

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

In the Matter of the Accusation Against:

DIOKA OKORIE (EN 773293),
A Permanent Certificated Employee,

Respondent.

OAH No. 2016020579

DECISION

This matter was heard by a Commission on Professional Competence. Its members were Thomas Y. Lucero, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), Los Angeles, California, Patricia Fujii Carberry, and Gordon Brown. The Commission heard this case on June 22 through 24 and August 18 and 19, 2016, at Los Angeles, California.

Michele M. Goldsmith, attorney at law, represented the Los Angeles Unified School District (LAUSD or District).

Respondent Dioka Okorie was present during the hearing and represented by Metu C. Ogike, attorney at law. At times respondent and Mr. Ogike were joined by a second attorney, Charles U. Odiase, who also represented respondent.

Oral and documentary evidence was received, and argument was heard. The matter was submitted for decision on August 19, 2016.

The Commission on Professional Competence considered the matter in executive session on August 23, 2016. After due consideration of the entire record, the Commission makes the following Findings, Conclusions, and Order.

INTRODUCTION

The District seeks the termination of a tenured teacher, Dioka Okorie. It asserts five statutory grounds for termination: unprofessional conduct (Ed. Code, § 44932, subd. (a)(1); immoral conduct (Ed. Code, §§ 44932, subd. (a)(1), 44939); dishonesty (Ed. Code, § 44932,

subd. (a)(3)); evident unfitness for service (Ed. Code § 44932, subd. (a)(5)); and persistent violation of state laws or regulations for the governance of schools (Ed. Code, § 44932, subd. (a)(7)).

The allegations are that respondent: (1) molested a fifth-grade student in the classroom on three occasions in 2006 and 2007; (2) pulled down the pants of elementary school students in the schoolyard; (3) refused to surrender computer equipment lent him by the District despite demand for its return; and (4) disobeyed District policies in various other ways.

FACTUAL FINDINGS

The Parties, Jurisdiction, and Procedural History

1. Complainant Justo H. Avila executed the accusation and the first amended accusation in this matter in his official capacity as the District's Chief Human Resources Officer.

2. Respondent is a certificated teacher employed by the District.

A. Respondent has a background in science and engineering. In 1996, he received an A.A. degree in liberal arts from Los Angeles Southwest College. In 1998 he received a B.S. degree from the University of Southern California in Industrial and Systems Engineering. He worked in petroleum technology for approximately one year ending in June 1998. He then worked approximately six months at the Regional Technology Transfer Center of the National Aeronautics and Space Administration (NASA).

B. In May 2002, respondent received an M.A. in Education (Multicultural) and a multiple subject teaching credential from California State University Dominguez Hills. He worked as an elementary school teacher for the Inglewood Unified School District from April 1999 through July 2003. In August 2003 the District hired respondent to teach at Westport Heights Elementary School (Westport), from which he is currently on administrative leave. (Exhibit 56.)

3. The District commenced this proceeding on December 18, 2015, when complainant executed a statement of charges against respondent. (Exhibit 1.) Proceedings to terminate respondent followed the statement's filing with the District's governing Board.

4. On January 13, 2016, the District gave respondent written notice of its intent to terminate him and served him with a copy of the statement of charges. Respondent made a timely request for hearing, which led to the issuance of the accusation. The District served respondent with the accusation by mail on March 8, 2016. On March 17, 2016, the District served respondent with the first amended accusation. On March 18, 2016, respondent filed a

first notice of defense. On April 4, 2016, respondent filed a notice of defense denying the allegations of the first amended accusation and asserting two affirmative defenses.

Guidance and Counseling

5. A conference attended by respondent and Sheri Kee, then assistant principal of Westport, took place on May 17, 2004. They discussed allegations that respondent choked a student taught by another teacher, Ms. Clark. Respondent denied that he touched the student. Ms. Kee sent respondent her summary of the conference, dated May 20, 2004. It included the directive, “Do not handle students in a physical manner, when reprimanding them.” (Exhibit 20.)

6. A conference attended by respondent, Alicia Stevenson, then principal of Westport, and Hazel Harris, a fifth-grade teacher at the school, took place on June 1, 2004. The discussion concerned a student who stated respondent mistreated him by calling him names and spraying air freshener around him when it was thought he had passed gas in respondent’s classroom. Ms. Stevenson sent respondent her June 7, 2004 memorandum of the conference, including assistance and guidance: respondent must not use air freshener and “name-calling must be avoided by you and your students.” (Exhibit 21.)

7. On May 8, 2006, Freida Smith, then principal of Westport, wrote a memorandum of her conference with respondent that day. A student complained respondent had swatted him on the bottom. Ms. Smith’s May 8, 2006 memorandum offered assistance and guidance, including: “Do not handle students in a physical manner when reprimanding them.” The memorandum also issued the directive that respondent: “Not use physical means to discipline or direct students.” (Exhibit 22.)

8. On November 23, 2009, Karen G. Long, then principal of Westport, sent respondent inter-office correspondence regarding a November 19, 2009 conference, attended by Principal Long, respondent, and the parents of a fifth-grade student in respondent’s class. As Ms. Long wrote, the parents sought to have their child transferred out of respondent’s class, complaining that he gave too much homework, was inflexible, and spoke to and treated students harshly. Respondent agreed to reduce homework by allowing students to answer every other question assigned. (Exhibit 25.)

9. On June 23, 2010, Principal Long wrote a memorandum of her June 21, 2010 conference with respondent. The memorandum covered many topics, including hugging a student after yelling at her. The memorandum notes that respondent “denied any instances of abuse including . . . hugging” The memorandum provided assistance and guidance, including: “Maintain professional rapport with both students and parents. Keep doors open when students are in the room during non-instructional time. Never remain in the classroom with one student.” (Exhibit 27.)

Reports of “Pantsing”

10. The District employed Jill Corral as a teacher beginning in 1977. She worked for approximately five years as a television reporter before returning to teaching at private schools for several years. Before she retired in 2014, she had been a fourth- and fifth-grade teacher at Westport for four or five years. Two other teachers taught fifth grade at Westport during the time Ms. Corral did, Robert Mehok and respondent. Ms. Corral had little memory of the “pantsing” incident. Her testimony regarding communications between her and respondent in other respects is set out below, beginning at Finding 81.

11. On May 21, 2014, three students in Ms. Corral’s class, two boys and a girl, were talking with other students about respondent. Approximately a month and a half previously respondent had been removed from the school and was on administrative leave. The students recalled that respondent had seen them on campus and expressed dissatisfaction with how the boys wore their pants, scolding them that their pants sagged and then pulling their pants down, “pantsing” them. Ms. Corral sent the three students to the interim principal, Susan Allen.

12. Ms. Allen worked as a teacher and administrator at LAUSD from 1982 until approximately eight years ago, when she retired. However, she has returned to the District periodically in different roles, such as interim principal at Westport, both at the beginning of the 2013-2014 academic year, before Jacqueline Hughes became principal, and for approximately a month at the end of that academic year, when Ms. Hughes was on maternity leave.

13. As Ms. Allen testified, she had the children write down what had happened on the same day Ms. Corral sent them to her. She told them not to talk to each other and to write down what happened. Ms. Allen was following District policy that administrators should allow students to tell the facts as much as possible without prompting or suggestions.

14. One of the boys, D.V. (students’ initials are used to protect privacy and confidentiality) wrote exhibit 39, which stated:

When Mr. O pantsed me I felt inbarest and insulted because he was laghfing at me and the class too. I think he did that so that we lerned a lesson. I get the part were we lerned the lesson but when he laghfed at me that was the part that I was insulted.

The note set out the student’s name, it was dated “5-21-14,” and it continued:

PS I hapend last year when I was coming back from lunch at about 10:30 PM.
(Spelling and grammatical errors in original.)

15. The girl, R.R.G., wrote Exhibit 40:

Dear Ms. Allen

The day Mr. O pantsed [E.D.] and [D.V.] it made me feel bad for them and it made me feel like it was a little rong, but he was also trying to teach them a lesson not to sag in the futer. (Spelling and grammatical errors in original.)

16. The third student, E.D., wrote Exhibit 41:

When Mr. O pantsed me I felt like I learned a lesson but I felt embarrassed and mad but, I learned that sagging is for gangsters. The next day I made sure to wear a belt.

PS: It happened 2 years ago in 2nd grade January 7th, 2012 at about 10:30 am

The student then wrote his name and the date of the note, "May 21st."

