

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
VALLEY CENTER - PAUMA UNIFIED SCHOOL DISTRICT

In the Matter of the Proceeding to Dismiss:

CHRISTOPHER JAHN,

Respondent.

OAH No. 2017061281

**DECISION**

This matter came on regularly for hearing before the Commission on Professional Competence in Valley Center, California on October 23, 24, 25, 2017, and in San Diego on November 3, and 9, 2017. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Mary Agnes Matyszewski, Ursula Sack, Ph.D., and Carmen Martinez.

Daniel Shinoff, Michelle Pacis, and Jack Sweet, Attorneys at Law, Artiano Shinoff, represented Valley Center - Pauma Unified School District.

Jon Cadieux, Attorney at Law, Smith, Steiner, Vanderpool & Wax, APC, represented respondent Christopher Jahn, who was present during the hearing.

On November 16, 2017, the Commission met to deliberate and the matter was submitted.

**CASE SUMMARY**

Mr. Jahn was employed by the district as a school psychologist. Beginning in the 2013-2014 school year, Mr. Jahn received an unfavorable evaluation. Thereafter, he was out on medical leave and when he returned he was behind in his work. During the 2015-16 and 2016-17 school years, Mr. Jahn failed to complete student assessments and reports, was unprepared for Individualized Education Plan (IEP) meetings, failed to comply with district directives and behaved inappropriately. Mr. Jahn was out on several leaves of absence and fell further behind in his work. Mr. Jahn's actions constituted unprofessional conduct and demonstrated he was evidently unfit to serve; and constituted persistent violations or refusals to obey regulations and district policies. The Commission did not find that Mr. Jahn's actions constituted dishonesty, although his statements to his supervisors were misleading. Based upon the

evidence presented, the Commission concluded that the allegations that were sustained warranted Mr. Jahn's dismissal from the district.

## FINDINGS OF FACT

### *Jurisdictional Matters*

1. Mr. Jahn was employed by the Valley Center - Pauma Unified School District as a school psychologist. During the time of the alleged incidents, he primarily worked at Valley Center Middle School.

2. On May 24, 2017, Mr. Jahn was placed on paid administrative leave to allow the district to complete its investigation.

3. Mark Garner, then the district's Director of Human Resources, signed the Notice of Charges on June 16, 2017, in his official capacity. The notice set forth the facts and laws on which Mr. Garner was relying and sought to immediately dismiss Mr. Jahn from employment with the district on the grounds of unprofessional conduct (Education Code section 44932, subdivision (a)(2)), dishonesty (Education Code section 44932, subdivision (a)(4)), unsatisfactory performance (Education Code section 44932, subdivision (a)(5)),<sup>1</sup> evident unfitness for service (Education Code section 44932, subdivision (a)(6)), and persistent violation or refusal to obey regulations and district policies (Education Code section 44932, subdivision (a)(8)).<sup>2</sup>

4. On June 19, 2017, Mr. Garner authored a letter to Mr. Jahn advising him of his intent to recommend to the Governing Board that it terminate Mr. Jahn's employment. Mr. Garner enclosed a copy of the Notice of Charges with his letter. In that notice, the district alleged that Mr. Jahn did not complete assessments or reports, was unprepared for meetings, was tardy to meetings, and did not comply with district directives.

5. Mr. Jahn timely appealed the dismissal action, denying that grounds for his dismissal from employment existed, and this hearing followed.

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<sup>1</sup> Mr. Jahn's motion in limine to strike the cause of discipline for unsatisfactory performance (Education Code section 44932, subdivision (a)(5)), was granted because the district failed to comply with the mandates of Education Code section 44938 that required the district to provide Mr. Jahn at least 90 days' notice of the charge to give him a chance to correct his behavior giving rise to the charge.

<sup>2</sup> Page 2, line 3, of the notice erroneously referenced Education Code section 44932, subdivision (a)(1), immoral conduct, and neither party objected to that subdivision being struck from the notice at the start of the hearing. The notice was also amended by interlineation at page 2, line 14, to strike "2017" and insert "2016."

### *Motions in Limine*

6. The parties filed motions in limine and oppositions<sup>3</sup> thereto. Tentative rulings were issued and the parties were allowed to orally argue their positions at the start of trial. After listening to oral arguments, final rulings were issued.

As the district's counsel successfully argued in one of its motions in limine, Mr. Jahn's medical condition should not be considered as a factor in this hearing because Mr. Jahn asserted during discovery that he had no medical issues affecting his work performance. Accordingly, the Commission made no findings about Mr. Jahn's medical condition.

### *Mr. Jahn's Education and District Employment*

7. After obtaining his Bachelor of Arts degree, Mr. Jahn received an Educational Specialist degree and a Master's Degree in Educational Psychology in 2006. Prior to obtaining his masters, Mr. Jahn was required to perform internships. Mr. Jahn did his internship at the district and his supervisor was so impressed with his work that he encouraged Mr. Jahn to apply for a position with the district. During his employment, Mr. Jahn worked at every school site with the bulk of his assignments being at the middle schools. Although the district asserted as further evidence of Mr. Jahn's unfitness and unprofessional conduct, that Mr. Jahn's office was in disarray, Mr. Jahn established that he shared an office with others and that it was used as a meeting room and for storage, making that claim unpersuasive.

### *Mr. Jahn's 2013-2014 Evaluation*

8. Scott Huffman, Director of Student Support Services, evaluated Mr. Jahn for the 2013-2014 school year. In the "Standards/Assessments" section, Mr. Jahn received ratings of "meets standards" in four categories and "partially meets standards" in two categories. Mr. Jahn did not receive any "exceeds standard" ratings.

Standard III evaluated how Mr. Jahn "[i]mplements the IDEA<sup>4</sup> consistent with district procedures and policies regarding the provision of special education services; maintains records/files containing all pertinent and legally information [*sic*] for assigned students." Mr. Jahn received a "partially meets standards" rating and Mr. Huffman wrote the following comment: "Chris is becoming more aware of updated district procedures and policies regarding the provision of special education services; he does a good job with maintaining

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<sup>3</sup> The motions in limine, oppositions thereto and the tentative rulings were received in evidence as Exhibits 23, 25, and 26.

<sup>4</sup> The Individuals with Disabilities Education Act (IDEA) ensures services to children with disabilities and governs how states and public agencies provide early intervention, special education and related services to more than 6.5 million eligible infants, toddlers, children and youth with disabilities.

records/files containing all pertinent and legally information [sic] for assigned students. He is careful to ask questions to ensure that all documents and procedures are followed as is growing [sic] in this area as well.”

Mr. Jahn also received a “partially meets standards” rating for Standard IV which evaluated whether Mr. Jahn “[p]rovides consultations and support to parents and staff in the areas of intervention, preventative crisis management and students’ social-emotional needs; documents all communication regarding STANDARDS, service and progress of assigned students.” In the comments section Mr. Huffman wrote: “Chris is developing in his ability to provide consultation and support to parents and staff in the areas of intervention, preventative crisis management, and students’ social-emotional needs; He learning [sic] to document all communication regarding the service and progress of students that he works with. He is working on ways to communicated [sic] and collaborate with staff regarding student matters on a daily basis.”

In the District Expectations portion of the evaluation, Mr. Jahn received a “Does Not Meet Standard” rating in the “Demonstrates responsibility in duties” category. Mr. Huffman wrote: “Chris is demonstrating increased responsibility with his duties. He has taken seriously his need to manage his time and provide support to school site in a responsible manner. This is an area that Chris is continuing to work on.” Mr. Jahn also received a “Does Not Meet Standard” rating in the “Is punctual” category. Mr. Huffman wrote the accompanying comment: “Chris is working on being on time to meetings and trainings.”

Mr. Jahn’s Overall Evaluation was “Meets Standards.” In the Evaluator Comments/Recommendations section Mr. Huffman wrote:

Chris is a pleasure to have on the team. He always [sic] willing to grow and learn, as well as improve at his craft. Chris is supportive of systems change and provides valuable insight regarding the ways in which we can serve the students of VCPUSD. He a [sic] great depth of knowledge and is a real asset to the District and the sped team.

I would like to see Chris continue to grow in his ability to address behavior systems and interventions at his school site. I would also like to see Chris stay in tune with his site team and maintain good follow up skills so as to ensure positive outcomes for the students he works with.

### *2016 Letter of Reprimand*

9. On April 8, 2016, Mr. Huffman authored a Letter of Reprimand to Mr. Jahn. In it, he cited a March 29, 2016, IEP meeting to which Mr. Jahn arrived late, was unprepared, and presented himself in an unprofessional manner. Mr. Huffman referenced prior e-mails advising Mr. Jahn of the subject of the meeting to refute Mr. Jahn’s claim of not knowing

what he needed for the meeting. The letter of reprimand mentioned a second meeting that was to occur on March 29, 2016. Allegedly, Mr. Jahn stated he did not have his report completed and would “wing it” at the meeting and his supervisor told him that was not acceptable. However, Mr. Jahn testified that the word choice “wing it” was his supervisor’s word choice, not his, stating that when he admitted he did not have a report for the meeting she asked him, “What are you going to do, wing it?” Mr. Jahn also testified that his supervisor always made him very anxious, nervous and upset when he interacted with her, because he felt that she was bullying him. However, he never reported those concerns to Mr. Huffman or Mr. Garner.

