

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2014030541

DANA KOON

Permanent Certificated Employee,

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence (Commission) at Los Angeles, California, on April 24, 25, 28, and 29, 2014. The Commission consists of the following members: Luciano Ortiz, Teachert; Maria Granado, Assistant Principal; and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings.

The Los Angeles Unified School District (District) was represented by Michelle Meek, Esq., of Liebert Cassidy Whitmore, Attorneys at Law. Respondent Dana Koon (Respondent) was present and was represented by Rosemary O. Ward, Esq., of Law Offices of Rosemary Ward and Richard J. Schwab, Esq., of Trygstadt, Schwab & Trygstadt, Attorneys at Law.

Rulings on motions were made on the record during the proceedings. Oral and documentary evidence was received. The Commission considered the matter in executive session. After due consideration of the record, the Commission makes the following factual findings, conclusions of law, and order:

FACTUAL FINDINGS

1. The Amended Accusation and Statement of Charges were brought by Justo H. Avila in his official capacity as Interim Chief Human Resources Officer for the District.
2. On February 18, 2014, Respondent was given written notice of the District's intention to dismiss Respondent unless he demanded a hearing. Respondent submitted a timely demand for a hearing.

3. The First Amended Accusation and Statement of Charges is dated April 11, 2014, and recommended the dismissal of Respondent from the District for the following legal causes under Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) immoral conduct; (3) evident unfitness for service; and (4) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing Respondent.

4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

5. District contends that Respondent is subject to dismissal based upon allegations that he hit, kicked, and pulled the hair of Student E ■■■ M., grabbed and dragged Student J ■■■ L., called students "stupid" and "dumb" and told them to "shut up" during the period of February 18, 2010 through October of 2012.

6. Respondent contends that he never called students "stupid" or "dumb" and did not tell them to "shut up." Instead, he asserts that the word "stupid" was discussed in class relative to its inclusion in a story in the language arts materials in the District's required curriculum. Respondent acknowledged that he removed a student from a music practice for his own safety, and that of the students around him, and that the student "went limp" purposely during the process. Respondent denied ever hitting any student, pulling the hair of any student, kicking any student, calling any students "stupid" or "dumb," or telling them to "shut up" or write "stupid" on a piece of paper and hold it over their heads.

Background Information

7. Respondent is Navy veteran and served in Vietnam. After completing his military service, Claimant worked as a patient's representative with Orthopedic Hospital of Los Angeles and Children's Hospital for a combined total of 15 years before joining the District as a teacher. Respondent first began teaching approximately 20 years ago on an emergency credential. Respondent has a multiple subject teaching credential, a Cross-Cultural Language and Academic Development Credential (CLAD), and a level B certification in Spanish from the District. Respondent had a brief break from District service while he worked as a computer graphics artist for one year. Respondent taught at Raymond Avenue Elementary School, Middleton Elementary School, Mariposa Avenue Elementary School, Santa Monica Elementary School, Santa Monica Charter Elementary School and for his last five years at Glen Feliz Elementary School (GlenFeliz). Respondent was a second grade teacher at GlenFeliz teaching a general education class during all relevant time periods.

2009-2010 School Year¹

8. E ■ M., a second grade student in Respondent's 2009-2010 class, was a challenging child with severe behavior problems which included hitting others, kicking others, pulling the hair of other children, urinating on others, and generally being disruptive. Principal Karen Sulahian (Ms. Sulahian) and Respondent had frequent discussions about E ■ M.'s challenging behaviors and strategies to deal with his behaviors.

9. M ■ R. was also a student in Respondent's 2009-2010 second grade class. He testified that he had been bullied by E ■ M. and that Respondent had interceded to protect him from E ■ M.'s repeated assaults. M ■ R. credibly testified that he never saw Respondent hit, kick, or pull E ■ M.'s hair. He also never heard Respondent call anyone "stupid" or "dumb." M ■ R.'s mother, L ■ R., testified that she was satisfied with Respondent's attempts to handle the situations and Matthew's tremendous academic growth in Respondent's class. L ■ R. occasionally volunteered in Respondent's classroom and during those times never saw Respondent behave inappropriately.