17. Ms. Allen noted at hearing that most students have trouble recalling an exact date for past events, but E.D. said he recalled the incident's date because some other unspecified but memorable event had occurred on the same date.

18. Ms. Allen recorded the incident in an Incident System Tracking Accountability Report (ISTAR), Exhibit 42, which states in part:

The two male students . . . were wearing "sagging" pants. A fifth grade teacher, Mr. Dioka Okorie, approached them at lunch, and pulled their pants down. He warned them not to wear gang related clothing to school. [¶] . . . [¶]

The two incidents happened at two different times. The incident with [E.D.] occurred on January 7, 2012 at approximately 10:00 am on the yard at the end of nutrition. The incident with [D.V.] happened last year at the end of lunch, on the yard.

As the ISTAR also states, Ms. Allen telephoned the Los Angeles Police Department (LAPD) on May 22, 2014 to ask whether they would investigate. An officer from LAPD told her she should handle the matter administratively, since the students were not in imminent danger. Ms. Allen took no further action.

19. Ms. Allen considered respondent a good teacher and a good disciplinarian. Some students who spoke to her of him said they thought he cared about them and they had learned much in his class.

20. Marsha Martinez is a registered nurse and the mother of E.D. and three other students who attended Westport. Two of her boys, not including E.D., were fifth-graders assigned at different times to respondent's class. Ms. Martinez testified that she considered respondent an excellent teacher and wanted E.D., her youngest child, to be in respondent's class, though that did not happen. When he was in sixth grade at another school, one of her

sons who had been in respondent's fifth grade class would return to Westport at times to visit respondent.

21. Ms. Martinez did not hear of any pantsing incident until she was contacted by police at some point in 2015. She could not remember if she heard from the LAPD or Los Angeles School Police Department (LASPD). The police said they were investigating whether respondent had molested students and they asked Ms. Martinez whether respondent had pantsed E.D. or whether E.D. had spoken of such an incident. As Ms. Martinez told the police, she had never heard of the incident.

22. She asked E.D. whether respondent pantsed him. E.D. denied any knowledge. Ms. Martinez concluded that respondent had not pantsed her son. If respondent had, Ms. Martinez would consider that molestation. But as she testified, based on her and her children's years of experience with respondent, and E.D.'s denial, respondent never did anything to molest or embarrass her children.

23. Ms. Martinez asked Principal Hughes about the police investigation. Principal Hughes told her she could provide no information, that any investigation was confidential, and that in any event she knew nothing about alleged pantsing.

Report of Sexual Molestation

24. D.B., currently a college student, reported that respondent sexually molested him when he was a student in respondent's fifth grade class at Westport.

25. D.B. attended a private high school in Los Angeles. The school organizes an annual retreat for the senior class. D.B. attended such a retreat at Big Bear Lake, California (the Big Bear retreat) in late March 2014. The event is designed to give students opportunities away from home to think about and discuss the future, particularly how they might engage religion once on their own at college, or otherwise away from parents and those who might have encouraged their religion or spirituality in the past.

26. Mary Eileen Young was among the teachers assigned to accompany D.B. and his senior class to the Big Bear retreat. D.B. was at the time a student in Ms. Young's English class. Observing him in class, Ms. Young considered D.B. among her best students. He was consistently thoughtful in discussions and in answering questions, friendly to others, intelligent, and talented as a singer and actor.

27. In preparing for the Big Bear retreat, Ms. Young told students in her class, including D.B., that she and the other teachers who chaperoned and organized the retreat were, by law, mandated reporters. She was referring to the California Child Abuse and Neglect Reporting Act, Penal Code sections 11164 through 11174.3, which mandates that teachers, among others, disclose to law enforcement officials matters of certain types, such as sexual abuse and other types of harm to a person under 18 years of age. She told the students that during the retreat there would be discussions, including comments students were invited

to make. She told them, including D.B., that if they discussed any matter whose disclosure to law enforcement officials was mandated by law, no confidence or request for secrecy would be honored. Rather she and the other teachers would follow the law, act as mandated reporters, and disclose what students said.

28. Ms. Young and the other teachers at the high school had training in mandated reporting. Ms. Young consulted with Rose Roberts, an experienced teacher and head counselor at the school, who had access to students' files and was not scheduled to attend, and did not attend, the Big Bear retreat. Ms. Young asked Ms. Roberts to be on stand-by. Ms. Roberts told Ms. Young that she would be available at all times while the retreat was in progress to answer questions by telephone and to review a student's file if necessary.

29. Approximately 70 students, including D.B., participated in the Big Bear retreat, accompanied on any given day by about half a dozen teachers. On an evening near the end of the retreat the entire senior class and several teachers gathered in a large room, which was well lighted where the students sat facing each other in a circle, while teachers, visible but less conspicuous, sat outside the circle in lower light. Students were asked to volunteer discussion of significant challenges they had faced.

30. Several students spoke briefly on the topic, sharing personal experiences. Neither the first nor last, D.B. was among those who volunteered. He stated that: when he was younger he had been sexually molested by someone his family knew, but who was no longer a person in his life; he had never told anyone of the incident; for a time he was angry at God but he had recovered his faith and managed to overcome the difficult emotions the incident caused him. No one commented on D.B.'s statements. The group simply moved on to what other students volunteered.

31. Listening to D.B., Ms. Young thought immediately that the incident he described must be reported to law enforcement. She checked first by telephone with Ms. Roberts, in case what D.B. had stated was already in his student file and already reported. Ms. Roberts told her no such statements were on file. The next day the two teachers filed a report of D.B.'s statements.

32. The report was filed with the Los Angeles County Department of Children and Family Services. Ms. Young told D.B. that, in light of his statements at the retreat, the school was referring him to a counselor at a counseling service with which the high school contracted. For the first time at this point Ms. Young observed that D.B. became emotional about the incident. He besought Ms. Young not to report the incident. She told him a report had already been filed. She also told him that his parents must be informed. He responded that he would inform them himself. Ms. Young told D.B. that she would telephone his parents next day to confirm they had been informed. She reminded him of mandated reporting. D.B. calmed during this discussion.

33. The next day Ms. Young telephoned D.B.'s home and confirmed that D.B. had informed his parents of the incident. She told them that a police officer would be interviewing D.B. at school in a day or so.

Initial Investigation of Alleged Molestation

34. Principal Hughes heard reports of the incident on April 2, 2014, the date of an Incident Report Form she wrote. The report states in part that the assistant principal, Janet Searcy:

received a call from LAPD, Officer Flemming, who reported to her that she, officer Flemming received a report from a therapist of a 17 year old former Westport Heights student. The student report[ed] to the therapist that he had been molested by a teacher at Westport Heights by the name of Dr. Okorie. The student alleges that the molestation happened from 9 years old to 12 years old. He said that the teacher touched his genitals and made the student touch the teacher's genitals. The student said the teacher also kissed him on his neck. (Exhibit 32.)

35. On April 3, 2014, two LAPD officers arrived at the high school to interview D.B. and investigate "Possible victim of Sexual Abuse." (Exhibit 45, p. LAUSD 504.) Ms. Young and the school had been informed that the police would interview D.B. at the school. They arranged matters so that D.B. could be called away from the classroom discreetly, with no indication that police activity was involved.

36. Upon the officers' arrival, Ms. Young met D.B. and took him to a small unused office, which provided privacy. There the officers advised D.B. that they would ask him questions about the incident he had described at the Big Bear retreat. They told him he could have another person present. He chose Ms. Young, who was present throughout the interview.

37. The officer who took the lead in interviewing D.B. was Marine Gevorgyan. She testified at the hearing about the LAPD training and experience she used in asking D.B. open-ended questions, to avoid suggestions to which the interviewee might readily assent. She was aware that often sexual abuse causes shame and other emotions that may prevent a person from speaking or speaking freely, so that the interviewing officer must work to establish rapport and speak in ways that engender trust and frankness. Officer Gevorgyan was also trained to ask for the same information in different ways, so that to respond the interviewee must reiterate facts and circumstances. Consistency of responses to repeated and similar questions is generally a good indication that the interviewee is telling the truth.

38. In the course of D.B.'s interview, Officer Gevorgyan returned to a few points in D.B.'s narrative to ask for clarification and to check for consistency and believability. In responding to questions and repeating information, D.B.'s version of events stayed consistent. D.B. described three incidents.

