

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
FOR THE EAST WHITTIER CITY SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MATT PLAISTED,

Respondent.

OAH No. 2010050308

**DECISION**

The Commission on Professional Competence (Commission) heard this matter in Whittier, California, on November 1-3, 2010, and held deliberations on Monday, November 8, 2010. The Commission consisted of Russell Ford, Leslie Ternosky, and Administrative Law Judge Amy C. Lahr, Office of Administrative Hearings, State of California, who presided.

Eric Bathen, Attorney at Law, represented the East Whittier City School District (District). Kent Morizawa, of Reich, Adell & Cvitan, represented Matt Plaisted (Respondent).

District employed Respondent as a middle school teacher. District alleged that Respondent demonstrated unprofessional and immoral conduct, willful refusal to perform regular assignments without reasonable cause, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey school law, based on twelve allegations. Respondent did not dispute the factual allegations. He argued that there was no ill-intent in his actions, and thus his conduct was not immoral, and he did not display evident unfitness for service.

Based on the evidence presented, the Commission determined that District established the majority of its allegations in the Accusation and Statement of Charges. Accordingly, Respondent's dismissal is upheld, as explained below.

**FACTUAL FINDINGS**

1. Joe Gillentine, District Superintendent, made and filed the Accusation and Statement of Charges in his official capacity.

2. Respondent is a permanent certificated employee of District. His most recent position was teaching Language Arts and Social Studies at Granada Middle School. Respondent holds a clear single subject credential.

3. The District filed the Accusation and Statement of Charges on April 19, 2010. Respondent timely filed a Notice of Defense and requested an administrative hearing.

*Respondent's Unauthorized Cell Phone Searches*

4. At all relevant times, District's policy regarding cell phones was that students can use their cell phones in designated areas only. Should a student violate that policy, teachers may confiscate the student's cell phone; however, teachers are not authorized to search; i.e., view, the cell phone contents. Only an administrator may view the cell phone contents, under certain circumstances. District instructed teachers to bring confiscated cell phones to the administrative office, to allow administrators to decide the appropriate next step.

5. District informed teachers of the cell phone policy in multiple ways: it provided a handbook which set forth the policy; and it provided instruction at the beginning of the school year.

6. In January 2009, Respondent twice violated the District's policy by viewing the contents of a student's cell phone.

a. Respondent confiscated a student's cell phone and looked at a text message. Respondent saw that the message contained foul language, and he directed the student to send the text message to his mother.

b. Respondent confiscated student J.F.'s cell phone, and looked through photos and text messages. Respondent disapproved of one particular photo, and he sent a text message to the student's mother, which attached the picture from J.F.'s phone. Respondent also used J.F.'s phone to send a text message to another student, D.R., who appeared in the photo. Respondent told D.R. that he was going to tell her parents about the incident, and that she would get into trouble. J.F. and her mother, Lyn Bruno, testified at the hearing. They were upset by Respondent's conduct.

7. Respondent admitted his conduct to Assistant Principal Virginia Serratos. Ms. Serratos reminded Respondent that teachers are not allowed to look through a student's cell phone contents. She directed Respondent to never look through a student's cell phone again. Shortly thereafter, Respondent met with Assistant Superintendent Mary Branca, and Principal Drew Passalacqua. They gave him a directive to comply with District's policies.

8. In March 2009, Respondent violated the District's cell phone search policy again. He confiscated D.C.'s phone, and looked through the phone contents. Respondent saw what he believed were disturbing photos: one of a gun in the student's mouth, and another of a naked person in a bathroom. Instead of informing District administration about the situation, Respondent contacted school counselor Elizabeth Moreno, and asked her to figure out who were the persons in the photos. Respondent asked Ms. Moreno not to tell school administrators that Respondent had given her the cell phone.

9. When confronted by District administrators, Respondent initially lied about searching through D.C.'s cell phone. He later admitted his actions, and apologized.

10. Respondent was dishonest by lying to administrators, and by asking Ms. Moreno to lie to administrators.

11. In March 2009, District issued a letter of reprimand to Respondent for his actions. In response, Respondent wrote an apology letter.