In response to his reprimand, Mr. Jahn authored a letter to Mr. Huffman on April 22, 2016, stating:

Thank you for meeting with me on March 30<sup>th</sup> and April 8<sup>th</sup> 2016. I apologize for unprofessional behavior on my part occurring on March 29<sup>th</sup>, 2016. The unsatisfactory features of my work performance on my part occurring on March 29<sup>th</sup> were caused by psychiatric, medical and other health factors. I’ve taken actions to remedy the situation, including but not limited to medical appointments, psychiatric/psychological appointments, updating medications, shortening my commute, consulting clergy, exercising regularly and dietary modifications. I have scheduled an appointment to meet with you at your office on May 8<sup>th</sup> at 1:00 p.m. I have also reviewed the board policies and California standards for the teaching profession cited in the letter dated April 8<sup>th</sup>, 2016. Thank you for your time and consideration.

Mr. Jahn testified that this letter was his way of saying that if he did something to make administration worry, he was sorry, he was trying to be a team player, to go along, and to not make waves. However, now that he looks at that letter, he “should have written it differently.”

The Commission concluded that the evidence did not establish that Mr. Jahn made the “wing it” statement but the evidence did not support Mr. Jahn’s claim of being “bullied” by his superior. Instead, his testimony seemed to be little more than excuses for his failure to complete his work. Moreover, Mr. Jahn’s claim that he should have written his letter differently was not persuasive and seemed to be an additional attempt to rationalize his actions.

#### *Allegations and Findings Re: Escondido Union High School Student*

10. On January 21, 2017, the Escondido Union School District Program Specialist, Renee Steel, sent Mr. Jahn an e-mail advising that he had promised to provide her with “the

psych-ed and SCIA<sup>5</sup> reports” for a student who had transferred to that district, but she had not yet received them. She noted that her e-mail was “a gentle reminder” that he send those reports. Mr. Huffman, not Mr. Jahn, replied to Ms. Steel’s email, stating that they would get the reports to her.

On February 7, 2017, Ms. Steel sent another e-mail advising that the student’s IEP meeting had taken place on December 16, 2016, and that she was still waiting for the reports. Mr. Jahn replied on February 8, 2017, that he would e-mail her the reports “by the end of the week.”

On February 8, 2017, Mr. Jahn sent an e-mail to “Ramon Guzman” stating: “I failed to obtain a copy of your report at our last IEP.” Mr. Jahn asked Mr. Guzman to fax it to him and asked if the parents had signed the IEP and if Mr. Jahn could access the student’s information in the Special Education Information System (SEIS), an information system that tracks all the district’s special education students.

On February 13, 2017, Ms. Steel advised Mr. Jahn that he could access the student’s SEIS information, that the parents had signed the IEP, and asked Mr. Guzman to scan and send the requested IEP to Mr. Jahn.

The district also alleged that Mr. Jahn acted unprofessionally at this student’s IEP meeting. The student’s mother testified in this hearing and disagreed with that claim. She described Mr. Jahn as being alert, engaged and able to articulate his recommendations at IEP meetings. She felt he understood her child’s needs. She testified that the IEP meetings were “large” because representatives of both districts attended and that if Mr. Jahn was unable to answer her questions, the other school psychologist “might have the answer.”

The Commission determined that Mr. Jahn failed to provide timely reports to Ms. Steel and misled her as to when he would provide them. Moreover, the student’s mother’s testimony did not completely refute the district’s contention that Mr. Jahn was unprepared for meetings as she referenced getting the answers from the other school psychologist when Mr. Jahn could not provide them. Moreover, the mother’s focus in the meeting would not be solely on Mr. Jahn making her testimony about what she observed unpersuasive.

#### *Allegations and Findings re: February 2017 Staffing Meeting, IEP Meetings and Conduct*

11. Kevin Sunderman, a special education teacher at Valley Center Middle School, testified about his interactions with Mr. Jahn regarding IEP students. During the 2016-2017 school year, Mr. Sunderman sent many e-mails to, and had many discussions with, Mr. Jahn regarding the status of assessments and reports that were due. Although Mr. Jahn never told Mr. Sunderman that he would not be able to complete the reports, he seldom completed them, causing Mr. Sunderman extreme stress because the lack of reports affected the IEP Teams’ ability to perform their job. Mr. Sunderman explained that if Mr. Jahn had

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<sup>5</sup> No evidence regarding what that acronym meant was provided at hearing.



informed him that he could not get the assessments or reports completed, Mr. Sunderman could have made other arrangements; instead Mr. Jahn thanked Mr. Sunderman for “keeping him on top of things.” Mr. Jahn’s failure to “communicate and be honest” caused Mr. Sunderman and the IEP Teams undue stress. This year, with Mr. Jahn gone and his replacement hired, the IEP Teams are “running on all cylinders” and the work is getting done.

Mr. Sunderman described a series of events involving a suicidal student that occurred in February 2017. There was grave concern for the student’s welfare and a staffing meeting was set to determine how best to address the student’s needs. Mr. Jahn was supposed to assess the student and have a report for the IEP Team. Despite repeated e-mails from Mr. Sunderman, Mr. Jahn failed to do so, which put the IEP Team in a “tailspin.” Mr. Jahn also provided “very little input” at the staffing meeting. Mr. Jahn agreed to have his report finished by the IEP meeting which was set to occur after the school break.

However, on the Monday after break, Mr. Jahn still had not completed his report. The next day, on the morning of the IEP meeting, Mr. Sunderman went to Mr. Jahn’s office to find out about the status of the report. When Mr. Jahn opened the door, he appeared disheveled, mentioned he had fallen, and his office was in disarray with papers on the floor and coffee spilled on a \$1,000 psychological test kit. Mr. Jahn was pacing back and forth, scratching his forearms, and Mr. Sunderman was “thrown for a loop.” Mr. Sunderman was extremely concerned about Mr. Jahn’s welfare and left to inform the principal. When Mr. Sunderman left Mr. Jahn’s office, the door slammed shut behind him.

After speaking with the principal, Mr. Sunderman returned to Mr. Jahn’s office and it was “weird.” Mr. Sunderman explained that Mr. Jahn opened the door and it was “like the prior incident had never happened.” This “bizarre swing of mood” was “disturbing” to Mr. Sunderman. Mr. Jahn then advised Mr. Sunderman that he would get him the report for the meeting. Thereafter, during fifth period, Mr. Jahn arrived unannounced to Mr. Sunderman’s classroom, carrying his computer and his lunch, stating he was there to work on the suicidal student’s information. Mr. Sunderman told Mr. Jahn that he was teaching his class, but Mr. Jahn remained, sat among the students, ate his food and worked on his computer. At one point, Mr. Jahn told Mr. Sunderman’s students to be quiet so he could work. Mr. Sunderman was upset that Mr. Jahn disrupted his class and told his students to quiet down.

Later that day at the IEP meeting, Mr. Sunderman “watched Mr. Jahn like a hawk” because he was so disturbed by Mr. Jahn’s behaviors earlier that day. Mr. Jahn did not have a report prepared, was eating during the meeting, appeared “giddy,” made inappropriate jokes and gestures, including reenacting shooting his arm with a syringe, and making what sounded like a comment about signing a death certificate, although he testified at this hearing that he could not say for sure if Mr. Jahn actually made that statement but thinks that was what he heard Mr. Jahn say. Mr. Sunderman observed the students’ parents looking at each other quizzically in response to Mr. Jahn’s statements and presentation. Further, rather than providing the IEP participants with copies of a finished report, Mr. Jahn reviewed his testing protocols with the team and the parents, and gave Mr. Sunderman the impression that Mr. Jahn did not know what he was reading; it was a very unorganized presentation. Moreover,

Mr. Jahn did not realize that the student's father was getting upset because Mr. Jahn was only sharing his one copy of the protocols with the mother. Recognizing this, Mr. Sunderman stopped the meeting to switch seats so the father could see the protocols. Typically at IEP meetings, the school psychologist has several copies of a report, not just one copy of test protocols, to share with parents and IEP Team members.