10. Conversely, D ■ R., also a second grade student in Respondent's 2009-2010 class, testified that Respondent "hit" E ■ M. twice during the time period of February 18, 2010 to the end of the school year in June of 2010. D ■ R. was credible in his testimony, both in terms of his demeanor, which was open and straightforward, and in terms of the consistency of his statements. D ■ R. did not describe the circumstances or details of the incident(s). Initially, D ■ R. also testified that Respondent kicked E ■ M. and pulled E ■ M.'s hair. However, cross-examination of D ■ R. revealed that he had not actually seen Respondent kick E ■ M. or pull E ■ M.'s hair. Instead, he "knew" these things happened because he had heard that they had occurred from his classmates. When asked about details, D ■ R. readily acknowledged that his knowledge of the hair pulling and kicking was hearsay. It was clear that D ■ R. had no bias or personal agenda in giving testimony. He had never volunteered information about Respondent and only reluctantly responded to the questions posed by counsel. D ■ R. credibly testified that he and his friends generally tried not to get on Respondent's "bad side" and were not usually in any trouble in class. D ■ R. also testified that E ■ M. was a source of distraction and disturbance in the classroom because he hit other students, kicked them, and pulled their hair. D ■ R.'s testimony persuasively established that there was some type of physical contact between E ■ M. and Respondent, but did not establish the character or context of the contact.

¹ Complainant was limited to allegations of conduct within four years of the filing of the Notice of Dismiss by operation of Education Code section 44944. Accordingly, Complainant's case was limited to the time period commencing February 18, 2010.

11. During the 2009-2010 school year, GlenFeliz teachers used behavior/discipline strategy known as "reflection." The goal of "reflection" was for a misbehaving student to have time and tools to reflect upon his behavior. The exercise required an offender to write or draw a picture of his inappropriate behavior and then summarize how he could make a better choice the next time. According to D■■■■ R., in the context of this learning strategy, Respondent told D■■■■ R. and one of his classmates that they should write a big "S" on their papers and hold it over their heads. D■■■■ R. understood the "S" to mean "stupid." D■■■■ R., like many second graders, considered "stupid" to be a very bad word. Although D■■■■ R. recalled Respondent instructing the two students to write an "S" on their papers and hold it over their heads, they did not do so, and were not disciplined for refusing to do so. There was no evidence that Respondent specifically called a student or students "stupid" or "dumb."

12. Respondent admitted that he once spontaneously called an inanimate object "stupid" in his classroom in frustration. He also admitted that the word "stupid" was discussed at length in his classroom because it was contained within the story "Matthew and Tilly" in the District mandated Open Court curriculum that was used in second grade during the 2009-2010 school year. Respondent spent considerable time discussing the meaning of the word "stupid" with his class. He also discussed with them that in some cultures the word is especially derogatory and demeaning. Respondent speaks Spanish and explained to his students that the word "stupid" when translated into Spanish is very demeaning and should not be used to describe a person. He also discussed the differences between the concepts of "stupid" and "not stupid."

13. Respondent testified that he did not dislike E■■■■ M. Instead, he asserted that he spent extra individual time with E■■■■ M. encouraging him to focus and complete story boards in an effort to develop E■■■■ M.'s language skills. To do this, Respondent used plastic boxes with themed toys to encourage E■■■■ M. to develop language skills. He assisted E■■■■ M. by taking dictation of narratives E■■■■ M. gave for pictures he drew based upon the toys and prompts contained in the plastic boxes.

14. Respondent acknowledged that E■■■■ M. hid in a classroom closet once. He was found there ransacking the lunches and backpacks of other students. Respondent denied placing E■■■■ M. in a closet or cabinet. Complainant did not establish that Respondent ever placed or caused E■■■■ M. to be in a closet or cabinet.