### *Respondent's Inappropriate Comments and Actions*

12. a. In November 2008, Respondent met with student J.I., his mother, B.I., and Assistant Principal Serratos. During the meeting, Respondent suggested that J.I. should change his appearance, and he offered to take J.I. to get a haircut. Afterward, Assistant Principal Serratos told Respondent that it was not appropriate for him to take J.I. for a haircut. Respondent ignored this instruction, and subsequently took J.I. for a haircut.

b. Respondent thought he was helping J.I.'s self esteem, by encouraging him to clean up his appearance. J.I.'s mother did not object to Respondent's actions.

c. Respondent disobeyed Assistant Principal Serrato's instruction not to take J.I. for a haircut.

13. From July through December 2009, Respondent acted inappropriately on numerous occasions. The evidence established that in July 2009, Respondent told a student to "stop flirting with me." This comment had sexual overtones and was inappropriate. Respondent's explanation that he used the phrase as progressive discipline to warn the student that he was "flirting with danger" did not negate his conduct.<sup>1</sup>

14. In September 2009, Respondent commented during a geography lesson that "there were a lot of rice bowls" in Japan, and "a lot of burritos" in Mexico City. District administrators informed Respondent that his comments could be viewed as offensive.<sup>2</sup>

15. In October 2009, Respondent witnessed a special education student, with autism, having a breakdown at school. Though not the Respondent's student, he took it upon himself to take photographs of the student during that incident. Respondent took photographs of the student during the incident. Respondent claimed that he took the

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<sup>1</sup> District also alleged that Respondent also told the student to "shut up"; however, it presented no direct evidence to establish this fact.

<sup>2</sup> Commission members Ford and Ternosky determined that Respondent's comments were innocuous, likely an attempt to use humor that fell short. ALJ Lahr dissented, and found that Respondent's comments were inappropriate and serve as grounds for discipline.

photographs as evidence, but had no credible explanation as to why he needed evidence of the incident. He was not instructed to memorialize the incident and had no involvement with the student. As established by the testimony of school administrators, Respondent's conduct only served to exacerbate the incident; the student was upset by Respondent's actions.

16. a. The following day, Respondent photocopied and distributed inappropriate pictures of a colleague, Nick Damico. Respondent superimposed Mr. Damico's school photograph over models' faces in sexually explicit advertisements. Respondent then used the school photocopy machine to make numerous copies, and he distributed them in other teacher's mailboxes. Respondent also placed the advertisements in the staff lounge, which students accessed, in plain sight of students. District immediately issued Respondent a Letter of Reprimand and a Notice of Unprofessional Conduct.

b. As established by the testimony of Mr. Damico and District administrators, Respondent's conduct was inappropriate and unprofessional. Mr. Damico felt concerned about the incident, in part because he had not yet acquired a tenured position with the District. Respondent meant to joke with Mr. Damico, and he apologized for his conduct.

#### *Unproven Allegations*

17. a. District alleged that Respondent committed willful refusal to perform his job duties, or evident unfitness for service, by his conduct at an individualized education plan (IEP) meeting for student J.C. The evidence did not support this contention. Although Respondent disclosed the student's identity outside of the meeting, he had J.C.'s mother's permission to do so, because it reduced bullying that J.C. experienced.

b. During the IEP meeting, Respondent questioned J.C.'s mother regarding her motives for volunteering at school. The manner in which he posed his questions purposefully provided her with a platform to speak during the IEP meeting. Respondent's conduct was perhaps unorthodox, but did not indicate refusal to perform his job duties or unfitness.

c. Respondent also addressed at the IEP meeting the fact that J.C. had made sexual comments to another student. J.C.'s mother had been aware of these comments previously; and in any event, an IEP meeting is an acceptable forum to candidly discuss issues about the student.

18. District alleged that Respondent demonstrated willful refusal to perform his job duties and evident unfitness for service during the 2006-2007 school year. Specifically, District pointed to Respondent's 2006-2007 Certificated Employee Evaluation which stated that Respondent "has engaged in behavior, [and] expressed comments and/or criticisms which are destructive of students' self esteem." Other than Respondent's 2006-2007 evaluation, which by itself did not provide enough evidence to sustain the charge, District did not provide any examples of Respondent's alleged destructive behaviors. In addition,

Respondent's evaluations in the following years did not indicate that any such problem existed. District did not sustain its burden with respect to this allegation.

19. District also alleged that Respondent demonstrated willful refusal to perform his job duties, unprofessional conduct, and evident unfitness for service by failing to cooperate with the District's English Learner program team. District did not show that Respondent failed to cooperate or otherwise acted unprofessionally or unfit. The evidence showed that a professional discussion took place and Respondent ultimately complied with the group consensus.