Jon Petersen, the former principal at the middle school where Mr. Jahn worked, is currently the district's Chief Business Officer. He testified that during that February 2017 IEP meeting Mr. Jahn was speaking more slowly than normally, was struggling to find the words regarding the student, and appeared to be reading from rating scales that he was interpreting at the meeting as opposed to having a prepared report. However, what was more troubling was that Mr. Jahn was continually trying to break the ice by telling jokes which caused the parents and one of their representatives to continually look at each other quizzically. Mr. Petersen described Mr. Jahn's demeanor as "giddy." Mr. Petersen called Mr. Huffman immediately after the meeting, telling him that this was "not normal behavior." Mr. Petersen agreed that no parents complained about Mr. Jahn but testified that it was not unusual for special education parents not to have complained about Mr. Jahn's behavior because "we rarely have complaints from parents after IEP meetings."

Mr. Jahn denied telling Mr. Sunderman that he fell in his office, testifying that Mr. Sunderman's testimony was simply not true. Mr. Jahn admitted he did not have a report for the February 28, 2017, IEP meeting. The reason he did not have his report was because he had not been able to complete his assessment because the student was absent from school on multiple occasions. Mr. Jahn denied doing the student's assessment in Mr. Sunderman's classroom, although he "could not recall exactly what [he] was doing in Mr. Sunderman's class." Mr. Jahn also denied making jokes, lethal injection motions or any statement about signing a death certificate during that February IEP meeting.

Mr. Jahn testified that he was on medical leave for approximately five or six weeks and got a MRSA<sup>6</sup> infection. He was released back to work a few days after leaving the hospital following two surgeries.<sup>7</sup> When Mr. Jahn returned to work he was still undergoing twice a day infusions that he performed at work. He was "wiped" and his workload had piled up. Although he could perform some of his duties, he could not perform them at "the level of competency or efficiency" that he normally did. He did not feel "100 percent" until March 2017, and he did not ask for help because there were other teachers "battling worse diseases," he "overestimated his abilities," and he was "not good at self-advocacy." In retrospect Mr. Jahn should have asked for help, additional time to complete his reports, and more time to get up to speed, especially as he was self-administering antibiotics to himself. But he thought the district knew he was recovering from a serious illness and that they would provide accommodations for him even though he returned to work with no restrictions. The

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<sup>6</sup> MRSA is an abbreviation for Methicillin-Resistant Staphylococcus Aureus, some bacteria that attacks organisms.

<sup>7</sup> The dates of his leaves and returns to work were not made clear at this hearing.



district did not hire a replacement to cover his workload and several dozen reports were due while he was out on leave. All but one or two of those reports were still due when he returned to work. He explained that once he was behind it was hard to keep up, but he planned to do so by working extra hours and over school breaks/holidays. However, things piled up.

The student's mother testified in support of Mr. Jahn. She claimed that he did not make any inappropriate jokes or remarks at the February IEP meeting; that she thought he was honest with her when she had questions regarding the medication the psychiatrist was recommending for her daughter; that he did not make a needle in his arm injection motion, or a death certificate comment. The mother testified that she always felt that Mr. Jahn was very professional in meetings, that he was compassionate and understanding and she liked him much better than his current replacement. The mother also testified that she received written reports, but upon further questioning it was clear that what she considered a report was merely the IEP document setting forth her parental rights in the IEP process.

Mr. Huffman admitted that Mr. Sunderman was the only employee who complained about Mr. Jahn's behavior at the February 2017 IEP meeting. Although Mr. Jahn's attorney implied in his cross-examinations that Mr. Sunderman was biased against Mr. Jahn, the evidence did not support that assertion. Mr. Sunderman presented as an excellent witness with firsthand knowledge of the facts at issue in this case. His testimony was credible; he answered all questions posed to him in a direct manner, gave a credible accounting of his observations and concerns, and his answers were persuasive.

The Commission concluded that Mr. Sunderman's testimony about Mr. Jahn's bizarre behavior in his office and in Mr. Sunderman's classroom was more credible than Mr. Jahn's testimony to the contrary. Additionally, Mr. Sunderman's testimony regarding Mr. Jahn's behavior at the IEP meeting where Mr. Jahn appeared giddy, made inappropriate comments, and was unprepared and disorganized was more persuasive than Mr. Jahn's and the student's mother's testimony. Mr. Sunderman had good reason to specifically focus his attention during that IEP meeting on Mr. Jahn because of their earlier encounters that day, as opposed to the mother who had no knowledge of those events and whose primary focus would be on the needs of her child. However, the Commission was not convinced that Mr. Jahn made "syringe in the arm" gestures, although he may have been doing something with his arms because of the IV injections he was giving himself for his MRSA infection. The Commission was also not convinced that Mr. Jahn made a death certificate comment because Mr. Sunderman admitted while testifying that he was unsure if Mr. Jahn made that statement.

#### *Allegations and Findings re: Mr. Jahn's March 1, 2017, E-mail*

12. On March 1, 2017, Mr. Jahn e-mailed Ashlee Salmon, a district education specialist, and sent copies to eight district employees, including his site principal, informing Ms. Salmon that he would not be able to make their 1:00 p.m. meeting because he needed to leave for a doctor's appointment. Mr. Jahn wrote:

My primary care doctor is annoying in several ways. He makes me see him once a month on the pretense of [REDACTED]; but I believe the actual function of this mandated monthly appointment affords him an outlet to rant to me about global political and economic conspiracy theories which he vehemently espouses and is deeply concerned about despite obvious disinterest from me. Also, his office hours are abysmal. He opens his office at 9 am and closes at 4, so I almost always must take time off work. I think he's a great doctor, but I need to find a new primary because his schedule and discussing topics don't work for me. I apologize for the inconvenience.

The Commission found that this e-mail was unprofessional and provided extremely detailed and unnecessary information to a colleague.

*Allegations and Findings re: March 3, 2017, IEP Meeting*

13. Mr. Sunderman described a March 2017 IEP meeting regarding another student during which Mr. Jahn “just walked in and sat down” even though he was not scheduled to attend the meeting and Mr. Sunderman did not know why Mr. Jahn was there. Moreover, Mr. Jahn arrived late to the meeting, did not say anything during the meeting, and appeared “to be in REM with his eyes open.” Mr. Sunderman observed one of Mr. Jahn’s eyes to be moving left and right, back and forth, and the other one to be rolling back in his head, as though he were “in a REM state of sleep but with his eyes open.” Mr. Sunderman nudged Mona Stroud, the vice principal attending the meeting, who nudged Mr. Jahn who “snapped out of it.” Mr. Sunderman observed Mr. Jahn exhibit this behavior again later in the meeting and was very concerned. Following the meeting Mr. Sunderman was “adamant” that Mr. Jahn not drive home given his condition. Mr. Sunderman and Ms. Stroud met with Mr. Jahn and Mr. Sunderman “was not backing down” regarding refusing to let Mr. Jahn leave campus and drive home. Eventually, Mr. Jahn allowed Mr. Sunderman and Ms. Stroud to drive him home.

The student’s mother who was at the March 3, 2017, IEP meeting testified at this hearing and attempted to refute the district’s assertion that Mr. Jahn was not alert and/or was falling asleep. She testified that Mr. Jahn did not act unprofessionally at the meeting and answered all of her questions. She admitted that Mr. Jahn had red eyes at the meeting and “coughed a number of times,” but she attributed that to “allergies.” However, no evidence was introduced by Mr. Jahn that he had “allergies.” The student’s mother also referenced the bullying her son endured during his three years at middle school and that it was Mr. Jahn who assisted her and helped her son when no other employees at the district would do so. The student’s mother also testified that Mr. Jahn worked with her daughter who has an IEP and she was satisfied with his services.

Mr. Jahn denied falling asleep in the March 3, 2017, IEP meeting, explaining that he did not close his eyes for any longer than a “slow blink.” He also refuted the district’s contention that he appeared at a meeting that he was not supposed to attend, testifying that the case manager asked him to attend because she was unable to go to the meeting and a third-party contract therapist had also asked him to attend. The night before the March IEP meeting, Mr. Jahn’s girlfriend was in the hospital all night with appendicitis and, although he was exhausted, he thought it would cause more problems if he stayed home from work and thought he could get through the day. The student’s parents and therapists were thankful that Mr. Jahn attended the IEP meeting because he had been able to successfully engage the student and was able to provide information during the meeting. Mr. Jahn also denied needing to be driven home following the IEP meeting, testifying he still does not believe it was necessary for staff to drive him home.

After Mr. Garner was informed by the assistant principal that staff had to drive Mr. Jahn home, he placed Mr. Jahn on administrative leave. Mr. Sunderman was asked to create a spreadsheet of all Mr. Jahn’s IEP students and the assessments or reports needed. Mr. Sunderman testified that doing so made him realize the extent of the work Mr. Jahn had not completed and that was when the district “hit the panic button.”

Mr. Jahn testified that he was not given advance notice of this forced leave of absence; he had no time to organize his files or tell others where his reports were located, and he had no communication with anyone at the district before being placed on leave. Mr. Jahn denied telling Mr. Huffman that the missing reports were completed and on his laptop; he recalls telling Mr. Huffman that “they might be on my laptop if they are anywhere,” and testified, “I did not believe I communicated in any unequivocal way that they were there [on my laptop].” He further explained that his power cord was at the office, he told staff that he was unable to access documents on his computer, and he was instructed not to do any work while on his leave of absence. Mr. Jahn asked a coworker to bring his laptop to the district and his coworker did.