A. The first incident: The first incident was in March 2006: D.B. was in fourth grade; he had a slip of paper from the school office telling him to report to respondent's classroom regarding the next year's classes; when he arrived at the classroom, respondent was alone, sitting at his desk; respondent came around the desk to D.B. and kissed him three times on the neck; respondent then touched D.B.'s clothed buttocks and genital area.

B. The second incident: The next incident was in November 2006: Respondent was D.B.'s fifth-grade teacher; because D.B. had not completed his homework, respondent required that he stay in the classroom instead of going out to recess; alone in the room with respondent, respondent blocked the door so that D.B. could not leave and touched D.B.'s clothed buttocks.

C. The third incident: A final incident occurred in approximately February 2007: as in the previous incidents, respondent touched D.B.'s clothed buttocks; respondent also took D.B.'s hand and placed it on respondent's clothed genital area.

39. Officer Gevorgyan prepared an LAPD Investigative Report that describes D.B.'s interview. (Exhibit 55.) The report is consistent with Officer Gevorgyan's testimony at the hearing. The report also refers to past allegations of respondent's misconduct, described in the Findings above.

D.B.'s Testimony at Hearing

40. D.B.'s testimony at hearing regarding the three incidents was consistent with Officer Gevorgyan's report and testimony.

41. At the hearing, D.B. provided some additional background and context for the three incidents. He was taken by surprise each time, though he tried to avoid the last incident.

A. Before the first incident, he was unexpectedly summoned to respondent's classroom by means of a note from the school office. But as a fourth-grader, he understood he might be assigned the next year to respondent's classroom. D.B. guessed the note might be related to the next year's classroom assignment. D.B. and other fourth-graders at the school knew respondent by reputation, especially for being strict with students. There was no reason for D.B. to think anything amiss about a note from the school office requiring that he report to the strict fifth-grade teacher's classroom between instructional periods, or about finding on arrival that he was alone with respondent in the classroom. Moments after entering the fifth-grade classroom, however, as set out in Finding 38, respondent touched D.B. in several ways so sexually suggestive that D.B. could not simply dismiss or forget them.

B. The next year, as a student in respondent's fifth grade, D.B. was aware that respondent regularly kept students from non-instructional activities like recess when they failed to complete homework. In consequence, D.B. simply complied when respondent

required that he remain in the classroom to complete a homework assignment. As there was no other student in the classroom, respondent seized the opportunity to touch D.B. again.

C. Having experienced two incidents difficult to anticipate, D.B. planned to forestall a third. He wanted to retrieve a meal card he had forgotten in respondent's classroom. He needed the card to be served lunch in the school cafeteria. As a precautionary measure against his being alone in the classroom with respondent once again, D.B. asked a classmate to accompany him. D.B. thought that at the least his classmate would be a witness in case of another incident. But respondent defeated the plan by closing the classroom door, leaving D.B.'s companion outside and D.B. subject to assault within.

D. Each incident caused D.B. to think what he ought to do. But his thinking was clouded by emotion. He believed he was physically attracted to girls, but worried that respondent's touching had elicited a physical reaction in him.

E. Confused and unsure to whom he might turn, D.B. considered but rejected telling his family. He resolved to keep the incidents to himself. He feared that in whomever he might confide, his father would learn at least part of the truth and be enraged. He feared that violent retaliation could cause his father to be imprisoned, to the family's deprivation, both intangible and financial.

F. Before speaking to his high school senior class, D.B. felt the urge to talk about how respondent had affected him. He did so at first tacitly. After he had graduated from Westport, D.B. returned to tell respondent that he was doing well in school, with good grades and awards. D.B. felt a measure of relief. He was signaling respondent that he had overcome any damage and was able "to laugh in his face."

42. As indicated in the Findings below, other witnesses testified regarding persons and matters regarding which D.B. testified, namely: (i) respondent, (ii) Westport teacher Dorothy Lynne Armstrong, (iii) D.B.'s mother, and (iv) D.B.'s maternal aunt.

43. On April 4, 2014, respondent was "pulled" or removed from the classroom and placed on administrative leave. Initially his removal was considered temporary. The person who authorized temporary removal was Janice Davis, Administrator of Operations at Educational Service Center West (ESC West), a local district office of LAUSD with administrative authority over Westport and other schools. As Ms. Davis testified, after consulting with Ms. Hughes and reviewing respondent's personnel file, she authorized the "temporary pull" of respondent, pending a further action, such as whether Ms. Davis should recommend to the LAUSD Board of Education that respondent be permanently removed from classes.

44. Officer Gevorgyan and her partner did not interview respondent. They intended to interview him at Westport shortly after they interviewed D.B., but respondent was no longer at the school when they sought him there. Officer Gevorgyan thought that eventually a detective would be able to conduct the interview, but as indicated below,

respondent refused to discuss D.B. with any investigators, whether from LAUSD, LAPD, or LASPD.

45. Further investigation by LAPD Officer Vonnie Benjamin-Brown followed up on the investigation by Officer Gevorgyan and her partner. On April 11, 2014, Officer Benjamin-Brown telephoned and left a voicemail message at D.B.'s residence and wrote him a letter as well seeking an interview. On April 15, 2014, however, D.B.'s mother told Officer Benjamin-Brown that D.B. did not wish to prosecute and would not cooperate with the investigation. She said that D.B. "wanted to move on with his life and forget about what happened." (Exhibit 55, p. LAUSD 474-475.)

46. On April 22, 2014, Officer Benjamin-Brown spoke to respondent about an interview. He said that, having engaged an attorney, he refused to provide a statement. (Exhibit 55, p. LAUSD 475.)

Testimony of D.B.'s Mother

47. A few days after the Big Bear retreat, D.B. recounted to his parents what he had told his classmates about molestation, adding that the person responsible was respondent. D.B.'s mother (Mother) was shocked, as she testified at hearing. She experienced anguish that she and others close to D.B. had not helped him cope with such a catastrophe. She worried about how much harm D.B. had been suffering.

48. Mother recalled that, at about the time the molestation started, D.B. had withdrawn somewhat from engaging her and other family members. She suspected at the time that he might be suffering emotionally, but she discounted and eventually dismissed her worry by the thought that children normally go through phases of unease or unhappiness, usually without lasting harm.

49. Mother worried for her husband as well. She worried he might threaten or even harm respondent. Asked by his parents why he had not earlier told them of the incidents, D.B. told them, as he had told others, that he was worried about what his father in particular might do. He wanted to avoid his father's acting in anger, which could end in his father's being punished, even jailed for a retaliatory attack on respondent. D.B. feared that the family could be deprived of his father's presence in the home, which could lead to financial and other difficulties.

50. Mother thought D.B. wise not to have disclosed the incidents earlier. Like her husband, her first impulse was to inflict harm on respondent, although that was soon followed by sadness and guilt that she had not prevented respondent's conduct, or known enough consciously to mitigate it.

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Testimony of D.B.'s Maternal Aunt

51. D.B.'s maternal aunt (Aunt), like her sister, D.B.'s mother, is a teacher. She taught second grade at Highland Elementary School in the Inglewood Unified School District for approximately 20 years, and was acquainted with respondent when he was also a teacher there. As indicated below, she told investigators that respondent had been disciplined for various sorts of misconduct at Highland Elementary School, the details of which, however, were unknown to her.

52. Aunt is close to her sister, to D.B., and to the family. She knows D.B. to be a good student, a respectful son and nephew, and honest. Like D.B.'s mother, she has no reason to doubt what D.B. said happened between him and respondent.

53. In early 2016, Aunt happened to see respondent as he was walking into and Aunt was walking out of a local Kaiser Permanente hospital. Respondent pleaded with Aunt to talk to her sister, D.B.'s mother, saying he wanted his job back. Aunt was sick at the thought that respondent had molested D.B. and was unwilling to listen to him. He was insistent. Aunt told him he knew what he had done to D.B., but he did not respond. Aunt tried to walk away to cut any conversation short. Respondent followed her to the station where she paid for her parking, as he continued his pleas that she should talk to her sister.

District Policies

54. The District has rules and policies that govern interactions between students and District employees.

A. The District has promulgated to its employees an "Ethics Policy Statement" which provides in part:

EMPLOYEE AND STUDENT RELATIONS. District employees are entrusted with the physical and mental well-being of every student. Therefore, employees shall treat students with respect and care and be aware of their proper roles as public servants, role models and contributors to student development. Employees shall not exploit . . . any student . . . (Exhibit 61, emphasis in original.)

B. The District's Code of Ethics includes this stricture:

11. Maintain appropriate relationships with students. *We [District employees] are committed to ensuring that employee-student relationships are positive, professional and non-exploitative. We will not tolerate improper employee-student relationships.* (Exhibit 62, emphasis in original.)

