition, respondent engaged in unprofessional conduct when he failed to comply with directives of administrators. On June 23, 2011, the principal directed respondent to treat other persons with respect and not to take his stress out on others by yelling at them. Respondent failed to abide by the principal's directive. On February 5, 2013, he questioned the counselor in a loud voice in front of his class and embarrassed and upset the counselor. After this incident, the assistant principal counseled and directed respondent to avoid questioning the professional conduct of another employee and to avoid raising his voice or arguing with another employee in front of students. Yet, on March 4, 2013, respondent violated the aforementioned directives to be respectful and not to yell at other employees when he told an advisor in a loud voice that the advisor should try to be in respondent's classroom and accused the advisor of not supporting him. In October 2013, respondent disobeyed the principal's directive to be respectful to others when he flagrantly disregarded the administrator's order to stay on the 11th floor of the District

offices. Respondent's conduct as described hereinabove was insubordinate and constituted unprofessional conduct.

4. As one of the specific grounds for which a permanent certificated employee may be dismissed from employment under Education Code section 44932, unprofessional conduct has a broad import, for it refers generally to conduct demonstrating unfitness. However, a particular act or omission on the part of a teacher may constitute not only unprofessional conduct but also evident unfitness for service and a persistent violation of or refusal to obey prescribed rules and regulations. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174-1175; *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551.) Unprofessional conduct may be viewed as a lesser included form of proscribed behavior within evident unfitness for service. Conduct constituting evident unfitness for service will often constitute unprofessional conduct, but the converse is not true. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.)

5. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service in that respondent engaged in unprofessional conduct which demonstrated that he is not fit to be a teacher due to a defect in temperament that cannot be remedied, based on Findings 1 – 15, 21, 38 – 39, 45, 54 and Conclusions of Law 2 and 3 above.

Evident unfitness for service means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at pp. 1444-1445.) Unlike unprofessional conduct, evident unfitness for service connotes a fixed character trait, not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Id.* at p. 1444.)

In general, the determination of evident unfitness requires an analysis based on the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, to decide whether, as a threshold matter, the questioned conduct of a permanent certificated employee indicates unfitness for service. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) If the *Morrison* criteria are satisfied, the next step is to determine whether the unfitness is evident, i.e., whether the offensive conduct is caused by a defect in temperament. (*Woodland Joint Unified School Dist, supra*, 2 Cal.App.4th at p. 1445.)

In the *Morrison* case, the California Supreme Court held that where charges of immorality or unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the person is fit to teach. (*Morrison v. State Board of Education, supra*, 1 Cal.3d. at p. 229.) The terms immoral or unprofessional conduct have been held too vague, standing alone, and must be applied to a specific occupation and given context by reference to fitness for the performance of that occupation. (*Basset Unified School Dist. v. Commission on Professional Competence* (1988) 201 CalApp.3d 1444, 1453.) The *Morrison* case requires that the determination of whether a person is fit to teach be based on

an objective and analytical approach consisting of a review of the teacher's conduct and an assessment of a variety of specific criteria which include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. These factors assist a board of education in determining a teacher's fitness to teach, and whether the teacher's future classroom performance and overall impact on his or her students are likely to meet the standards of the board of education. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at pp. 229- 230.)

A Commission on Professional Competence has broad discretion in matters of teacher discipline and dismissal. The role of a Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates a teacher's unfitness to teach. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220.)

6. Discussion—The preponderance of the evidence in this matter showed that, in the spring semester of the 2010-2011 school year when he was the technology coordinator for Central High School and Tri-C, during the spring semester of the 2012- 2013 school year when he was a teacher of the orientation or intervention class at the administrative offices, and during the 2013-2014 school year, when he was placed on Temporary Housed Status at the District, respondent engaged in repeated acts of inappropriate, disrespectful, and unprofessional conduct, which also violated the District's policies and regulations that require, in part, the ethical and respectful conduct towards others.

In June 2011, respondent yelled at the principal and the senior office technician. He said that the senior office technician and the assistant principal were "liars." Afterwards, the principal counseled and directed respondent not to yell at or call people names and to treat others with respect. In his written response, respondent questioned, in part, the principal's morals and integrity.

During the spring semester of the 2012-2013 school year, when he was assigned to be a teacher at the administrative offices of Central High School and Tri-C, respondent had difficulty managing his classroom and engaging his students to learn. He did not effectively enforce his class disciplinary plan or follow a positive behavioral support plan or values. Respondent lost his patience with student E [REDACTED] A., told the student to leave, and followed the student out of the bungalow to continue his argument with the student. Respondent had a protracted argument with student W [REDACTED] B., which caused the student to leave the school grounds. Respondent escalated arguments over bus tokens with student R [REDACTED] N. by continuing to confront the student and putting himself and the student in dangerous situations. Respondent frequently called the administrative office for help in managing his students.