15. Respondent denied ever hitting E■■■■ M. or any other child. It is difficult to reconcile Respondent's outright denial with D■■■■ R.'s credible testimony. However, the lack of detail in D■■■■ R.'s testimony, and the lack of corroboration, leaves open the possibility of different perceptions of the same events. The Commission determined that it was established by a preponderance of the evidence that Respondent made some type of physical contact with E■■■■ M. which D■■■■ R. interpreted to be a "hit" and that the conduct was distressing to D■■■■ R.

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2010-2011 School Year

16. During the 2010-2011 school year, J [REDACTED] L. was a student in Respondent's second grade class at GlenFeliz. J [REDACTED] L. was a challenging student who had severe behavior issues including hitting others, kicking others, being disruptive, running away from class, and not being where he was supposed to be.

17. On some days during the 2010-2011 school year, Respondent had a teacher's assistant, Marianne Sahagun (Sahagun), who accompanied his class and whose primary responsibility was to assist with Student J [REDACTED] L. for thirty minutes per day. Sahagun had been trained in methods to restrain J [REDACTED] L. when necessary. In brief, restraining J [REDACTED] L. was sometimes needed when he attempted to run away from class or was in danger of hurting himself or someone else. At hearing, Sahagun demonstrated that the appropriate restraint was from behind with her arms around his waist and her head held to the side to avoid being head butted or kicked. Sahagun never saw Respondent hit or kick any child and never saw him do or say anything she would consider inappropriate. She praised Respondent's work on the GlenFeliz Parent Teacher Association (PTA). Sahagun was president of the PTA and Respondent served as the teacher representative to the PTA for several years.

18. When Respondent led his class into the auditorium on December 8, 2010 for a music rehearsal, J [REDACTED] L. placed his hands over his ears and expressed his reluctance about going into the auditorium. On this day, Sahagun was not with Respondent's class. Respondent, Ms. Sahagun, Ms. Sulahian and other staff members were also aware that Joshua L. had an aversion to the auditorium. Nancy Kim, one of J [REDACTED] L.'s prior teachers, testified that she often had to take J [REDACTED] L. by the hand in order to get him into the auditorium. Once inside the auditorium, Respondent's class lined up on risers in front of the school stage. Four other classes of second graders were also present in the stage area.

19. The rehearsal was called on short notice. At the time, music teacher Melineh Khachikian (Ms. Khachikian) taught music at four elementary schools including GlenFeliz. She was at GlenFeliz three days a week and taught various grades. The Christmas/holiday programs were her biggest projects. After Ms. Khachikian gave some initial instruction to the group, J [REDACTED] L. began making noises, swaying his body, sitting down on the risers, and bumping into other students. Ms. Khachikian warned J [REDACTED] L. to stand up. He refused to do so. After she counted to five, he stood up, but began making different noises. Ms. Khachikian told J [REDACTED] L. to be quiet and threatened to "bench" him during lunch if he continued. At that time, Respondent told Ms. Khachikian that "benching doesn't work anymore" because that was no longer a strategy used by the school to deal with J [REDACTED] L.'s behaviors. J [REDACTED] L. continued to be disruptive, but Ms. Khachikian attempted to ignore him, turned on the IPOD which had been set up on top of the piano in front of the stage, and began the lesson. When she turned back to the risers and stage area where the students were standing, she saw Respondent holding J [REDACTED] L. by the wrists and dragging him on the floor.

20. When J [REDACTED] L. refused to follow Ms. Khachikian's directions, Respondent became concerned that his behaviors would escalate. Respondent asked J [REDACTED] L. to come down from the risers, grabbed his hands and wrists and helped him to descend the risers. J [REDACTED] L. purposely went limp as he came down from the riser area, requiring Respondent to hold on to him to keep him from falling. Respondent drug him for a brief period and then told him to get up and sit in a chair in the audience, which he did. The auditorium had two doors, one leading to the street and another to the school yard. Respondent had concerns that J [REDACTED] L. would run from the auditorium and exit either of the two doors. Respondent's concern was based upon past experience with J [REDACTED] L.'s attempts to run away. Respondent was concerned that if J [REDACTED] L. was able to get out of the auditorium, he would lose sight of him and he might become lost or injured. Afterwards, Respondent discussed the incident with Ms. Sulahian and J [REDACTED] L.'s mother.