C. The District's Code of Conduct with Students includes these cautions regarding activities that teachers and other District employees are to avoid:

1. Meeting individually with a student behind closed doors, regardless of gender. [¶] . . . [¶]

6. Touching or having physical contact with a student(s) that is not age-appropriate or within the scope of the employee's/individual's responsibilities and/or duties. (Exhibit 63.)

D. The District has published and provided its employees copies of written policies that were in effect in 2006 and 2007. They were substantially the same as policies set out in bulletins, Exhibits 64, 65, and 66. The bulletins, in effect since 2011: (i) prohibit sexual abuse of students and require that, as mandated reporters, teachers report suspected sexual abuse of students, (ii) prohibit hazing or any conduct that adversely affects the well-being of students, and (iii) prohibit sexual harassment of students.

Recovery of Computer Equipment

55. LAUSD has at times purchased computer equipment for the use of teachers. On March 28, 2011, the District issued a laptop computer to respondent, upon his signing a form which stated in part:

LAPTOPS ARE PROPERTY OF LAUSD AND MUST BE RETURNED.
LAPTOPS MUST BE SECURED AT ALL TIMES. (Exhibit 59, p. LAUSD 514, capitalized in original.)

56. On August 5, 2013, the District issued respondent an iPad, a tablet computer, after he signed a form. Section B of the form states in part:

I acknowledge receipt of the property listed below and agree to the terms for its use, safeguard, and return as indicated in Section C below.

Section C listed nine conditions for use of the iPad, including:

6. Loaned equipment/property listed on this form remains the property of the LAUSD and will be returned on or before expiration of the loan period indicated in Section A [not so indicated and left blank].

7. The division reserves the right to request the equipment/property prior to the return date.

8. The receiving office agrees to return the equipment/property upon request or by the return date. (Exhibit 59, p. LAUSD 515, emphasis omitted.)

57. While the LAPD was conducting its investigation, the District proceeded with an Administrative Investigation in early 2014, during which the District demanded that

respondent return the computer equipment, the laptop and iPad. Detective John Metcalf initiated the demand.

58. Detective Metcalf is employed by LASPD. Before LASPD, Detective Metcalf was an officer and later promoted to detective in the LAPD. He worked at LAPD for approximately 28 years and estimated he has participated in many thousands of cases. He has worked at LASPD since January 2014, when LAUSD instituted and assigned Detective Metcalf to the Student Safety Investigation Team (SSIT). SSIT investigates complex acts of misconduct by District employees, whether teachers or others.

59. SSIT and Detective Metcalf sought to investigate the molestation allegations. This part of the investigation was postponed, however, while the LAPD investigated respondent. SSIT may not investigate a teacher while LAPD investigates the teacher.

60. The LAPD's investigation had ended on April 15, 2014, when Detective Metcalf requested seizure of the computer equipment. The request was directed to ESC West. Detective Metcalf planned that, upon its return, the equipment would be scanned for child pornography or sexually explicit adult content. Such scanning is routine in cases of reported sexual misconduct.

61. Cynthia Jackson, an Operations Coordinator, was the person at ESC West charged with recovering the equipment from respondent and communicating with Detective Metcalf about her efforts. On April 21, 2014, she spoke to respondent about return of the equipment. Respondent was "housed" at that time, that is, he was assigned to report for work to the training room at ESC West, adjacent to where Ms. Jackson worked. She called him out of the training room and then asked him about the equipment. He said that he did not remember where the equipment was.

62. On April 23, 2014, Ms. Jackson spoke to respondent by telephone and sent him an email, asking that he return the equipment. On April 24, 2014, respondent wrote an email in response, in which he stated in part:

When you called me out of the ESC West training room on Monday to question me about my personal computer and asked me if I had a district issued computer I was answering your question openly and honestly. I told you that I did and that it is somewhere, but I wasn't sure about the location because I have not used it in a while. (Exhibit 34.)

63. Like Ms. Jackson, Ali Galedary was an Operations Coordinator at ESC West in 2014, and later took over her duties when she left her position. At hearing, Mr. Galedary recalled that Ms. Jackson asked him to be in the room during an interview with respondent when she asked that he return District equipment. At the start of the meeting respondent was cordial and respectful. When Ms. Jackson was insistent that he return the equipment, he raised his voice. He said that he did not know where the equipment was. When a retired principal, Willard Love, heard the commotion, he came into the room and Ms. Jackson left.

Respondent then said that Ms. Jackson had been disrespectful toward him. Asked at hearing whether Ms. Jackson was disrespectful, Mr. Galedary said no, she was merely firm. That was the only time that Mr. Galedary heard any complaints from respondent. He listened in on that occasion because Ms. Jackson asked him to. Otherwise he was not involved in dealing with respondent.

64. Ms. Jackson kept Detective Metcalf and Administrator of Operations Ms. Davis informed of her unsuccessful attempts to recover the equipment from respondent. Ms. Davis told Ms. Jackson that she should give respondent a written directive. Ms. Jackson gave respondent the written directive on May 6, 2014, which stated in part:

You are directed return [sic] the following items, which are the property of the Los Angeles Unified School District, by Wednesday, May 7, 2014:

1. Hewlett-Packard Laptop
2. Apple iPad Tablet Computer [¶] . . . [¶]

Failure to follow an administrative directive may lead to discipline including the issuance of a Notice of Unsatisfactory Act, Notice of Suspension and/or dismissal from the Los Angeles Unified School District. (Exhibit 67.)

Investigation by Detective Aaron Gray

65. Respondent did not comply with the directive. Shortly afterwards, Ms. Davis told Ms. Jackson to ask the police to take over the recovery effort. Ms. Jackson did so by writing a May 19, 2014 email to LASPD headquarters. (Exhibit 67.)

66. LASPD has employed Aaron Gray for 19 years. For approximately the past 15 years, he has worked as a detective, handling a wide variety of alleged crimes against property and persons. Persons he investigates include teachers, school nurses, administrators, indeed any type of LAUSD employee. Detective Gray often works closely with SSIT. When he investigated respondent, Detective Gray had experience recovering District property on hundreds of past occasions.

67. From the start of investigating respondent, Detective Gray considered time of the essence. If a District employee returns computer equipment without delay, that tends to preserve memories, assisting investigation, whereas delay is a hindrance and raises suspicion that the employee may be hiding something, or taking time to delete or destroy inappropriate digital content, such as child pornography or explicit adult sexual material or copies of inappropriate email communications. All such matters the District routinely investigates when sexual impropriety is suspected,

68. To recover the equipment from respondent, Detective Gray was required to subpoena internet service providers and correlate their information with location information from tracking software and signals automatically transmitted by the equipment and residence

information obtained from the Department of Motor Vehicles. He then obtained a search warrant for respondent's residence, where he and eight other officers went early in the morning on October 15, 2015, some of them entering with guns drawn. The number of officers and the way they handled their firearms was in accord with police safety protocols. They served the warrant, searched the house as respondent and his family looked on, and quickly found the equipment in plain view in a bedroom.

69. Complying with LASPD procedure, Detective Gray reported the search and its results to the Los Angeles City Attorney's office. That office, not Detective Gray's, was charged with determining whether respondent should be charged with theft. In Detective Gray's view, respondent was guilty of theft, hiding the crime by lying about his ignorance of its whereabouts. But the detective recommended to the City Attorney's office that any criminal charges be rejected, because they would serve no practical purpose.

70. Detective Gray has no background in forensic investigations of computers and did not know whether matter may have been removed, destroyed, or deleted from the equipment recovered from respondent. Whether the equipment stored or processed improper matter was for Detective Metcalf, not Detective Gray, to investigate.

Further Investigation of Molestation

71. On May 12, 2014, Detective Metcalf telephoned D.B.'s mother to request an interview with him. She told him her son declined being interviewed, preferring to move on with his life.

72. Also in May 2014, Detective Metcalf asked Ms. Jackson to obtain permission for his interviewing respondent. Respondent's response, as Ms. Jackson reported to Detective Metcalf, was that he would not submit to an interview while he was on leave to bond with his newborn child, after which he would be unavailable on summer vacation.

73. Besides their communications regarding the interview request, Ms. Jackson periodically apprised Detective Metcalf of her and the District's efforts to retrieve the District's computer equipment from respondent.