The Commission concluded that Mr. Sunderman’s account of the March IEP meeting and the need to drive Mr. Jahn home afterwards was more credible than Mr. Jahn’s testimony and that of the student’s mother. Again, as a parent she would have no reason to be specifically observing Mr. Jahn. Moreover, she acknowledged his “red eyes” but attributed them to allergies. That explanation was not persuasive. Finally, it is highly unusual for staff to be so concerned about a colleague that they insist on driving the colleague home, thereby lending further credence to Mr. Sunderman’s testimony about Mr. Jahn’s condition. The Commission did not find that Mr. Jahn’s statements were dishonest; for whatever reason, he truly believed he had done the work.

### *2017 Notice of Unprofessional Conduct*

14. On April 20, 2017, district Superintendent Mary Gorsuch, in her official capacity, issued a Notice of Unprofessional Conduct to Mr. Jahn for his “behavior during the Spring 2017 school semester.” Superintendent Gorsuch referenced Education Code section



44932, subdivision (a)(2),<sup>8</sup> which “requires the employee be given 45 calendar days to correct his or her faults and to overcome the grounds for the charge.” Superintendent Gorsuch wrote: “This formal notice is designed to give you the opportunity to correct your behavior and overcome the basis for this Notice.” Superintendent Gorsuch identified the “Incident of Unprofessional Conduct” as being Mr. Jahn’s failure to timely assess a student before a February 17, 2017, meeting; his lack of being prepared at the February 17, 2017, meeting; his failure to prepare the report as promised by February 27, 2017; his interactions with another teacher to whom he promised the assessment “ASAP”; his disruption of that teacher’s instructional time when Mr. Jahn appeared and began assessing a student during class; and his inappropriate behavior during the student’s IEP meeting, including making a joke about signing a death certificate and gesturing as if he were injecting something in his arm. Superintendent Gorsuch also referenced Mr. Jahn’s inappropriate e-mail to staff wherein he provided “a very detailed explanation regarding your criticisms of your medical doctor” and his odd behavior at a March 3, 2017, IEP meeting for another student that led to staff driving him home because staff did not think he “was in a position to drive.”

Superintendent Gorsuch noted the prior directives issued to Mr. Jahn and his April 22, 2016, letter in which he “confirmed that [he] reviewed the Board policies and California standards for the teaching profession and stated that [he was] taking actions to remedy [his] inappropriate behavior.” Superintendent Gorsuch reiterated Mr. Jahn’s duties to comply with the California constitution, state laws and board policies, citing to those sources. Superintendent Gorsuch wrote that Mr. Jahn’s behavior “constitutes inexcusable and unprofessional conduct” which led her to issue this Notice pursuant to Education Code section 44938. Superintendent Gorsuch directed Mr. Jahn to “reflect upon the seriousness of [his] conduct and performance and in order to correct [his] behavior and overcome the basis for this Notice.” She identified five directives he was to follow:

1. Comply with all previous directives given to you by site or District administrators. Additionally, you are directed to comply with any suggestions given to you, by site or District administrators, following this Notice to assist you in overcoming the above-mentioned deficiencies;
2. Maintain frequent communication (contact at least once weekly) with your evaluator/supervisor, Scott Huffman, and principal, Jon Petersen, to keep them informed of your progress toward improving upon the aforementioned areas and to seek guidance/advice and suggestions regarding improving performance and conduct;

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<sup>8</sup> It is Education Code section 44938, subdivision (a), that requires that the employee be given 45 calendar days to overcome the grounds for the charge whenever a district charges unprofessional conduct pursuant to Education Code section 44932, subdivision (a)(2).

3. Be prepared for all staffing meetings, including staffing meetings concerning IEP team meetings; submit reports/documentation to supervisor prior to the staffing meetings;
4. Be prepared for all staffing meetings, including completing psychological assessments and reports in a timely manner and prior to the day of the IEP team meeting; submit reports/documentation to supervisor prior to IEP meeting; and
5. Act in a professional manner when interacting with other District and agency contracted employees, students, parents of students and representatives of the parents/families.

Superintendent Gorsuch concluded her Notice by advising Mr. Jahn that he had 45 calendar days to “correct [his] faults and overcome the grounds for the charges” or the matter may be referred to the board for dismissal proceedings.<sup>9</sup> Superintendent Gorsuch attached excerpts from the state constitution, board policies and Mr. Jahn’s May 7, 2017, evaluation.

*E-mails after Mr. Jahn Returned from Administrative Leave in Spring 2017*

15. On April 22, 2017, Mr. Jahn sent Mr. Huffman an e-mail advising that he had tested a student on Friday “as much as I could” and would “do so again on Monday,” but the student’s IEP meeting was “at 8 am on Tuesday.” At this hearing Mr. Huffman agreed that it would not be reasonable to expect Mr. Jahn to have assessed the student and written a report before the April 25, 2017, IEP meeting given that he had only just returned to work on April 21, 2017, after being out on administrative leave.

16. On April 24, 2017, Mr. Huffman sent Mr. Jahn an e-mail confirming what had been discussed with him and his site principal following that morning’s IEP meeting. Mr. Huffman noted that the three of them discussed Mr. Jahn being on time to work, that he showed up 14 minutes late to the IEP meeting, and that he appeared sleepy and closed his eyes during the IEP meeting. Mr. Huffman stated that his behavior was unprofessional. Mr. Huffman directed Mr. Jahn to be awake and alert at meetings, to share his calendar with Mr. Huffman, and that as of May 5, 2017, Mr. Jahn was to have all reports to Mr. Huffman five days before the meetings so that Mr. Huffman could review them. Mr. Huffman thanked Mr. Jahn for advising him of his inability to complete a report and directed Mr. Jahn to send Mr. Huffman weekly updates regarding assessments on which he was working and his timelines for completion. Mr. Huffman testified that he directed Mr. Jahn to provide his reports five days in advance so Mr. Huffman could review them for completion/accuracy to ensure that Mr. Jahn looked professional at IEP meetings.

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<sup>9</sup> The district placed Mr. Jahn on leave before the 45 calendar days lapsed.

17. On April 26, 2017, Mr. Jahn advised Mr. Huffman that he was currently evaluating a student whose IEP was scheduled for May 1, 2017, and would not be able to deliver a report five days before the IEP meeting. Mr. Huffman testified that it was reasonable to expect Mr. Jahn to have accomplished assessing and preparing his IEP report by the time of this IEP because Mr. Jahn told Mr. Huffman he could do it, and he did not ask for support to get it accomplished despite Mr. Huffman repeatedly offering support to him.

18. On May 1, 2017, Mr. Huffman sent Mr. Jahn an e-mail summarizing their meeting “so as to be sure we are on the same page.” Mr. Huffman noted that his expectation was that Mr. Jahn plan out his testing/assessment schedule, plan in advance, and have his “pre-meeting reports for review with all evaluations from May 25th and on.”<sup>10</sup> Mr. Huffman’s e-mail further directed Mr. Jahn to continue to be on time, to report his absences in the system, stay focused on his work, and let Mr. Huffman know if he needed support. Mr. Jahn replied to that e-mail thanking Mr. Huffman for his “feedback and detailed instructions.” Mr. Jahn advised that he was unable to login to his work computer to retrieve a student’s report and had sent in a “tech help ticket.” When Mr. Huffman asked if Mr. Jahn had submitted a “help desk ticket,” and Mr. Jahn replied, “No. I called tech. yesterday. Melissa suggested and transferred me to Cort. I left a VM mssg. Was just looking at help desk login. I’m not sure what my login for that is, so I’m looking for instructions on that.” In a follow-up e-mail Mr. Jahn wrote: “Done. My help ticket number is 30368.”

19. On Monday, May 1, 2017, Mr. Huffman forwarded a spreadsheet entitled, “Chris and Flora Caseload” to Mr. Jahn asking him to “please be sure to add to this list all Psych. Reports that are due until the end of the school year by Wednesday to this list.” Mr. Jahn replied on May 1, 2017, “Thanks. I will.” On Thursday, May 4, 2017, Mr. Jahn e-mailed Mr. Huffman that he had “been working on this and will finish it today.” He advised that he only had “read access” to the list and was requesting “edit access,” and that he was “finishing a spreadsheet in the format we discussed on Monday with all my assessments. That document will be done today, and I will share it with you and Mr. Petersen.”

20. On May 1, 2017, Mr. Huffman sent Mr. Jahn a text advising that he was waiting in his office for their appointment. Mr. Huffman testified that Mr. Jahn then arrived for their meeting a few minutes later.