21. Ms. Khachikian considered Respondent to be a good teacher and his class was always well behaved. She was concerned about the interaction between Respondent and J [REDACTED] L. Ms. Khachikian was very conscientious and aware of her duties to report anything that might be suspected child abuse. She believed that what she observed in the interaction between Respondent and J [REDACTED] L. triggered her duty to report as a mandatory reporter of suspected child abuse. Therefore, on December 15, 2010, she contacted the Los Angeles Police Department and filed a Suspected Child Abuse Report (SCAR). She did not contact Ms. Sulahian or anyone with the District about her observations and wished to remain anonymous.

22. After the filing of the SCAR, Ms. Khachikian and J [REDACTED] L. were both interviewed by Los Angeles Police Department Officer Ada Chica Estrella (formerly Vazquez). Respondent was not interviewed. According to Officer Estrella's testimony at hearing and as memorialized in her report, J [REDACTED] L. admitted that he had intentionally gone limp when Respondent attempted to remove him from the risers, was not hurt, and was not afraid of Respondent. Additionally, J [REDACTED] L.'s mother reported to Officer Estrella that Respondent had advised her of the incident. J [REDACTED] L.'s mother thought Respondent had effectuated some positive changes in J [REDACTED] L.'s behavior and asked that J [REDACTED] remain in Respondent's class. Officer Estrella concluded that there was no evidence of child abuse and closed the case.

23. Respondent was evaluated by Ms. Sulahian on June 9, 2011. Respondent received a rating of "meets standards" in all areas. Ms. Sulahian also made notation of his perfect attendance and volunteering as grade level chairperson. Although Ms. Sulahian never gave Respondent a negative Stull evaluation, she did express some concerns to him on occasion and he was always receptive to her direction. She expressed concerns to him about the lesson focused on the word "stupid" and counseled him informally about the use of the word "stupid" because she believed the second graders were overly excited about the word. Respondent felt it necessary to teach the students about the words "stupid" and "dumb" because the word "stupid" was used in

the lesson and the students had questions and concerns. She also reminded him that he had a naturally loud voice and that he needed to be mindful of the volume and tone he used with students. Ms. Sulahian and Respondent had frequent conversations about strategies to manage the problem behaviors of E■■■ M. and J■■■ L. Ms. Sulahian always found Respondent to be engaged and receptive to her direction. Ms. Sulahian had no serious concerns about Respondent and considered him to be a good teacher until the allegations which form the basis for the Amended Accusation came to her attention.

24. In paragraph 1 of the Amended Accusation, Complainant alleges that Respondent "pulled student E■■■ M's hair on one or more occasions." The Commission found that Complainant failed to establish by a preponderance of the evidence that Respondent pulled E■■■ M.'s hair. It was established only that one of Respondent's former student's D■■■ R., believed that Respondent pulled E■■■ M.'s hair.

25. In paragraph 2 of the Amended Accusation, Complainant alleges that Respondent "placed and/or locked student E■■■ M. in the classroom closet and/or wall cabinet on one or more occasions." The Commission found that E■■■ M. was in a cabinet or closet on at least one occasion, but Complainant did not establish by a preponderance that Respondent had caused E■■■ M. to be in the cabinet or closet. Respondent credibly testified that on one occasion E■■■ M. was found in a cabinet or closet where other students' backpacks were kept. At the time, E■■■ M. was ransacking other students' backpacks and was eating snacks and lunches from the backpacks.