74. On August 20, 2014, Detective Metcalf met respondent in the presence of his attorney, Metu C. Ogike. Mr. Ogike told Detective Metcalf that respondent declined an interview based on his Fifth Amendment right against self-incrimination. Detective Metcalf explained to Mr. Ogike that nothing respondent said could be used against him in a criminal proceeding, under *Spielbauer v. County of Santa Clara* (2009) 45 Cal.4th 704. Detective Metcalf explained three times that respondent's refusal to speak when requested in this, an administrative investigation, could be deemed insubordination and grounds for discipline, including termination. Respondent followed his attorney's advice and refused to speak except to assert his Fifth Amendment right.

75. On September 15, 2014, Detective Metcalf interviewed Aunt, a School Psychologist and teacher at Highland Elementary School in the Inglewood Unified School District (IUSD). She is also D.B.'s maternal aunt, although the record is unclear whether Detective Metcalf was aware of the family relationship. Aunt knew of respondent when they were both IUSD teachers in the 2002-2003 school year at Highland Elementary School. She told Detective Metcalf that on a few occasions respondent had been disciplined by IUSD.

76. To check on statements by Aunt, that respondent may have been disciplined while a teacher at IUSD, Detective Metcalf reviewed respondent's personnel file at IUSD's administrative office. The file had no record of discipline, little information, and nothing useful to Detective Metcalf's investigation. Detective Metcalf spoke to the IUSD Director of Human Resources. She said that in 2002, the IUSD School Board had decided not to re-elect respondent as a permanent employee. She said that the decision was not based on any disciplinary issues, and volunteered that it was possible a better qualified teacher had been hired in place of respondent. Respondent was retained as an IUSD substitute teacher in the 2002-2003 and 2006-2007 school years. (Exhibit 46.)

77. Shortly after obtaining information from IUSD, having little with which to continue an investigation, Detective Metcalf suspended his investigation.

78. In the fall of 2015, another LASPD detective, Aaron Gray, advised Detective Metcalf that on October 15, 2015, the District had recovered its laptop computer and iPad at respondent's home, where Detective Gray had served a search warrant.

79. Detective Metcalf promptly had the recovered computer equipment scanned. No child pornography or sexually explicit adult content was discovered.

80. Detective Metcalf's report of his investigation is Exhibit 45. It includes the facts above, to which he testified at hearing, as well as "[p]rior allegations of misconduct/conferences" As Detective Metcalf testified, his investigation was inconclusive primarily because he was unable to interview either D.B. or respondent.

Testimony of Jill Corral

81. As indicated above, Westport fifth-grade teacher Ms. Corral, now retired, worked with two other fifth grade teachers at the school, respondent and Robert Mehok. Ms. Corral, respondent, and Mr. Mehok had weekly grade-level meetings, which the District required. A meeting would last 45 minutes to an hour. Instead of discussing school matters, however, respondent and Mr. Mehok talked about sexual encounters, some they spoke of as past, others planned for the future, and about drinking alcoholic beverages and alcohol-influenced exploits. They also told crude jokes and tried, though unsuccessfully, to pry into Ms. Corral's personal life, making her uncomfortable. Ms. Corral considered reporting their conduct to District authorities, but she was discouraged by the thought it would be her word against two others'. She was also intimidated by the aggressive tone respondent and Mr. Mehok used in telling her to reveal nothing. She recalled one instance in particular when,

particularly offended by the talk during a meeting, and saying she would leave early as a result, respondent commanded that she “sit the fuck down and shut the fuck up.”

82. She recalled jet travel once when she and respondent happened to take the same flight. She remarked on respondent’s not wearing his wedding ring as usual. His response was that he was not married when traveling without his family.

83. Ms. Corral recalled that a student told her respondent “pantsed” him, but otherwise her memory of any such misconduct was poor.

Testimony of Principal Jacquelyn Hughes

84. Some parents, perhaps four or five in the 2013-14 school year, complained to Westport Principal Hughes that respondent was harsh and unfair. For instance, he took the headphones belonging to one child and when told that the parents wanted them returned to the student, respondent quipped that he had new headphones. There was a grandmother who wanted her grandchild, for whom she was legal guardian, switched to another fifth-grade teacher. At a meeting with the grandmother, respondent spoke in such a way that she left crying.

85. Ms. Hughes heard reports that a male adult was using the boys’ bathroom at the school. She did not know who the person was, but wanted to stop the practice, so she wrote a letter to all school staff on September 27, 2013. It stated in part:

It was brought to my attention that an adult staff member has been using the student bathrooms.

This letter serves to notify all staff that no adults are to use the student restrooms. (Exhibit 31.)

86. Shortly afterwards Ms. Hughes heard from respondent, who said she had caused him to be vilified, since many people believed that, though he was not named in the letter, Ms. Hughes was referring to him. Respondent said that she should not have written the letter, since he had good reasons to use the boys’ bathroom. He said he had a problem with his bladder that forced him to urinate frequently, to such an extent that when he drove a long distance in his car he was sometimes forced to take a container to relieve himself on the way as he drove.

87. On January 22, 2015, a conference at ESC West was held, attended by Ms. Hughes, Operations Coordinator Ali Galedary, respondent, and Michael Kaplan, a representative of the teachers’ union to which respondent belongs, United Teachers of Los Angeles (UTLA). Ms. Hughes’s January 28, 2015 memorandum of the discussion at the meeting is Exhibit 47. The memorandum describes in detail the three incidents D.B. alleged and respondent’s failure to return District-issued equipment. The memorandum directed

respondent not to be alone with or touch students in any way unless for their immediate safety, to return all school property, and to follow District policies and codes.

88. At hearing, Ms. Hughes could not recall a specific instance when respondent was alone with a student. District policy clearly prohibits a teacher's being alone with a student, even when the teacher is giving instruction.

Testimony of Administrator of Operations, ESC West, Janice Davis

89. Administrator of Operations Davis retired from LAUSD. She has been a principal and a teacher. Her last assignment in July 2012 was at ESC West, which oversaw approximately 155 schools, including Westport. As set out above, Ms. Davis authorized the "temporary pull" of respondent in early April 2014. The permanent pull was her decision in consultation with others, including Principal Hughes. Ms. Davis stated that when the issue is whether there has been inappropriate touching by a teacher, she errs on the side of caution to protect students. As also noted above, Ms. Davis was involved in the effort to retrieve the District's computer equipment from respondent and communicated with Ms. Jackson about that.

90. Ms. Davis explained that a Skelly meeting¹ is the last chance for the teacher before a decision on discipline is made to provide information that might affect the decision. Ms. Davis was the Skelly officer in the Skelly meeting with respondent. She has experience with between 25 and 30 such meetings. She strives to participate in the Skelly meeting with an open mind, open to what the teacher might present or who might be brought to speak at the meeting. The District prepared a Skelly packet, which included the charges against respondent and Ms. Hughes's January 28, 2015 memorandum, Exhibit 45. Ms. Davis reviewed the Skelly packet before attending the meeting, so that she would be prepared and would have the issues in mind during the meeting.

91. Respondent attended the Skelly meeting with a lawyer and his pastor. All those at the meeting reviewed the charges. Respondent had nothing to say or add regarding the charge of molestation. Regarding other charges, respondent's counsel said that he would respond in writing, by letter or email. However, Ms. Davis was unaware of any later response.

92. There was discussion of a conference memorandum prepared by Ms. Long in 2010 (Exhibit 27, described above in Finding 9). Respondent said he had not received it and so did not have a chance to respond to it. Ms. Davis asked Ms. Long about that, and she said she had sent the conference memo to respondent's home.

¹ The name is derived from *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, in which the California Supreme Court ruled that certain procedural safeguards are required as part of constitutionally protected due process before the imposition of discipline of sufficient severity.

93. Ms. Davis described her thought process in deciding whether to recommend to the Board that it proceed with dismissal: she looks at all the evidence and reviews all of the charges, she considers the severity of the charges, and then she considers how it would affect students if no action is taken toward dismissal. She recommended that the Board proceed with dismissal. At the same time she sent respondent notice that that was her recommendation to the Board.

94. Ms. Davis's recommendation was based primarily on her concern that molestation had occurred. Other misconduct was contributory. She noted that respondent took no responsibility for any of the misconduct described in Skelly packet. She believed that he was dishonest in saying he did not know where the computer equipment was. She believed that the District could not trust him to be honest about anything and was not fit to be returned to any District classroom. She concluded that there was a pattern of misconduct and that misconduct was likely to occur again. Respondent had no remorse. She determined that the District had justifiably lost confidence in respondent's ability to be a responsible teacher.