21. On May 10, 2017, Lelani Osugi, a district principal, copied Mr. Huffman on an e-mail she sent to Mr. Jahn “to touch base about a few reports.” She wrote that she needed two reports on two students as they were “getting to wrap up things for the end of the year” and asked if he could “get them to Debbie within the next few weeks . . . .” Mr. Jahn replied, “Thank you for the heads up on those students. I will take care of that.” Mr. Huffman directed Mr. Jahn to get those reports to Ms. Osugi “by the end of tomorrow. Let me know if that will be a problem.” Mr. Jahn replied that he would let Mr. Huffman know if

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<sup>10</sup> Mr. Huffman acknowledged that Mr. Jahn could not comply with this directive because Mr. Jahn was no longer working at the district as of May 25, 2017.



that would be a problem. Two days later, on Friday, May 12, 2017, Mr. Jahn e-mailed Mr. Huffman and Ms. Osugi asking, “May I please have until the end of day, Monday, May 15, 2017, to deliver these two items?” Mr. Huffman replied, “Yes.” On Tuesday, May 16, 2017, Mr. Huffman e-mailed Mr. Jahn, asking if he got “those reports to Leilani Yesterday?” On Friday May 19, 2017, Mr. Jahn e-mailed the following to Mr. Huffman and Ms. Osugi: “Sorry for the delay on these two reports. I have worked on them, but not finished them. My best confident estimated completion date is Friday 5/26. I will try to have them before that.” Mr. Huffman forwarded the string of e-mails to Mr. Garner with the following note: “Here is his response on reports that should have been done long long time ago...”

#### *Mr. Jahn’s May 2017 Evaluation*

22. Mr. Huffman evaluated Mr. Jahn in May 2017. Mr. Garner approved the evaluation on May 10, 2017, and Mr. Huffman signed it on May 24, 2017. The section on the form for Mr. Jahn to sign or add comments was blank. Mr. Garner testified it was blank because as of May 24, 2017, Mr. Jahn was on administrative leave.

For Standard I, which measured whether the employee “Identifies and evaluates students with a suspected disability; maintains documentation in screening referrals, SST logs, evaluation reports, IEP’s and meeting notices,” Mr. Huffman gave Mr. Jahn a “Partially Meets Standards” score and wrote:

Chris has struggled in the area over the past year in that he has not been able to organize his documents and reports prior to IEP meetings on many occasions. Furthermore Chris has struggled at maintaining documents in an organized fashion. Specifically, Chris has been unable to provide staff with students [*sic*] reports in a timely manner when requested. In some instances Chris has been unable to find the student assessment reports and has had to create them in order to provide to the teams that need them.”

For Standard III, which measured whether the employee “Implements the IDEA consistent with district procedures and policies regarding the provision of special education services; maintains records/files containing all pertinent and legally [*sic*] information for assigned students,” Mr. Huffman gave Mr. Jahn a “Does Not Meet Standards” score and wrote: “Chris does not implement the IDEA consistent with the district procedures in that he does a very poor job at maintaining records and files for out [*sic*] students in the district.”

For Standard IV, which measured whether the employee “Provides consultations and support to parents and staff in the areas of intervention, preventive crisis management and students’ social-emotional needs; documents all communication regarding STANDARDS services and progress of assigned students,” Mr. Huffman gave Mr. Jahn a “Partially Meets Standards” score and wrote: “Chris has made attempts to support school sites when working with teams to address students [*sic*] concerns. Unfortunately Chris [*sic*] inconsistent

attendance and participation in team meetings has hindered his ability to follow through with teams in this area on a consistent basis.”

For Standard V, which measured “Communicates with students, families, and staff about student progress toward IEP STANDARDS,” Mr. Huffman gave Mr. Jahn a “Partially Meets Standards” score and wrote: “During the course of the year Chris has been working on his ability to maintain effective communication with parents and staff. Chris has made some progress in the area recently, but continues to struggle with setting up effective systems of communication with teams and families, either through e-mail, in person or over the phone to helps *[sic]* support students and staff within the program.”

In the District Expectations Section Mr. Huffman wrote that Mr. Jahn “Did Not Meet Standards” for the following categories and commented as follows:

Communicates effectively with parents: “Over the course of the year Chris has had IEP meetings where parents and families have been confused and unclear about what Chris is communicating to them in terms of student assessment results and social emotional status.”

Demonstrates responsibility in reports: “Chris has consistently struggled with timely and thorough assessment reports that are prepared and ready to go for IEP meetings. There have been a number of times where Chris has been in the middle of the IEP meeting and writing the report. Additionally *[sic]* the assessment reports at times are incomplete due to lack of follow through on Chris *[sic]* part in preparing documents need *[sic]* to draft reports.”

Demonstrates responsibility in duties: “Chris has struggled to show that he fully understands his professional responsibilities while on the job. Chris has been lacking in the areas of professional communication with staff and parents during IEP meeting and after, Chris has struggled with being prepared for meeting *[sic]* after, Chris has struggled with being prepared for meetings by having all reports and results ready for the meetings. Chris has been late to work many times which has led to meetings being delayed, or disjointed in that he has not been there to participate in them.”

Demonstrates responsibility in meeting: “Again, Chris not being prepared to effectively communicate and share his completed reports with the IEP teams has demonstrated that he lacks responsibility in meetings.”

Is punctual: “As of late Chris has been on time to work each day. Prior to the last 3 weeks, Chris has great difficulty with being at work on time.”

Maintains good attendance: “Chris has been better with his attendance within the past 3 weeks. Prior to this Chris has really struggled with this.”

Mr. Huffman gave Mr. Jahn “Meets Standard” ratings for the “Demonstrates responsibility in supervision of students” category, noting: “Chris has a great connection with students and does an excellent job building positive relationships with them.”

Mr. Huffman gave Mr. Jahn an “Overall Evaluation” of “Unsatisfactory” and referred him to Peer Assistance and Review (PAR). Mr. Huffman wrote the following in the Evaluator Comments section:

At this time it is recommended that Chris participate in PAR. Chris has struggled over the years to effectively perform his basic job responsibilities as a school psychologist.

At this [*sic*] Chris will need to focus on a few key areas in order to demonstrate that he fit [*sic*] to perform his duties on a daily basis. Chris will need to develop systems of organization that will allow him to create efficient methods of developing timely and thorough reports for IEP meetings.

He will need to seek out support from the director and site administrator and adhere to all directives as it [*sic*] relates to daily organization of his responsibility that are given to him [*sic*]. Furthermore Chris will need to show up to work on time each day and check in with the site administration to ensure that he is on campus and present. Chris is expected to be at all meetings on time and prepared with all proper materials and documents so that he can meaningfully participate with the team to support successful student outcomes.

Moving forward Chris will need to show evidence that he has put systems in place that address timeline compliance with reports and assessments that have been conducted. Specifically, Chris will need to set up a weekly appointment with the Director or Site Principal where he will provide updates about timelines and assessments in the form of a google [*sic*] doc spreadsheet that is shared with both administrators. Additionally, Chris will need to share his google [*sic*] calendar and document his daily activity as means [*sic*] of demonstrating advanced planning for

testing, general meetings, IEP meetings and other duties as assigned.

Chris is expected to notify site administration and director of any absence through e-mail. He is also expected to use the district electronic sub/absences system when he will be out.

It is important to note that as of late Chris has had some improvement in being at work on time. Additionally, Chris has demonstrated a willingness to take direction and advise [sic] on how to better plan an [sic] prepare for his daily duties and responsibilities.

If at any time Chris is unable to perform his daily tasks he will need to seek out support from his site administrator and director to get guidance on what he should do.

I am hopeful that Chris can develop successful systems and methods to perform his job as a school psychologist in Valley Center-Pauma Unified School District in a professional way moving forward.

#### *May 2017 Administrative Leave*

23. On May 24, 2017, less than 45 days after Superintendent Gorsuch issued her notice of unprofessional conduct, Mr. Garner issued a letter to Mr. Jahn advising him that on May 23, 2017, Mr. Jahn was placed on paid administrative leave. The purpose of the leave was to allow the district to “investigate allegations of misconduct.” Accordingly, Mr. Jahn was unable to follow up on any of the directives contained in his May 2017 evaluation. It was unclear from the evidence why the district did not give Mr. Jahn an opportunity to comply with the directives contained in his 2017 evaluation, participate in PAR, or allow the 45 days to run.

#### *Exemplar Psycho-Educational Report*

24. The district introduced a January 7, 2016, Psycho Educational Report Individual Summary of Assessment prepared by Mr. Jahn. The report noted that it was a triennial report. The district alleged that it was sparse, insufficient, and did not conform to the templates the district had provided Mr. Jahn. However, the templates were not introduced in evidence and the Commission was not persuaded that this report was insufficient or fell below accepted standards.