26. In paragraph 3 of the Amended Accusation, Complainant alleges that Respondent "kicked student E■■■ M, on one or more occasions." Complaint failed to establish these allegations by a preponderance of the evidence. It was established only that Student D■■■ R. believed that Respondent had kicked E■■■ M. and he and his friends had discussed the topic.

27. In paragraph 4 of the Amended Accusation, Complainant alleges that Respondent "hit student E■■■ M., on one or more occasions." It was established by a preponderance of the evidence that Respondent made some type of physical contact with E■■■ M. on two occasions and that D■■■ R. believed the physical contact was a "hit."

28. In paragraph 5 of the Amended Accusation, Complainant alleges that Respondent "screamed at student E■■■ M., on one or more occasions." The Commission found that Complainant failed to establish by a preponderance of the evidence that Respondent screamed at E■■■ M.

29. In paragraph 6 of the Amended Accusation, Complainant alleges that Respondent "physically and/or verbally abused student E■■■ M., on one or more occasions." The Commission found that Complainant failed to establish by a

preponderance of the evidence that Complainant physically or verbally abused student E ■ M.

30. In paragraph 7 of the Amended Accusation, Complainant alleges that Respondent "mistreated or physically abused student E ■ M., on one or more occasions." The Commission found that Complainant failed to establish by a preponderance of the evidence that Complainant mistreated or physically abused student E ■ M.

31. In paragraph 8 of the Amended Accusation, Complainant alleges that Respondent "told students in his classroom to 'shut up' and called students in his classroom 'stupid'." The Commission found that Complainant failed to establish by a preponderance of the evidence that Complainant told students in his classroom to "shut up" and/or called students in his classroom "stupid."

32. In paragraph 9 of the Amended Accusation, Complainant alleges that "During the 2010-2011 school year, [Respondent] Koon grabbed Student J ■ L. by the hand and/or wrist, and dragged him across the school auditorium." The Commission determined that the preponderance of the evidence established that Respondent did grab Student J ■ L. by the wrists and did drag him for a short period of time. The Commission found that Respondent's concerns were reasonable, but he should have found a less forceful method of dealing with J ■ L.'s behavior.

33. In paragraph 10 of the Amended Accusation, Complainant alleges that "During the 2012-2013 school year, [Respondent] Koon told students in his classroom to 'shut up' and called students in his classroom 'stupid.'" The Commission found that Complainant failed to establish these allegations by a preponderance of the evidence.

34. Respondent's conduct had an adverse effect on Student D ■ R. who was somewhat fearful of Respondent after witnessing his behavior with E ■ M. Respondent's conduct also had an adverse effect on music teacher Ms. Khachikian who witnessed his attempts to manage student J ■ L. which resulted in J ■ L. being dragged across the floor during music rehearsal. Respondent's conduct was remote in time occurring three to four years ago. The extenuating circumstances were that Respondent attempted to manage severe behaviors exhibited by E ■ M. and J ■ L., but was not provided adequate assistance or training. Respondent's conduct was neither praiseworthy nor blameworthy. There were no constitutional implications with regard to Respondent's conduct.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter pursuant section 44944. (Factual Findings 1 through 4.)

2. Pursuant to section 44944, subdivisions (c)(1)-(3), when a school board recommends dismissal for cause, the Commission may only vote for or against it. Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction.

3. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardiner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700.)

4. The Amended Accusation and Statement of Charges does not set forth specifically which of the District's factual allegations relate to each of the four alleged grounds for dismissal: (1) unprofessional conduct, (2) immoral conduct, (3) evident unfitness for service, and (4) refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district.

5. Section 44932 provides in pertinent part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

...[¶]...

(5) Evident unfitness for service.

...[¶]...

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

6. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. "Unprofessional conduct," as used in section 44932, subdivision(a)(1), may be defined as conduct which violates the rules or

ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553; see *Perez v. Commission on Professional Competence* (1983) 149 Cal. App. 3d 1167, 1174.)

8. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.) Evident unfitness for service requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (Id. at p. 1444.)

9. Under section 44932, subdivision (a)(7), the violation of school rules must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App. 3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

10. The Commission found that Complainant did not establish by a preponderance of the evidence that Respondent's conduct was immoral. It was not established that Respondent's conduct was inconsistent with rectitude, indicative of corruption, indecency, depravity, dissoluteness; nor that he displayed willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community or an inconsiderate attitude toward good order and the public welfare. The Commission determined that cause does not exist to dismiss Respondent for immoral conduct, pursuant to section 44932, subdivision (a) (1), for the reasons set forth in Factual Findings 8-34 and Legal Conclusions 1-6.

11. The Commission found that Complainant established by a preponderance of the evidence that Respondent engaged in unprofessional conduct. It was established by a preponderance of the evidence that Respondent engaged in conduct unbecoming of a member of the teaching profession. Here, Respondent made some sort of physical contact with E ■■■ M. D ■■■ R. gave credible testimony that he saw this physical contact and believed that Respondent hit E ■■■ M. twice. Respondent also told D ■■■ R. that he should write a big "S" on his paper and hold it over his head. These facts were established by D ■■■ R.'s credible testimony.

12. With respect to determination of witness credibility: On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and

on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability. (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.)

13. Additionally, it was established by a preponderance of the evidence, that Respondent grabbed J [REDACTED] L. by the wrists, and when J [REDACTED] L. went purposely limp, Respondent was left holding him by the wrists and dragging him across the floor. Respondent's conduct taken in the aggregate shows the use of more force than necessary and an inappropriate comment to D [REDACTED] R. The Commission determined that Respondent engaged in unprofessional conduct, as defined in section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 8-12, 15-23, 27, 32-34 and Legal Conclusions 1-5, 7 and 10. However, after application of the *Morrison* factors, the Commission determined that cause to dismiss Respondent for unprofessional conduct does not exist as Respondent is not unfit to teach.

14. The Commission found that Complainant did not establish by a preponderance of the evidence that Respondent is unfit to teach. It was not established that Respondent has a defect in his temperament or a fixed character trait that makes him unfit to teach. The Commission determined that cause does not exist to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 8-34 and Legal Conclusions 1-5, 8 and 10.

15. The Commission found that Complainant did not establish that Respondent violated school rules, the District code of conduct, the Code of Ethics, the Corporal Punishment policy, or any other directive, policy, law, or rule set by the District or the State board of Education on a persistent basis. The Commission determined that cause does not exist to dismiss Respondent for persistent violation of school laws of the state or the reasonable regulations prescribed by the government of the public schools by the State Board of Education or by the governing board of the school district employing him pursuant to section 44932, subdivision (a) (7), for the reasons set forth in Factual Findings 8-34 and Legal Conclusions 1-5 and 9.

16. Even where unprofessional conduct or evident unfitness for service are established, it must also be established that such unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal. 3d 208; *Woodland, supra*, 4 Cal.App. 4th at pp.

1444-1445.) Under the facts of the *Morrison* case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (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.

17. Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal. Ed. At 220.) Applying the facts of this case to the *Morrison* factors leads to the conclusion that Respondent is not unfit to teach.

(a) *Morrison* Factor: The likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity. Respondent's conduct had an adverse effect on Student D ■■■ R. who was somewhat fearful of Respondent after witnessing his behavior with E ■■■ M. Respondent's conduct with J ■■■ L. was concerning to Ms. Khachikian, but there is no evidence that she was adversely affected. There was no evidence that Respondent's conduct had an adverse effect on anyone else.

(b) *Morrison* Factor: The proximity or remoteness in time of the conduct. Respondent's conduct was remote in time occurring three to four years ago.

(c) *Morrison* Factor: The type of teaching certificate held by the teacher. Respondent holds a Multiple Subject teaching credential, which entitles him to teach classes typically found at the elementary school level.