95. In addition, Ms. Davis considered that respondent was given assistance and guidance regarding his misbehavior but it had not changed.

96. Ms. Davis was not sure whether the "pantsing" misconduct involving Ms. Corral's students was an issue during the Skelly meeting. It was not in the notice of the Skelly meeting. Regarding the "pantsing," Ms. Davis did not speak to potential witnesses, the students, parents, or the interim principal.

97. Ms. Davis also noted, in support of dismissal, that the victim, D.B., had never recanted. He had simply refused to be interviewed.

98. There was no need in Ms. Davis's view to inform the school community of the discipline she recommended because respondent had already been removed from the school.

99. Teachers were advised that they could make an appointment to speak with Ms. Davis if they wished, and some teachers did so at times. Respondent did not.

Respondent's Testimony

100. Respondent lives with his wife and five children, aged 11 to two years. Except for the youngest, they attended Westport, though eventually he sent them to school elsewhere.

101. Working for NASA, respondent was pursuing a career in engineering when, in the late 1990s, he visited an elementary school classroom in Inglewood, California. He enjoyed watching the instruction and, feeling he was called to be a teacher, he decided to switch careers. He obtained his teaching credential and started teaching at IUSD as a

substitute, teaching kindergarten through 12th grade. He became a permanent IUSD teacher in 1999.

102. Respondent found his new career stimulating. He was motivated to help students more than required by the school district. He often stayed in the classroom after instructional hours to help students, both at IUSD and later throughout his time at Westport.

103. Respondent was strict with his students at Inglewood. He left IUSD to teach at Westport in 2003. The next year, the Westport principal at the time, Alicia Stevenson, told respondent there were two areas on which he should concentrate: raising test scores and discipline, especially concerning students from ethnic minorities. She had spoken to IUSD personnel who had said that these were respondent's strong points. Respondent was happy to do as Ms. Stevenson asked and took pride in the tasks.

104. He would regularly stay at the school until 6:00 p.m., helping students with homework and other school matters. He had high expectations and tried to lead the students by his own good example. The students responded well to respondent's efforts, as evidenced by visits from many who graduated but came back to talk to respondent about how they were getting on.

105. Respondent recalled receiving Exhibit 22, Principal Smith's May 8, 2006 memorandum. Respondent understood before and after receiving the principal's directive in the memo that he must not use physical means to discipline or direct students.

106. Respondent did not simply deny the "pantsing" allegations, he testified he had never heard of such a thing until he was accused. He remembered in particular one of the students involved in the alleged incident and stated that he did not act toward the student as alleged. He agreed that pulling down any student's pants would be inappropriate.

107. Respondent denied that he ever touched D.B. Asked at hearing about the specific ways he was accused of touching D.B. during the three incidents, respondent testified that none of it ever happened. Asked whether he ever blocked the classroom door to keep D.B. inside the classroom alone with him, respondent testified that he did not do that or anything like that at any time. He testified that he had never touched any child inappropriately.

108. Regarding return of the computer equipment issued him by the District, respondent gave no coherent explanation, but testified: (i) despite his request, no one told him why he was escorted off the Westport premises on April 4, 2014; (ii) he was removed from his Westport classroom so unexpectedly and abruptly that he was unsure what property of his own or the District's was left behind; (iii) during the first week after his removal from the classroom, respondent and Operations Coordinator Ms. Jackson were communicating, but there was no directive that he return computer equipment; (iv) while "housed" at ESC West, respondent observed that other teachers there were using District-issued computers; (v) he was distracted from attempting to locate the equipment, especially by complications in his

wife's pregnancy, which ended with delivery of their youngest child by Caesarean section; (v) at one point, after Mr. Galedary became Operations Coordinator in place of Ms. Jackson, respondent offered to return the equipment to him, but Mr. Galedary refused the offer.

109. Respondent was good at teaching. He loved the profession and hopes to return to it.

Character Evidence

110. Dorothy Lynne Armstrong was one of two Westport teachers who testified to respondent's good character. She is aware of the District's accusations against respondent, including molestation.

111. Ms. Armstrong first taught at Westport in 2001. She recalled that respondent started teaching at Westport the year after she got there. She has approximately 20 years of teaching experience. She has taught kindergarten through fourth grade at Westport and has taught fifth grade in summer school there.

112. Ms. Armstrong testified that Westport benefits from diversity, especially among its students and teachers. Respondent's background in science and his experiences growing up in Africa make him an asset to that diverse school community. It is not a question of background only. Respondent has devoted significant effort to improve understanding of peoples from around the world. His efforts fit Westport well. The school enjoys a good community that is racially diverse.

113. Ms. Armstrong worked with respondent closely from the time he arrived at the school until he left in 2014. She considers him a good colleague and an exceptional teacher, one who could turn children's lives around. He was the teacher at the school most visited by former students. He held his students to high standards and they respected and celebrated him for that. Ms. Armstrong had opportunities to see respondent with students at the school and she never saw him engage in inappropriate conduct.

114. Carol Tripodo, a Westport teacher since 1998, testified to respondent's good character. She has approximately 23 years of teaching experience. She became acquainted with respondent when he arrived at Westport over ten years ago. Ms. Tripodo was aware of the District's accusations against respondent.

115. As Ms. Tripodo testified, respondent had a reputation at the school for rehabilitating wayward students. He was firm and deft with discipline. Students were not afraid of respondent; rather they looked up to him as a father figure, stern but not abusive. She never observed and was unaware of inappropriate conduct by respondent toward students or other teachers at the school.

116. On a few occasions, as a health education coordinator, Ms. Tripodo observed respondent as he was teaching. She was aware that he spent a good deal of time after school

to tutor children. He was effective in both roles. Westport will lose an effective teacher, as Ms. Tripodo testified, if respondent does not return.

117. Ms. Tripodo supported the testimony of Ms. Armstrong regarding students' lunch cards, which were kept at the cafeteria, and not used in classrooms for any reason.

118. Pastor William D. Smart, Jr. testified that respondent is an active and respected member of his congregation. Pastor Smart is acquainted with many teachers. He had a son who was a student in respondent's class at Westport. Pastor Smart visited the school many times during the 2012-2013 school year, as a parent actively involved in his child's education. He did not observe respondent in the classroom, but he testified to respondent's reputation at the school as a tough teacher for whom the students developed strong respect.

119. Pastor Smart asked respondent to tutor his son, to prepare him for the Independent School Entrance Examination. Respondent ensured that the pastor's son was well prepared and did well on the examination. Respondent spent time after regular school hours with many students, helping them with homework. Impressed by how he treats students, the pastor asked and respondent agreed to a motivational talk to children in the congregation, which inspired and motivated the students to do well in school.

LEGAL CONCLUSIONS

1. The District has the burden of proof. The applicable standard is proof by a preponderance of the evidence. (*Gardner v. Com. on Prof. Competence* (1985) 164 Cal.App.3d 1035, 1040.)

Pertinent Law and Regulations

2. Education Code section 44932, subdivision (a), provides in pertinent part:

(a) A permanent employee shall not be dismissed except for one or more of the following causes:

(1) Immoral conduct, including, but not limited to, egregious misconduct. For purposes of this chapter, "egregious misconduct" is defined exclusively as immoral conduct that is the basis for an offense described in Section 44010 . . . of this code, or in Sections 11165.2 to 11165.6, inclusive, of the Penal Code.

(2) Unprofessional conduct. [¶] . . . [¶]

(4) Dishonesty.

(5) Unsatisfactory performance.

(6) Evident unfitness for service.

(7) Physical or mental condition unfitting him or her to instruct or associate with children.

(8) Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her.

3. Education Code section 44939 provides in pertinent part:

(a) This section applies only to dismissal or suspension proceedings initiated pursuant to Section 44934.

(b) Upon the filing of . . . a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district with . . . willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, . . . the governing board of the school district may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.

4. Education Code section 44010 provides:

“Sex offense,” [as used in various Code sections,] . . . means any one or more of the offenses listed below:

(a) Any offense defined in Section 220, 261, 261.5, 262, 264.1, 266, 266j, 267, 285, 286, 288, 288a, 288.5, 289, 311.1, 311.2, 311.3, 311.4, 311.10, 311.11, 313.1, 647b, 647.6, or former Section 647a, subdivision (a), (b), (c), or (d) of Section 243.4, or subdivision (a) or (d) of Section 647 of the Penal Code. [¶] . . . [¶]

(h) Any attempt to commit any of the offenses specified in this section.