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### *Spreadsheets of Mr. Jahn's Unfinished or Incomplete Reports*

25. The district introduced two spreadsheets documenting Mr. Jahn's unfinished assessments and reports. Mr. Jahn did not dispute the information contained in the spreadsheets; rather, he asserted that other school psychologists also had missing reports. His testimony was not persuasive and the fact that other psychologists may or may not have had missing reports did not absolve him of his responsibility to complete his work on time.

*Witness Testimony*

26. Mark Garner, now the Assistant Superintendent of Human Resources, testified about the role of school psychologists, the 2014 grant the district received to assist special education students, how school psychologist caseloads are determined in the district and the "crucial role" school psychologists play on the special education team. In the fall of 2016, Mr. Garner learned that Mr. Jahn was out on medical leave and that the school psychologists at other sites performed his work. Mr. Garner did not speak with Mr. Jahn when he returned to work and Mr. Jahn did not reach out to Mr. Garner to request support.

Before Christmas 2016, Mr. Huffman and Mr. Garner discussed Mr. Jahn's incomplete reports and other issues; many of which were documented in the records introduced at this hearing. Margaret Williams was hired to work Mr. Jahn's caseload when he went on medical leave in the spring of 2017 and "from all indications all was being managed." Mr. Jahn returned to work with no restrictions, all his work was up to date, having been performed by Ms. Williams, and the district paid to have Ms. Williams remain on staff for one week after Mr. Jahn returned to help him transition back to work. Mr. Jahn never claimed that he was unable to perform his job when he returned.

Mr. Garner and Mr. Huffman had discussions in the spring of 2017 regarding Mr. Jahn's poor work performance. Mr. Jahn's caseload at this time was "significantly less" than other school psychologists by almost 30 to 50 percent. The district performed an audit of Mr. Jahn's caseload and discovered numerous missing evaluations, assessments and reports. Mr. Garner was very concerned about this because it exposed the district to serious liability because of its failure to meet IDEA requirements. Mr. Garner described the district's duty to provide a free and public education (FAPE) to students in the district and he recommended that Mr. Jahn be dismissed from the district because the district would "not be doing our job if we allowed him to continue his employment because he was not completing his job and he was letting our families down." However, Mr. Garner admitted that the district has received no complaints from any families regarding Mr. Jahn.

Mr. Garner's testimony was consistent with the documents introduced at hearing but established that he had little to no firsthand knowledge of the acts alleged making his testimony not very persuasive.

27. Scott Huffman, the district's Director of Student Support Services, testified consistent with the documents, describing his interactions with Mr. Jahn and the many efforts he made to help Mr. Jahn succeed. Mr. Huffman was hired by the district in 2013 and

described his duties, including his work implementing SEIS, the district's special education tracking system.<sup>11</sup> When Mr. Huffman asked Mr. Jahn about missing evaluations and reports, Mr. Jahn variously claimed that the documents were on his computer, had been uploaded, had been written in, or were being completed. However, there are several reports that the district still cannot locate.<sup>12</sup> Mr. Huffman described the importance of the school psychologist's report because it memorializes the information and helps the IEP team participate meaningfully at the IEP meeting and going forward. Mr. Huffman explained the laws regulating special education services for students and the purpose of the IEP meetings, describing both the procedural and substantive problems that occur when there is no school psychologist report. Without a report, the district is out of compliance with applicable laws and it is unprofessional.

Mr. Huffman described the various duties of the IEP team members and the "very demanding" and time-consuming work a school psychologist performs. Mr. Huffman had "concerns early on" regarding Mr. Jahn's job performance and ability to meet deadlines, but was hopeful they could work through them. As a new director, Mr. Huffman was trying to look at his staff as individuals, looking at their strengths and having discussions with them on areas that required improvement. Mr. Jahn always had an issue with being on time, but Mr. Huffman was hopeful that he could support Mr. Jahn and work on keeping him on track. Mr. Huffman had discussions with Mr. Jahn regarding his lack of reports and behavior at meetings, including instructing him to be alert, to actively participate and not to have slurred speech during meetings. Mr. Huffman testified that he received several calls from site administrators asking where Mr. Jahn was and when Mr. Huffman spoke with Mr. Jahn about these issues, he came to believe that this was a bigger issue than what he had originally thought. Mr. Huffman was concerned about Mr. Jahn, he wanted him to be successful, and he offered him support.

Mr. Huffman and the special education team developed templates during the 2013-14 school year for the school psychologist's reports that were made available on Google documents. Mr. Jahn claimed that he did not have the templates, so Mr. Huffman re-shared them through Google attachments. On the Thursday before Mr. Jahn returned from leave in April 2017, Mr. Huffman, Mr. Garner, Mr. Shinoff, Mr. Cadieux, and Mr. Jahn all met. During that meeting, Mr. Huffman shared his concerns regarding Mr. Jahn's work performance and the missing reports that were still needed, testifying that it was about this time that he started to realize the extent of Mr. Jahn's missing reports. Before the meeting, Mr. Jahn told Mr. Huffman that he would provide the reports; at the meeting Mr. Jahn said the reports were on his computer; and after the meeting Mr. Jahn said that he could not get them off his computer because he did not have a charger cord or plug. Mr. Huffman told Mr. Jahn to bring the computer to the district so that they could retrieve the documents. During the Thursday meeting Mr. Huffman also told Mr. Jahn that he would meet with him as

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<sup>11</sup> During Mr. Jahn's internship and initial employment, the district did not have SEIS.

<sup>12</sup> Mr. Jahn acknowledged that this may be true, explaining that he thought he had uploaded the reports, performed the evaluations, or written the reports.



frequently as possible so that Mr. Jahn would have all the support he needed when he returned to work.

Mr. Jahn returned to work on Monday, April 24, 2017, and was scheduled to attend an IEP meeting that morning. Mr. Huffman also attended the IEP meeting. Despite the many directives given to him, Mr. Jahn showed up late for the meeting, claiming he had gone to the teacher's classroom and not the conference room where the meeting was being held. Because others had reported that Mr. Jahn fell asleep during IEP meetings, Mr. Huffman watched him during the meeting and it looked as though Mr. Jahn was falling asleep. During his testimony, Mr. Jahn explained that he did arrive to work on time but went to the wrong location because the morning IEP meetings were typically held in the teacher's classroom, and not the conference room. Thus, he went to the teacher's classroom and not the conference room which made him late to the meeting. The Commission found Mr. Jahn's explanation for being tardy to the IEP meeting credible.

Mr. Huffman testified that the district kept Ms. Williams on staff for one week after Mr. Jahn returned to work to help him transition. Thereafter, Mr. Jahn never asked the district for any additional support and when asked about his workload Mr. Jahn replied that he was "comfortable to take it on." However, during the spring 2017 Mr. Jahn continued to fall behind in the completion of his reports, repeatedly asking for extensions of time. Although Mr. Jahn was always respectful and willing to make changes, he never asked for help or support, instead saying that he would "work on it." Mr. Jahn continued to have other difficulties as well, including struggling to stay awake at meetings with Mr. Huffman.

After Mr. Jahn returned to work in April 2017, there were still missing reports for IEP meetings conducted before he went on leave, as well as there being IEP meetings where Mr. Jahn merely reported on information but did not have reports. Those reports were not completed at any time before Mr. Jahn was placed on his final leave from the district. Currently the district is still missing reports for nine students and Mr. Huffman had to recently notify the State of California when it conducted its audit that the district does not have reports for those students. Mr. Huffman testified that he had previously reported to the state that the district was 100 percent compliant with its special education requirements but has now found that not to be the case.

Mr. Huffman testified that Mr. Jahn was unfit for his position because he had lied to Mr. Huffman about completing his reports and consistently exhibited an inability to "pull it all together" to get his work done, to perform in a timely manner and to do his job despite "all the supports around him." Mr. Huffman testified that the district had more supports in place for Mr. Jahn than any other school psychologist. However, despite those supports, Mr. Jahn could not comply with the directives given to him.

28. Superintendent Gorsuch testified that although he was a very nice person and great with students, she recommended Mr. Jahn be dismissed from the district because "the work was not getting done and I had to stop that." She admitted that she did not witness any

of the alleged incidents; she merely documented what was reported to her. As such, her testimony, like Mr. Garner's, was unpersuasive.

29. Ashlee Salmon testified that she was the case manager for 12 or more IEP meetings with Mr. Jahn during the 2016-17 school year. At one IEP meeting, Mr. Jahn worked on his assessment report during the meeting and did not appear as knowledgeable about the subject matters he was presenting as other school psychologists with whom she has worked. Ms. Salmon described other meetings with Mr. Jahn where his reports were not available. Mr. Jahn said he would get them to Ms. Salmon after the meetings, but never did. Ms. Salmon contacted her supervisors regarding Mr. Jahn's failure to provide reports because she was concerned about looming IEP deadlines. Ms. Salmon's supervisors told her that they were aware of the issues with Mr. Jahn and were working to help him. Ms. Salmon received the May 1, 2017, e-mail from Mr. Jahn regarding his primary physician, but she did not have a problem with it other than thinking "his word choice was interesting."