Moreover, during the 2013 spring semester, respondent continued to engage in inappropriate, disrespectful, and unprofessional conduct towards his colleagues and administrators. He questioned the authority of a counselor in a loud voice and in front of his class while the counselor was trying to talk to a student. The principal held a conference and advised respondent not to correct the behavior of another employee or to raise his voice or argue with another employee in the presence of students. On another occasion, when an advisor tried to help respondent with his class, respondent suggested in a loud voice and in an angry and frustrated tone that the advisor should try being a teacher in his class. At the end of the 2012-2013 school year, respondent accused the principal of sending people to his house to kill him, which precipitated his removal from the classroom due to concerns about his mental state and school safety. Before he was transferred to the District offices, respondent accused the assistant principal who reported his accusation of trying to destroy his teaching career. In the 201-2014 school year, respondent disobeyed the directive of the District's Director of Educational to stay on the 11th floor of the District offices while he was on Temporary Housed Status. Finally, respondent accused the same assistant principal of having engaged in suspected child abuse even though respondent had not submitted a written report of suspected child abuse to an agency. Respondent engaged in his inappropriate, disrespectful, and unprofessional conduct on multiple occasions after he was given assistance, guidance, and directives by the principal and assistant principal not to engage in disrespectful conduct.

Under the *Morrison* factors, respondent's conduct was not only unprofessional but also demonstrated that he is not fit for service as a teacher with the District. First, respondent's conduct adversely affected students and school employees to a significant degree. For example, he continued to argue with student E [REDACTED] A. and caused the student to react aggressively. He argued for 10 minutes with W [REDACTED] B., which caused the student to become upset and leave the school. On two occasions, respondent escalated arguments with student R [REDACTED] N. over the provision of bus tokens. By continuing to argue with the student, respondent caused the student to hit a wall in anger on one occasion and to become so angry and upset on a second occasion that an administrator feared that the student might physically attack respondent.

Second, respondent's conduct is relatively recent. He engaged in his inappropriate, disrespectful, and unprofessional acts beginning in June 2011, continuing into the spring semester of the 2012-2013 school year, and ending in March 2014 when he claimed that he witnessed suspected child abuse but failed to file a written report. Third, respondent holds a credential or credentials that allow him to teach students at Central High School and Tri-C, which are schools for at-risk students within the District's Educational Options Division.

Fourth, there were aggravating factors to respondent's conduct. In June 2011, after he yelled at the principal and assistant principal and called an office technician a liar over an incident involving graduation programs, respondent was counseled by the principal not to take his anger and stress out on others by yelling and being disrespectful to them. Despite being counseled, respondent responded by criticizing the principal, in part, for

having low morals, promoting falsehoods, and being unprofessional. Three semesters later, respondent repeated his disrespectful conduct towards administrators at the administrative office. During the spring semester of the 2012-2013 school year, respondent embarrassed a counselor by loudly questioning her in front of the students in his class. He denigrated an advisor, who was trying to help him in his class, by loudly saying that the advisor should try being a teacher in his class and accused the advisor of not supporting him. Respondent refused to give bus tokens to student R [REDACTED] N. because respondent speculated that the student was selling the bus tokens to obtain marijuana. Bus tokens were freely given to students so that they could get to school and return home. Respondent accused the principal of sending people to his house to kill him which, in turn, caused the principal to worry and fear about the safety of the school. Respondent was unable to manage his students and frequently asked for help, resulting in administrators and staff frequently taking time from their regular duties to come to his class and assist him. In May 2013, the principal assigned a second teacher to respondent's class.

Fifth, respondent's motives for engaging in his unprofessional conduct were blameworthy and not praiseworthy. In his relations with school staff, respondent was arrogant and overbearing. He called a senior office technician a liar when she did not agree that he had told her that he had already picked up the graduation programs. He loudly questioned a counselor while she was trying to speak to one of his students, embarrassing the counselor. Respondent apparently believed that the counselor should have asked him for permission to talk to the student. Respondent was insubordinate and caustic to his supervisors and administrators. He yelled at the principal, accused the advisor of not supporting him, and blatantly disobeyed a directive to stay on the 11th floor while he was on Temporary Housed Status at the District offices. He flaunted the administrator's directive by leaving papers on the administrator's desk on the 18th floor. Respondent became frustrated and upset when he was unable to manage his classroom and instruct his students. His apparent solution was to begin arguing with some of them. He kept trying to tell students that he was the teacher, which only served to further antagonize them. When asked about his strategies for managing his classroom, respondent accused the principal of purposefully sabotaging him. He characterized the students as the worst students in the District and accused them of being gang members and drug users. When confronted with a second Notice of Unsatisfactory Act and Notice of Suspension in April 2014, respondent complained that administrators were neglecting the students and making up lies about him. Thus, respondent's motives or reasons for his misconduct seemingly arose from frustration with staff members and students and self-centered indignation at the criticisms or counsel of others. He lacked respect for staff members, did not recognize the authority of administrators, did not care for some of the students, and allowed himself to become frustrated and upset with certain students.