Penal Code section 288, cited by section 44010, is pertinent here. It prohibits a lewd or lascivious act upon the body of a child under 14 years of age. Inapplicable here, however, are many types of misconduct described in the Penal Code sections cited above, such as those relating to incest and rape.

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5. Penal Code section 11165.1 provides in pertinent part:

As used in this article, “sexual abuse” means sexual assault or sexual exploitation as defined by the following:

(a) “Sexual assault” means conduct in violation of one or more of the following sections: Section 261 (rape), subdivision (d) of Section 261.5 (statutory rape), Section 264.1 (rape in concert), Section 285 (incest), Section 286 (sodomy), subdivision (a) or (b), or paragraph (1) of subdivision (c) of Section 288 (lewd or lascivious acts upon a child), Section 288a (oral copulation), Section 289 (sexual penetration), or Section 647.6 (child molestation).

(b) Conduct described as “sexual assault” includes, but is not limited to, all of the following: [¶] . . . [¶]

(4) The intentional touching of the genitals or intimate parts, including the breasts, genital area, groin, inner thighs, and buttocks, or the clothing covering them, of a child, or of the perpetrator by a child, for purposes of sexual arousal or gratification, except that it does not include acts which may reasonably be construed to be normal caretaker responsibilities; interactions with, or demonstrations of affection for, the child; or acts performed for a valid medical purpose.

6. Whether a teacher like respondent may be dismissed depends on both statutory law and factors set out in *Morrison v. Board of Education* (1969) 1 Cal.3d 214 (*Morrison*). The *Morrison* factors set out in California Code of Regulations, title 5, section 80302, subdivision (a):

(a) The Committee, in conducting its investigation, shall determine the relationship between the alleged misconduct and the applicant's or holder's fitness, competence, or ability to effectively perform the duties authorized by the credential. Such relationship may be based on facts which include, but are not limited to, the following:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated;
- (2) The proximity or remoteness in time of the conduct;
- (3) The type of credential held or applied for by the person involved;
- (4) The extenuating or aggravating circumstances surrounding the conduct;

- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct;
- (6) The likelihood of the recurrence of the questioned conduct;
- (7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons;
- (8) The publicity or notoriety given to the conduct.

7. In considering the degree to which misconduct may support a teacher's dismissal, aggravating and mitigating circumstances may be considered. The California Commission on Teacher Credentialing, has adopted California Code of Regulations, title 5, section 80300, which may be considered authority analogous to that directly applicable here.

A. Subdivisions (a) and (b) of California Code of Regulations, title 5, section 80300 pertain to "aggravating factors":

- (a) "Adverse action" is a denial, a private admonition, public reproof, suspension or a revocation of one or more credentials.
- (b) "Aggravating factor" is an event or circumstance which demonstrates that a greater degree of adverse action for an act of professional misconduct is needed to adequately protect the public, schoolchildren or the profession. Aggravating factors may include, but are not limited to, the following:
 - (1) a prior record of adverse action including the nature and extent of that record;
 - (2) that the misconduct evidences multiple acts of wrongdoing or demonstrate a pattern of misconduct;
 - (3) that the misconduct was surrounded by or followed by bad faith, dishonesty or other violation of the laws governing educators;
 - (4) that the misconduct significantly harmed a child entrusted to the care of a credential holder or applicant, significantly harmed the public or the educational system;
 - (5) that the holder or applicant demonstrated indifference toward the consequence of the misconduct, which includes failure to comply with known court orders; or

(6) that the holder or applicant had prior notice, warnings or reprimands for similar conduct from any reliable source.

B. Subdivision (m) of California Code of Regulations, title 5, section 80300 defines “mitigating factors”:

(m) “Mitigating factor” is an event or circumstance which demonstrates that the public, schoolchildren and the profession would be adequately protected by a more lenient degree of adverse action or no adverse action whatsoever. Mitigating factors may include, but are not limited to, the following factors:

- (1) absence of any prior record of adverse action over many years of educational service, coupled with present misconduct which is not deemed most serious;
- (2) lack of harm to the person who is the object of the misconduct;
- (3) emotional or physical difficulties suffered by the holder or applicant which substantially contributed to the misconduct; provided that the difficulties were not the product of illegal conduct by the credential holder or applicant, such as illegal drug or substance abuse; and further provided that the credential holder or applicant has established through clear and convincing evidence that he or she no longer has such difficulties;
- (4) a demonstration of good character of the applicant or holder attested to by references from the educational community or the general community from individuals aware of the extent of the applicant's or holder's misconduct;
- (5) objective action taken by the applicant or holder, spontaneously demonstrating remorse at the time of the misconduct, and recognition of the wrongdoing which is designed to timely make amends for the consequences of the misconduct;
- (6) the proximity or remoteness in time relative to the seriousness of the misconduct; or
- (7) the nature and extent of subsequent rehabilitation.

Alleged Misconduct in Pulling Down Students’ Pants

8. Cause does not exist for respondent’s dismissal based on reports that he pulled down two students’ pants. The District did not carry its burden to show by a preponderance of the evidence that respondent engaged in such conduct.

Immoral Conduct

9. Cause exists for dismissal of respondent based on immoral conduct, under Education Code section 44932(a)(1). Respondent touched D.B. inappropriately on three occasions.

A. Respondent's touching the clothing covering D.B.'s genital area and groin is explicitly prohibited by Penal Code section 11165.1, subdivision (a)(4), and defined as immoral conduct by section 44932, subdivision (a)(1).

B. The conduct also shows unfitness to teach under several *Morrison* factors.

(i) The first *Morrison* factor, the likelihood of adverse effect:

(a) Respondent's conduct adversely affected D.B. before, during, and after D.B. was a student in respondent's class. Beginning with the first incident, when D.B. was in fourth grade, he was confused by his physical reaction to a man's, respondent's, touching. D.B. feared lest his reporting respondent's conduct led to retaliation by respondent's father, and possible adverse consequences from the retaliation. D.B. suppressed emotions respondent caused him. Nevertheless D.B.'s mother and aunt sensed some alienation from them, though they were unable to discern the cause, counter its effects, or provide knowing or directed solace.

(b) Respondent's conduct raises the danger that he has acted or could act in a similar way toward other students. Even if respondent were not to succeed in touching another student or students inappropriately, an assault is enough. Threatening to touch a student inappropriately is an assault, though not battery, and is likely to cause a student trauma, just as D.B. was traumatized not only by being touched as he was, but also by the prospect of respondent's attempting more touching.

(ii) The second *Morrison* factor, the time since the conduct: This factor has little impact on whether dismissal is proper. The conduct was not recent, which is a mitigating factor. (Cal. Code Regs., tit. 5, § 80300, subd. (m)(6).) It was, however, of such a nature that, even if considered remote, it should be addressed under other factors.

(iii) The third *Morrison* factor, the credential involved: Respondent's multiple subject teaching credential allows him to interact daily with elementary school-age children, a population especially vulnerable to sexual misconduct by an adult. It is out of the ordinary that an adult such as respondent would make sexual advances to a child as young as D.B. was at the time of the incidents. This indicates that respondent has an uncommon tendency to commit the sort of misconduct he directed at D.B. Respondent's credential put him in a position to indulge the tendency. This factor weighs strongly in favor of dismissal.

(iv) The fourth *Morrison* factor, extenuating or aggravating circumstances, which are referenced as well in California Code of Regulations, title 5, section 80300,

subdivision (b) (aggravating factors) and subdivision (m) (mitigating factors): The aggravating factors substantially outweigh circumstances in extenuation of respondent's misconduct.

(a) Noted above is extenuation by reason of the lapse of years since the incidents.

(b) There are both extenuating and aggravating aspects of the harm respondent caused. There was harm to D.B., as his mother and aunt credibly testified in substantially similar fashion, relating to his distancing himself emotionally for a time. Nonetheless an extenuating circumstance is that respondent did not significantly harm D.B. physically. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(4).) Regarding the non-physical, D.B. had overcome the doubt about himself caused by respondent's conduct when he returned to tell respondent that he was doing well in another school setting. Any extenuation in this regard must be tempered, however, by the consideration that D.B. happens to be a very resilient person. An aggravating factor is that there was significant harm to others, including the public and the educational system, as evidenced, again, by D.B.'s mother and aunt. Teachers themselves, they were outraged that a teacher could act as respondent did. They were yet more outraged as a family.