30. Margaret "Maggie" Williams was retained to cover Mr. Jahn's caseload when he was on leave in the spring of 2017. Ms. Williams described the missing information in Mr. Jahn's reports and the spreadsheet she created regarding all his pending reports. There were reports and assessments she was unable to locate. Both Ms. Williams and Mr. Garner testified that Ms. Williams completed Mr. Jahn's reports and assessments such that his caseload was fully caught up when he returned to work. Mr. Jahn refuted that testimony, claiming there were reports immediately due upon his return. The evidence in this regard was unclear and the Commission concluded that the district did not prove that Ms. Williams completed all of Mr. Jahn's work while he was on leave.

Ms. Williams remained on staff for one week after Mr. Jahn returned from administrative leave in April 2017 to provide him any needed assistance. When he returned, Ms. Williams provided Mr. Jahn with an exemplar of her schedule to assist him with time management. On May 10, 2017, Ms. Williams e-mailed Mr. Jahn a copy of her "general daily routine" to assist him with planning his days and Mr. Jahn thanked her, stating her note was "very helpful." Ms. Williams was surprised at the amount of input Mr. Jahn needed prioritizing his workload. She thought perhaps his issues in that regard were due to the leave he had taken, which she assumed was medically related.

31. Lawrence Gediman has worked with Mr. Jahn for approximately 10 years and has attended approximately 100 IEP meetings with him. Mr. Gediman never observed Mr. Jahn falling asleep at meetings, nor did he attend meetings where Mr. Jahn had not assessed the student. There never was a time that Mr. Gediman could not do his job because Mr. Jahn had not done his work. However, Mr. Gediman was out on leave for 18 months beginning in April 2016, returning for the 2017-2018 school year. Thus, the last time Mr. Gediman attended an IEP meeting with Mr. Jahn was in March 2016; he did not attend any IEP meetings with Mr. Jahn during the 2016-2017 school year and could provide no information regarding the meetings at issue in this hearing. Accordingly, Mr. Gediman's testimony did little more than establish that prior to the 2016-17 school year Mr. Jahn did not display the behaviors and poor job performance that he exhibited during the 2016-17 school year.

### *Mr. Jahn's Testimony*

32. Mr. Jahn disputed the accuracy of some of the district's letters to him. He now believes that he should have addressed those inaccuracies, but at the time, he did not want to be looked at in an even more negative light which is "something I need to work on, to advocate for myself." He stated that he should refute "allegations with superiors when I do not think they are correct."

During his testimony, Mr. Jahn repeatedly stated that he completed reports "to the best of my ability." He testified: "I did the very best assessments I can"; "If I do not have all the pieces to make an assessment I'll stall for more time, I will not do it without all the pieces, I ask for more information or testing"; "I am a stickler for protocol, not the pieces of paper protocol, but for how test takers say how to take or give the test." When asked about all his missing reports and failed deadlines, Mr. Jahn repeatedly testified that he should have advocated more for himself, should have advocated in a stronger manner, and was not good at self-advocating. He testified that he "did not recall making a conscious decision not to complete the psychological reports," explaining that he knew he had to do them, that it was the best practice, and that he tried to complete them. To the best of his knowledge, there were not any reports in the 2016-17 school year that he was not able to complete, although he acknowledged he was not sure if he had done all of the reports that the district listed on its spreadsheets as missing.

Mr. Jahn "really worked hard," even working at home to complete his work, and Mr. Huffman never advised him that he would be fired, as he was under the impression that Mr. Huffman liked him and that he was doing his job and "all [was] good so far." When asked about his 2013-14 evaluation performed by Mr. Huffman after he had been newly hired in the district, Mr. Jahn explained that he sometimes felt there was a disconnect because his prior bosses had been trained as school psychologists, as opposed to Mr. Huffman who did not have that background, and Mr. Jahn felt that there were "finer intricacies of the job or certain processes that [Mr. Huffman] was not aware of." Mr. Jahn "was flabbergasted" that anyone thought he did a poor job at an IEP meeting and he felt that he was being "punished for doing a good job at a meeting."

When Mr. Jahn returned to work in April 2017, he was given a number of directives and "I complied with them to the best of my ability, I was extremely worried." When he returned most of his work was still incomplete and there were assessments and reports due. Mr. Jahn disputed that Ms. Williams completed all of his work while he was on leave. He was not aware of any reports that Ms. Williams did for him. When he returned, Ms. Williams, the principal and Mr. Jahn went over a spreadsheet of reports and their due dates. All his assessments had not been completed while he was out on leave and there were several open assessment plans pending. Mr. Jahn did "the most thorough job possible to" complete the assessments. Thereafter, despite being given a notice of unprofessional conduct that advised him that he had 45 days to comply, he was placed on leave before he could comply. When asked about e-mails in which he told district employees that he would get reports to them, Mr. Jahn denied misleading anyone; rather he believed that he could get the tasks

accomplished. The Commission determined that the evidence did not establish that Mr. Jahn was dishonest; rather it was further evidence in support of the Commission's findings that he could not perform his job and that he acted unprofessionally. His mistaken belief that he performed work he had not performed was concerning and showed that the district could not rely on him to do his job.

#### *Mr. Jahn's Failure to Return to the Hearing After the Lunch Break*

33. On Friday, November 3, 2017, the fourth day of hearing was held at the Office of Administrative Hearings - San Diego. The hearing recessed for the lunch break with the parties scheduled to return at 1:30 p.m. However, Mr. Jahn did not return and did not respond to his attorney's repeated telephone calls. At 2:30 p.m. the hearing was reset for November 9, 2017, and the matter was recessed until then. When the hearing reconvened on November 9, 2017, Mr. Jahn testified that on November 3, 2017, after getting his lunch from a drive-thru, he drove to his boat at the marina but discovered he did not have his keys to get into the marina parking lot. He parked on the street, ate his lunch in his car, and fell asleep. The next thing he knew, he had been awakened by his attorney knocking on his car window.

The district introduced the declaration of Superintendent Gorsuch documenting that after the parties were dismissed at 2:30 p.m. on November 3, 2017, she "ran along the harbor" and came upon Mr. Jahn's parked vehicle with him sleeping inside. Mr. Jahn was leaning onto the passenger seat. Superintendent Gorsuch contacted Mr. Shinoff who contacted Mr. Cadieux. Superintendent Gorsuch remained at the scene until Mr. Cadieux arrived. While she was waiting, Superintendent Gorsuch observed Mr. Jahn sit up, stretch his arms, lean onto the driver's side window, and go back to sleep.

## LEGAL CONCLUSIONS

#### *Applicable Code Sections Regarding Dismissal Actions*

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(2) authorizes dismissal for unprofessional conduct. Subdivision (a)(4) authorizes dismissal for dishonesty. Subdivision (a)(6) authorizes dismissal for evident unfitness for service. Subdivision (a)(8) authorizes dismissal for persistent violation or refusal to obey regulations and district policies.

3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its final decision.

4. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a permanent employee.

*Burden and Standard of Proof*

5. The “burden of proof” means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The district has the burden of proof to establish cause to dismiss its employee.

6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

*Applicable Laws and District Regulations re: IEPs and Reports*

7. Title 20 United States Code section 1414(b)(4), titled “Determination of Eligibility and Educational Need,” states:

Upon completion of the administration of assessments and other evaluation measures

(A) the determination of whether the child is a child with a disability as defined in section 1401 (3) of this title and the educational needs of the child with a disability shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and

(B) a copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent.

Mr. Garner acknowledged in his testimony that federal law does not contain a deadline for when these documents must be provided to parents.

8. Education Code section 56043 states in part:

The primary timelines affecting special education programs are as follows:

(a) A proposed assessment plan shall be developed within 15 calendar days of referral for assessment. . . .

(b) A parent or guardian shall have at least 15 calendar days from receipt of the proposed assessment plan to arrive at a decision. . . .

[¶] . . . [¶]

9. The district's Administrative Regulation, AR 6164.4, provides:

Before the initial provision of special education and related services to a student with a disability, the district shall conduct a full and individual initial evaluation of the student. (Education Code 56320; 34 CFR 300.301)

Upon receipt of a referral of any student for special education and related services, a proposed evaluation plan shall be developed within 15 days, not counting days between the student's regular school sessions or terms or days of school vacation in excess of five school days, unless the parent/guardian agrees, in writing, to an extension. If the referral is made within 10 days or less prior to the end of the student's regular school year or term, the proposed evaluation plan shall be developed within 10 days after the beginning of the next regular school year work term. (Education Code 56043, 56321)

[¶] . . . [¶]

Before conducting an initial evaluation, the district shall provide the parent/guardian with prior written notice in accordance with 34 CFR 300.503. In addition, as part of the evaluation plan, the parent/guardian shall receive written notice that includes all of the following information: (Education Code 56329; 34 CFR 300.304, 300.504)

[¶] . . . [¶]

3. A copy of the evaluation report and the documentation of determination of eligibility shall be given to the parent/guardian.