Sixth, the evidence has a strong tendency in reason to prove that respondent is very likely to repeat his disrespectful and unethical conduct if he were to be retained by the District and provided additional guidance, training, and professional development. Respondent has made it clear that he does not want to work for the District or to teach in the District. He believes that he has been an excellent teacher and employee and that the

disciplinary and dismissal process has been based on fabrications and is unfair and biased. What is especially troubling is respondent's tendency to criticize or to make allegations against administrators after he has been counseled or found to have engaged in inappropriate conduct. For example, in June 2011, after being counseled by the principal for yelling and saying that other employees were liars, respondent wrote that the principal was angry, hostile, and immoral. In May 2013, soon after his second incident with the student R [REDACTED] N., respondent falsely accused the principal of sending people to his house to kill him. In March 2014, after he had been served with the Notice of Unsatisfactory Act and the Notice of Suspension, respondent claimed that he saw the assistant principal at Central High School commit an act of suspected child abuse almost a year earlier. Respondent asserted that he had made a report of the incident to DCFS but admitted that he did not file a written report as required by the District's child abuse reporting policy. In responding to the Notice of Unsatisfactory and Notice of Suspension, respondent averred that the Director of Educational Options had predetermined to dismiss him and had fabricated allegations.

It was not entirely clear why respondent reacts in this manner. Perhaps respondent believes he must exaggerate or raise criticisms in order to divert attention from his own conduct or to simply put the administrators in a negative light as a defensive ploy. What is clear, however, is that respondent is unable to acknowledge any wrongdoing on his part or to demonstrate any understanding of the impact that his inappropriate conduct has on others. His loud questioning of the student counselor in front of his class caused the counselor to become embarrassed and upset. During the conference with the assistant principal, respondent asserted that the counselor was disrespectful and should have asked him for permission to talk to the student. His accusation that the principal sent people to his house to kill him caused the principal to fear for the safety of the school. Respondent, in turn, accused the assistant principal of trying to destroy his teaching career. His failure to cease arguments with student R [REDACTED] N. over bus tokens, or to recognize that he was antagonizing the student, caused [REDACTED] N. to become so upset that the student hit a wall with his fist on the first occasion and appeared ready to physically attack respondent on the second occasion.

Furthermore, respondent did not acknowledge that he understood that the students enrolled at Central High School and Tri-C are at risk of dropping out, had histories of failure in the academic setting, and were emotionally fragile. He did not admit that his conduct caused the students to have additional distress and emotional dissonance that would interfere with their ability to learn and lessen any desire to stay in school. Respondent's persistent failures to abide by the District's policies and his non-compliance with administrators' directives, combined with his unwillingness to admit any wrongdoing or shortcomings, provide ample reason to conclude that respondent is not amenable or agreeable to reform his professional conduct and would not benefit from further training or professional development so that he could become a responsible employee and effective teacher.

Seventh, the evidence did not show that disciplinary action would have an adverse impact or chilling effect on respondent's constitutional rights. Respondent was

afforded his due process rights in this administrative hearing and given the opportunity to tell his side of the story as he wanted.

Based on Findings 1 – 67 above and the foregoing analysis under the factors set forth in the *Morrison* case, the preponderance of the evidence showed that respondent's unprofessional conduct is indicative or a product of a defect in his temperament. Respondent has shown that he is incapable of complying with directives of administrators and District policies, lacks understanding and insight into how his conduct affects others, and harbors a personal sense of morality that makes him judgmental, intolerant, and confrontational. Respondent is evidently unfit to serve as a certificated employee of the District.

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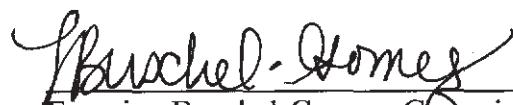
WHEREFORE, the Commission on Professional Competence Judge makes the following Order:

ORDER

Amended Accusation and Statement of Charges, Case Number 2015020642, filed against respondent Hsiao Yuan Wang, a permanent certificated employee, is sustained, based on Conclusions of Law 1 – 6 above, jointly and for all. Respondent Hsiao Yuan Wang is hereby dismissed or terminated as a permanent certificated employee of the Los Angeles Unified School District.

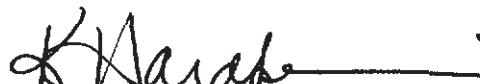
IT IS SO ORDERED.

Dated: April 11, 2016



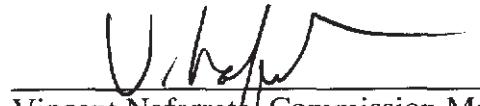
Francine Buschel-Gomez, Commission Member  
Retired Teacher  
Los Angeles Unified School District

Dated: April 11, 2016



Kristi Harabedian, Commission Member  
Teacher, Los Angeles County Office of Education

Dated: April 11, 2016



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