(d) *Morrison* Factor: The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct. The extenuating circumstances were that Respondent attempted to manage severe behaviors exhibited by E ■■■ M. and J ■■■ L., but was not provided adequate assistance or training. The aggravating circumstances are that the involved students were relatively young second graders.

(e) *Morrison* Factor: The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent's conduct was neither praiseworthy nor blameworthy.

(f) *Morrison* Factor: The likelihood of recurrence of the questioned conduct. There was no evidence that the conduct was likely or unlikely to occur again.

(g) *Morrison* Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from employment with the District.

16. Respondent's conduct does not show such unfitness to teach as to warrant dismissal from District employment.

ORDER

The Accusation and Statement of Charges are dismissed. Dana Koon shall not be dismissed from his position as a permanent certificated employee of the Los Angeles Unified School District.

June __, 2014

Glynda B. Gomez
Administrative Law Judge
Chairperson
Commission on Professional Competence

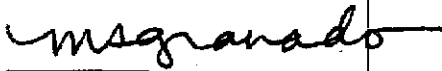
June __, 2014

Luciano Ortiz
Member
Commission on Professional Competence

DISSENT

Commission Member Maria Granado concurs in the factual findings recorded herein, but respectfully dissents from the ultimate conclusion that Respondent not be dismissed reached in this matter.

June 3, 2014



Maria Granado
Member
Commission on Professional Competence

(g) *Morrison* Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from employment with the District.

16. Respondent's conduct does not show such unfitness to teach as to warrant dismissal from District employment.

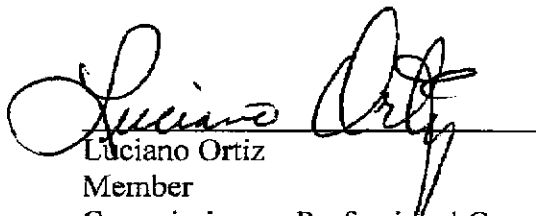
ORDER

The Accusation and Statement of Charges are dismissed. Dana Koon shall not be dismissed from his position as a permanent certificated employee of the Los Angeles Unified School District.

June __, 2014

Glynda B. Gomez
Administrative Law Judge
Chairperson
Commission on Professional Competence

June 10, 2014



Luciano Ortiz
Member
Commission on Professional Competence

DISSENT

Commission Member Maria Granado concurs in the factual findings recorded herein, but respectfully dissents from the ultimate conclusion that Respondent not be dismissed reached in this matter.

June __, 2014

Maria Granado
Member
Commission on Professional Competence

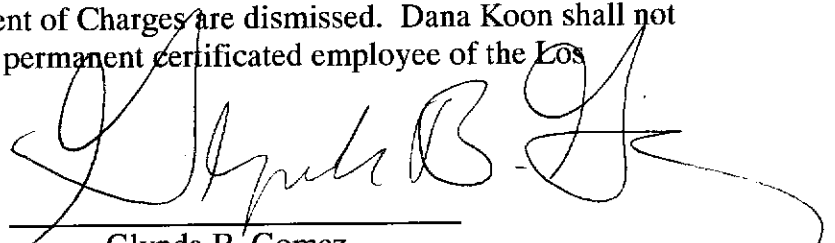
(g) *Morrison* Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from employment with the District.

16. Respondent's conduct does not show such unfitness to teach as to warrant dismissal from District employment.

ORDER

The Accusation and Statement of Charges are dismissed. Dana Koon shall not be dismissed from his position as a permanent certificated employee of the Los Angeles Unified School District.

June 16, 2014



Glynda B. Gomez
Administrative Law Judge
Chairperson
Commission on Professional Competence

June __, 2014

Luciano Ortiz
Member
Commission on Professional Competence

DISSENT

Commission Member Maria Granado concurs in the factual findings recorded herein, but respectfully dissents from the ultimate conclusion that Respondent not be dismissed reached in this matter.

June __, 2014

Maria Granado
Member
Commission on Professional Competence