## *Board Policy*

10. “Board Policy 4119.21, 4219.21, and 4319.21” sets forth the professional standards the board expects of its employees. As noted, the board expects district employees to “maintain the highest ethical standards, follow district policies and regulations,” and their “conduct should enhance the integrity of the district and advance the goals of the educational program.” The board further expects its employees to “exercise good judgement and maintain professional standards and boundaries.”

## *Relevant Judicial Authority*

### UNPROFESSIONAL CONDUCT

11. The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. There the Supreme Court held that where charges of unprofessional conduct are raised in teacher dismissal cases, the applicable standard is whether the person is fit to teach. The factors outlined in *Morrison* must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. (*Id.* at p.229.)

12. Unprofessional conduct has been defined as conduct, measured by the *Morrison* factors, which indicates unfitness to teach. (*Board of Education v. Jack M.* (19 70) 19 Cal.3d 691, 696-697; *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-1174.)

### DISHONESTY

13. In *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn. 12, the Supreme Court required application of the *Morrison* factors to the determination of “dishonesty.” As the Court noted: “Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute ‘dishonesty’ as a ground for discipline.” (*Ibid.*)

14. In an often-cited definition, the court stated in *Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717:

Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As put by the court in *Alsup v. State*, 91 Tex. Cr. 224, ‘dishonesty denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.’

## EVIDENT UNFITNESS FOR SERVICE

15. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. “Fitness to teach” is a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

16. “Evident” is defined as “clear to the vision and understanding.” “Unfit” is defined as “not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound” and “unsuitable, incompetent and not adapted for a particular use or service.” (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

17. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding “unfit for service.” One line of cases equated that term with “unprofessional conduct” and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate “unfit to serve,” and complied with the rules of statutory construction. The *Woodland* court concluded that “unprofessional conduct” and “evident unfitness for service” do not mean precisely the same thing. Although conduct constituting “evident unfitness for service” will often constitute “unprofessional conduct,” the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that “unprofessional conduct” meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the “unfitness” is “evident”; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of “unfit to serve” can be made if the evidence, taken in the aggregate, shows that retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

18. An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The inquiry is whether any adverse inferences can be drawn from the teacher’s conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

19. To establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that “[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

20. “Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectation of the employing school district.” (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1142-43.)

21. An employee’s actions on a given day may suggest a lack of judgment and discretion, or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee’s teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

22. In determining whether the teacher’s conduct indicated unfitness to teach, such matters as (1) the likelihood that the conduct may have adversely affected students or fellow teachers, (2) the degree of such adversity anticipated, (3) the proximity or remoteness in time of the conduct, (4) the extenuating or aggravating circumstances, if any, surrounding the conduct, (5) the likelihood of the recurrence of the questioned conduct, and (6) the notoriety and publicity accorded the teacher’s conduct may be considered. (*Jack M., supra.*, at p.702, fn. 5.)

23. The nexus between an employee’s conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher failed to recognize the seriousness of his misconduct, the teacher attempted to shift blame to parents and students who might access his posting, his principal had lost confidence in his ability to serve as a role model based upon the posting, or, most noteworthy, the teacher’s testimony that he did not think his postings would have any impact on his ability to teach his students if any of them had viewed his post and that he did not view his posting as immoral. The conduct itself, together with the teacher’s failure to accept responsibility or recognize the seriousness of it, given his position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

24. One act does not alone demonstrate the unfitness of the teacher, but is simply one of the factors to be considered. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal. App.3d 555, 561-62.)

25. There must be a nexus between the teacher’s conduct and his usefulness to the school district and only when so construed can grounds to dismiss for immoral conduct or unfitness to serve be constitutionally applied. (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 929.)

## PERSISTENT VIOLATION OF OR REFUSAL TO OBEY LAWS

26. A violation of Education Code section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the district must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

27. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Education Codes section 44932, subdivision (7) pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Id.* at p.84.)

### *Morrison Factors*

28. In *Morrison, supra*, the Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

29. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

30. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

### *Other Disciplinary Considerations*

31. An administrator's loss of confidence in the educator and doubt regarding the educator's ability to serve as a role model for students are factors that may be considered.

(*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

32. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

### *Evaluation of the Charges*

33. Mr. Jahn was successfully employed as a school psychologist until the 2013-14 school year when the district hired Mr. Huffman as the Director of Student Support Services. Based upon the evidence introduced at hearing, Mr. Huffman's issues seemed to begin soon after Mr. Huffman arrived at the district. In 2013-14 Mr. Huffman gave Mr. Jahn an evaluation documenting that Mr. Jahn partially met and did not meet various district standards. Mr. Huffman presented as a very "no nonsense" supervisor and it was evident that his management style clashed with Mr. Jahn's laid back, relaxed demeanor.

Although the dates were not clearly identified at hearing, sometime during the 2016-17 school year, Mr. Jahn was out on medical leave for five to six weeks. Mr. Jahn's medical condition was not disclosed at this hearing other than his testimony about his MRSA infection. He offered no explanation for his failure to perform his job duties other than the "snowball effect" that resulted when he returned from leave and had pending evaluations to perform and reports to write. However, his "snowball explanation" did not address all of the issues raised in this hearing. Further, although Mr. Jahn's counsel asserted during closing argument that Mr. Jahn should undergo a medical evaluation, that argument was speculative and presumed that Mr. Jahn had a medical condition that prevented him from performing his work but no evidence of a medical condition was presented in this regard. As ALJ Matyszewski ruled during the motions in limine, Mr. Jahn's medical condition could not be considered in this hearing because Mr. Jahn asserted during discovery that he had no medical issues affecting his work performance. Thus, the Commission made no findings regarding Mr. Jahn's medical condition.

The overwhelming evidence demonstrated that, for reasons not made clear at this hearing, in the spring of 2016 Mr. Jahn's poor work performance was so egregious that he received a letter of reprimand. In the fall of 2016 he was out on medical leave and when he returned to work he was unable to meet the demands of his position. However, rather than seeking accommodations or requesting help, Mr. Jahn continued to inform his supervisors that he could complete his job tasks even when it became evermore increasingly clear that he was unable to do so. His inability to perform his duties increased his colleagues' workloads and caused them undue stress. Although it was not established that all of Mr. Jahn's work was completed by others while he was on leave, as when he returned from leave he had reports and assessments almost immediately due, Mr. Jahn continued to advise his colleagues that he could accomplish his tasks and did not seek help or support.

Even more concerning than these failures was Mr. Jahn's present inability to acknowledge the issues presented at this hearing. He testified that he did not need to be driven

home following a March 2017 IEP meeting despite convincing evidence to the contrary and he attributed his repeated failure to perform his job duties to his inability to self-advocate. None of these excuses were sufficient. Further, his failure to return from lunch during this hearing, because he fell asleep for several hours in his car, was clear evidence that substantiated the district's concerns about his current behavior. This is not to say that Mr. Jahn could not someday perform the work of a school psychologist, or could not be employed as a school counselor or other type of therapist. In fact, based upon his excellent reviews regarding his positive interactions with students, Mr. Jahn seems best suited for a school counselor position. However, Mr. Jahn is presently incapable of performing the work of a school psychologist and must be dismissed.

*Cause Exists to Dismiss Mr. Jahn*

34. Cause exists to dismiss Mr. Jahn pursuant to Education Code section 44932, subdivision (a)(2), because the evidence established that Mr. Jahn engaged in unprofessional conduct.

35. Cause exists to dismiss Mr. Jahn pursuant to Education Code section 44932, subdivision (a)(6), because the evidence established that Mr. Jahn was evidently unfit for service.

36. Cause exists to dismiss Mr. Jahn pursuant to Education Code section 44932, subdivision (a)(8), because the evidence established that Mr. Jahn persistently violated district policies and regulations.

*Cause Does Not Exist to Dismiss Mr. Jahn for Dishonesty*

37. Cause does not exist to dismiss Mr. Jahn pursuant to Education Code section 44932, subdivision (a)(4), because the evidence did not establish that he was dishonest.

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ORDER

Mr. Jahn's appeal of his dismissal from employment with the Valley Center-Pauma Unified School District is denied. The district's request to dismiss Mr. Jahn is granted. Mr. Jahn shall be dismissed from the district.

DATED: December 12, 2017

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CARMEN MARTINEZ  
Commission Member

DATED: December 13, 2017

DocuSigned by:  
  
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URSULA SACK, PH.D.  
Commission Member

DATED: December 13, 2017

  
MARY AGNES MATYSZEWSKI  
Administrative Law Judge  
Office of Administrative Hearings