(c) An aggravating factor is that respondent's misconduct was directed at a very young child, beginning when he was only in fourth grade. D.B. was especially liable to be hurt.

(d) An aggravating factor is that respondent planned the first incident. There was no professional reason that D.B. should be summoned from his routine in fourth grade to respondent's fifth-grade classroom. It is properly inferred that respondent manipulated the school's administrative procedures to enable his conduct in the first incident.

(e) Another aggravating factor is that there were three incidents. In the first, respondent observed that D.B. quickly fled the classroom. Nevertheless the second incident occurred. Again D.B. quickly fled. Still, the third incident ensued. Respondent demonstrated a pattern of misconduct. (Cal. Code Regs., tit. 5, § 80300, subd. (b)(2).)

(v) The fifth *Morrison* factor, praiseworthiness or blameworthiness of motives: Respondent's conduct was wholly blameworthy. In conducting himself as he did to D.B., respondent repeatedly and egregiously transgressed the morals of the general community. He transgressed more explicitly as well. He violated the District's Code of Ethics and the District's Code of Conduct with Students in several ways, including strictures against meeting a student behind closed doors and touching a student that is not age-appropriate or within the scope of the employee's responsibilities or duties.

(vi) The sixth *Morrison* factor, the likelihood of recurrence: Given that respondent engaged in misconduct on more than one occasion over several months, recurrence is likely. Because the potential of such misconduct to cause serious damage is

high, action to avoid even a low likelihood of recurrence is warranted. This factor supports dismissal.

(vii) The *Morrison* factor, how discipline may affect constitutional rights: This factor has little significance here. This is not a case in which there is doubt whether respondent was exercising a right such as freedom of speech or another Constitutional right. Dismissing a teacher based on molestation does not implicate any rights protected by the Constitution.

(viii) The eighth *Morrison* factor, the conduct's publicity or notoriety: There was no evidence that respondent's misconduct was publicized or notorious. This factor has little bearing on whether dismissal is warranted.

10. D.B.'s testimony was credible, supporting the charge of immoral conduct in detail. The traumatic circumstances D.B. described, like his emotional reactions to them, were such as one would expect a child in middle school to observe and be able to delineate later.

A. D.B. described how at first respondent's immoral conduct took him by surprise. D.B. was unexpectedly summoned to respondent's classroom by means of a note from the school office. But as a fourth-grader, he understood he might be assigned the next year to respondent's classroom. D.B. guessed the note might be related to his classroom assignment for the next year.

B. D.B. and other fourth-graders at the school knew respondent by reputation, especially for being strict with students. There was no reason for D.B. to think anything amiss about a note from the school office requiring that he report to the strict fifth-grade teacher's classroom between instructional periods, or about finding on arrival that he was alone with respondent in the classroom. Moments after entering the fifth-grade classroom, however, respondent touched D.B. in several ways so sexually suggestive that D.B. could not simply dismiss or forget them.

C. The next year, D.B. was respondent's fifth-grade student, and aware that respondent regularly kept students from non-instructional activities like recess when they failed to complete assignments like homework. In consequence D.B. simply complied when respondent required that he remain in the classroom to complete a homework assignment. Respondent touched and traumatized D.B. again in ways to make the second incident hard to put out of memory and charged, for D.B., with unwelcome emotions.

D. Having suffered through two incidents that were difficult to anticipate, D.B. planned to forestall a third. D.B. thought he must retrieve a card he had forgotten in respondent's classroom which was needed to receive his school lunch. He thought precaution enough against his being alone in the classroom with respondent was having a classmate accompany him. But respondent defeated the plan by closing the classroom door, leaving D.B.'s companion outside and D.B. subject to assault within.

E. Ms. Armstrong and Ms. Tripodo, teachers who testified to respondent's good character, also testified to the card system used in the Westport cafeteria. As the teachers recalled, the cards were regularly kept in the cafeteria, and not used in a classroom. Their testimony throws some doubt on D.B.'s recollection, but not in a significant way. D.B. may not have remembered accurately all circumstances surrounding the molestation, but his testimony that he was molested on three occasions is quite believable.

11. Certain testimony and statements by respondent were not trustworthy.

A Respondent's simple denial of the three incidents of molestation was not credible, especially as compared to the detailed descriptions of the incidents from D.B., repeated and consistent over time, and from which D.B. derived no benefit.

B. Respondent's assertion that he did not know where to find the computer equipment that the District issued him was not truthful, given it was easily found at his home.

C. Respondent's testimony that he offered to return the District's computer equipment, but that Operations Coordinator Galedary refused the offer, was not credible. There was no reason for Mr. Galedary to refuse equipment he knew the District sought, and would obtain by extraordinary means as necessary, such as the search warrant served by armed police.

A witness whose testimony is deliberately untruthful about something important may be disbelieved about any or all other things to which the witness testifies. (See CACI Jury Instructions, no. 107.)

12. Ms. Corral's testimony, in its detail, supported by her sincere demeanor, was convincing. Her testifying to respondent's statements about sexual and personal matters, however, does not prove molestation. His aggressive manner to her likewise does not prove molestation and otherwise has little probative value.

Evident Unfitness for Service

13. Cause exists for respondent's dismissal based on his evident unfitness for service, under Education Code section 44932, subdivision (a)(6). The discussion above regarding respondent's immoral conduct applies in all particulars to his unfitness for service. Most particularly, respondent's misconduct directed at D.B. indicates danger in his continuing in a teaching position that is part of a "calling . . . so intimate, its duties so delicate" with respect to children. (*Goldsmith v. Bd. of Education* (1924) 66 Cal.App. 157, 168.)

14. The three witnesses, Ms. Armstrong, Ms. Tripodo, and Pastor Smart, who testified to respondent's good character, gave convincing evidence that respondent was a

good and effective teacher. Their testimony does not make D.B.'s testimony regarding molestation less believable, however.

Dishonesty

15. Cause exists for respondent's dismissal based on dishonesty, under Education Code section 44932, subdivision (a)(4). Respondent was dishonest in claiming not to know where the District-issued computer equipment lent him was. The equipment was found in his house, in plain sight.

16. Respondent's dishonesty was aggravated by his failing to surrender the computer equipment for several months. The District asked about the equipment in April 2014, but respondent's response was not forthright. In May 2014, respondent disobeyed a written directive for the equipment's return. The District retrieved its property in October 2015 only after it deployed special locating software, communicated with internet service providers, and obtained a search warrant, which was then served by several police officers required to draw weapons. Respondent could have saved the District all such resources if he had returned the computer equipment upon request as he had promised.

17. In further aggravation of respondent's dishonesty, he was aware that he was suspected of sexual abuse of a minor. His keeping the computer equipment long after he should have returned it raises the suspicion that he was taking advantage of delay to despoil evidence, such as pornography or explicit adult content, particularly on the laptop computer. Whether or not he despoiled evidence, respondent knew that, given the nature of the District's suspicions about him, his delay would force the District to expend fruitlessly the maximum amount of resources for retrieving computer equipment.

Violation of or Refusal to Obey Laws or Regulations

18. Cause exists for respondent's dismissal based on persistent violation of, or refusal to obey, the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing respondent, under Education Code section 44932, subdivision (a)(7).

A. By molesting D.B. on three occasions, respondent persistently violated and refused to obey obligations imposed by school laws and reasonable regulations. Respondent had received previous directives not to handle students physically.

B. In failing to comply with directives to return District-issued computer equipment, respondent persistently refused to obey and violated obligations imposed by school laws and reasonable regulations. The equipment was found in his house, in plain sight.

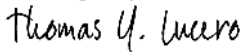
C. Matters that were the subjects of directives to respondent, other than those relating to his touching D.B. and his failure to return computer equipment, are not grounds for dismissal. For instance, respondent used a boy's restroom at Westport. There was no evidence, however, that respondent disobeyed the directive that he not use that restroom after he admitted to the principal he had been doing so.

19. Cause exists for dismissal of respondent based on his willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under Education Code section 44939, subdivision (a). It is a regular assignment that a teacher return District-issued equipment when directed. Respondent willfully refused to follow such a directive.

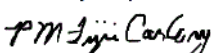
ORDER

Respondent Dioka Okorie shall be terminated as a certificated employee of the Los Angeles Unified School District forthwith.

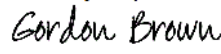
DATED: November 23, 2016

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THOMAS Y. LUCERO
Administrative Law Judge
Office of Administrative Hearings

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PATRICIA FUJII CARBERRY
Commissioner

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GORDON BROWN
Commissioner