20. District did not establish that Respondent failed to adhere to the sixth grade social studies curriculum or failed to keep a record of students' grades. The evidence showed that Respondent timely submitted his grades.

#### *Character Evidence*

21. Respondent has been employed as a teacher in the District since 2002. He loves being a teacher and wants to continue in the profession. Respondent acknowledged the seriousness of his conduct, and is willing to make amends.

22. Respondent presented two character witnesses, John Weir and Bonnie Hernandez. Respondent leads the boy scouts group in which Mr. Weir's son is involved. Ms. Hernandez is also a teacher, and Respondent taught her son. They had high praise for Respondent and his teaching abilities.

#### LEGAL CONCLUSIONS

1. Cause exists to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(1), (immoral or unprofessional conduct), based on Factual Findings 1 through 13 and 15-16, and Legal Conclusions 1 through 11.

2. Cause exists to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(5), (evident unfitness for service), based on Factual Findings 1 through 13 and 15-16, and Legal Conclusions 1 through 11.

3. Cause exists to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(3), (dishonesty), based on Factual Findings 8 through 10, and Legal Conclusions 1 through 11.

4. Cause exists to dismiss Respondent as a certificated employee of the District under Education Code section 44932, subdivision (a)(7), (persistent violation or refusal to obey school laws), based on Factual Findings 1 through 13 and 15-16, and Legal Conclusions 1 through 11.

5. “Immoral conduct” has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

6. “Evident unfitness for service requires that unfitness for service be attributable to a defect in temperament . . .” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.) Such temperamental defect “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 1444.)

7. “Unprofessional conduct,” as used in Education Code section 44932, subdivision (a), has been construed as constituting unfitness to teach. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

8. Even where unprofessional or immoral conduct, or evident unfitness for service are established, it must also be established that such immoral conduct or evident unfitness renders Respondent unfit to teach. Such determination unfitness requires an analysis based on criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. In *Morrison*, the Supreme Court of California held that the determination of whether a person is fit to teach must 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 factors including: (1) the likelihood of recurrence of the questioned conduct; (2) the presence of extenuating or aggravating circumstances; (3) the effect of notoriety and publicity; (4) the likelihood that the conduct adversely affected students or fellow teachers; (5) the disruption of the education process; (6) the motive underlying the conduct; and (7) the proximity or remoteness in time of the conduct.

9. As applied to this case, the *Morrison* factors suggest the following conclusions: first, Respondent’s conduct reflected poor judgment on multiple occasions, and demonstrated the likelihood he would disregard District policy as he sees fit. Based on the evidence presented, it is likely that Respondent would engage in similar conduct. Next, no extenuating circumstances existed that would explain Respondent’s actions. Respondent has tried to justify his repeated violations of District’s cell phone policy by stating that he has good instincts and intuition about student problems; however, the evidence showed that his actions have resulted in student harm. Respondent has rationalized his other behaviors by labeling himself as a dedicated teacher. With regard to the inappropriate photos of Mr. Damico, Respondent acknowledged that his actions were inappropriate. The evidence showed that Respondent’s many instances of misconduct affected students and their parents, as well as his colleagues. Finally, Respondent’s misconduct was very recent, having occurred in 2008 and 2009. In sum, the *Morrison* factors as applied in this case support Respondent’s dismissal.

10. Although District did not prove every allegation, it proved the majority of allegations in the Accusation and Statement of Charges. The proven allegations were sufficient to establish that multiple causes existed to support Respondent's dismissal.

11. Lastly, Respondent's argument that he was deprived of due process by the District "re-characterization" of Respondent's conduct as something more than unprofessional; i.e., immoral, is without merit. District did not "re-characterize" Respondent's conduct; it alleged in the Statement of Charges that Respondent's conduct was both immoral and unprofessional. In that regard, District gave Respondent proper notice of his unprofessional conduct as required by the Education Code.

### **ORDER**

The determination of the Governing Board of the East Whittier City School District to dismiss Respondent Matt Plaisted as a permanent employee of the District is affirmed.

Respondent Matt Plaisted is dismissed from his position as a certificated employee of the East Whittier City School District.

DATED: \_\_\_\_\_

\_\_\_\_\_  
AMY C. LAHR  
Administrative Law Judge  
Office of Administrative Hearings

DATED: \_\_\_\_\_

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RUSSELL FORD  
Commission Member

DATED: \_\_\_\_\_

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LESLIE TERNOSKY  
Commission Member