

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

DAVE LUKKARILA,
a permanent certificated employee,

Respondent.

OAH No. 2014051215

DECISION

The Commission on Professional Competence (Commission) heard this matter on January 19 and 20, 2016, in Los Angeles, California. Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, State of California, Kristi Harabedian, and Ray Gallardo constituted the Commission. ALJ Cohen presided.

Milton Foster and Brian Bock, attorneys at law, of Fagen Friedman & Fulfroost, LLP, represented complainant Kevin Ward, Assistant Superintendent, Human Resources, of the Claremont Unified School District (District). Respondent Dave Lukkarila, who was not represented by counsel, did not appear.

Prior to and during the hearing the parties brought several motions, on which the ALJ ruled, as reflected on the record. Among those motions, respondent moved on the first day of hearing for a telephonic conference; he did not formally move to continue the hearing. For reasons set forth on the record and in an order dated January 19, 2016, respondent having received notice of the hearing and there being no good cause for a continuance or a telephonic conference, the motion was denied. Complainant moved to have deemed admitted facts set forth in two sets of requests for admissions served on respondent. The two sets of requests for admissions were collectively marked for identification and admitted as Exhibit 37. For reasons set forth on the record and in an order dated January 20, 2016, and respondent filing no opposition, the motion was granted and the facts were deemed admitted. Complainant filed a trial brief, which was marked for identification as Exhibit 37.

The ALJ ordered that any testimonial reference to the names of minor students be replaced in the hearing transcript by each student's first name or first name and last initial.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on January 20, 2016. The Commission considered the record in executive session.

FACTUAL FINDINGS

Jurisdiction and Parties

1. On April 3, 2014, complainant filed a Notice of Proposed Intent to Dismiss and Immediately Suspend Without Pay, and a Statement of Charges, with the District's Governing Board of Education (Board), which the Board approved.¹ On April 9, 2014, the District served the Statement of Charges on respondent, notifying him of his immediate suspension and proposed dismissal. On May 9, 2014, respondent timely requested a hearing.

2. Acting in his official capacity, complainant filed and served an Accusation and Statement of Charges on June 11, 2014. Respondent timely served a Notice of Defense. By telephonic trial setting conference order dated January 15, 2015, the matter was set for hearing for May 21 through June 5, 2015. Complainant filed an Amended Accusation and Statement of Charges on January 22, 2015. By order dated May 20, 2015, the hearing was continued; by trial setting order dated July 20, 2015, served on both parties, the hearing was rescheduled for January 19 through January 28, 2016. On July 30, 2015, complainant properly served respondent with a Notice of Hearing, identifying again the new hearing dates. Complainant filed a Second Amended Accusation on September 3, 2015. Respondent participated telephonically in a pre-hearing conference on December 18, 2015; a pre-hearing conference order issued on December 22, 2015, notifying the parties that the hearing would proceed on January 19 through January 28, 2016, as previously noticed.

3. Respondent is a permanent certificated employee of the District on unpaid leave. Before being placed on leave, respondent was a high school social science teacher assigned to teach Advanced Placement Economics and U.S. History at Claremont High School (CHS).

Complainant's Charges Against Respondent

4. In the Second Amended Accusation, complainant alleges cause exists to dismiss respondent as a permanent certificated employee of the District for:

- a. Immoral conduct, under Education Code sections 44932, subdivision (a)(1), and 44939;²
- b. Dishonesty, under section 44932, subdivision (a)(3)³;

¹ On March 5, 2014, the District provided respondent with a Notice of Proposed Intent to Immediately Suspend and Dismiss and with a Statement of Charges, notifying him of a March 21, 2014, Skelly conference. Respondent did not appear at the Skelly conference.

² All further statutory references are to the Education Code unless otherwise specified.

³ Recodified, effective January 1, 2015, at section 44932, subdivision (a)(4).

- c. Evident unfitness for service, under section 44932, subdivision (a)(5);
- d. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing him, under section 44932, subdivision (a)(7); and
- e. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939.

Complainant's Charging Allegations

5. The Second Amended Accusation contains numerous charging allegations intermixed with a considerable amount of narrative. The charges discussed herein are identified and numbered using the number of the paragraph or paragraphs in which they appear in the Second Amended Accusation. Those portions of the narrative setting forth relevant actions the District took with respect to respondent are discussed at Factual Findings 115 through 120. The remainder of the narrative is discussed only when necessary to explain the charging allegations.

6. Complainant alleges at Charge 2 that on February 3, 2012, the District counseled respondent and presented respondent with a plan after having received complaints from parents, students, and staff in January 2012. According to the plan, respondent was to refrain from addressing his personal problems with students.⁴ (See also Factual Finding 115.) The complaints and concerns the District received were:

- a. Respondent inappropriately discussed his personal problems with students during classroom time;
- b. Staff members reported that Respondent's personal issues were negatively affecting the proper delivery of education to his students;
- c. Students reported that Respondent informed his class to "look busy" if, and when, an administrator enters the classroom;
- d. Respondent informed his students he had "tenure" and the District "can't do anything" to him;

⁴ Complainant attached as an exhibit to the Second Amended Accusation a memorandum dated February 14, 2012, from Steven Patterson to respondent and others regarding the February 3, 2012, meeting and setting forth the counseling and plan, as alleged. (See Ex. 5.)

- e. When absent, Respondent failed to provide specific and clear directions in his substitute plans;
- f. During the first semester final exam, Respondent initially distributed the final with the answers on the exam and had to collect the exam and redistribute it;
- g. Respondent was not teaching the required curriculum and further assigned grades in an inappropriate and unfair manner;
- h. Respondent failed to comply with timelines regarding goals and objectives;
- i. Respondent cancelled parent-teacher meetings without justification; and
- j. Respondent discussed school facilities needs and concerns during instruction time. (Ex. 4, pp. 3-4.)

7. The evidence, including testimony, corroborative documents, and matters deemed to have been admitted by respondent, established that the District received the complaints alleged in paragraph 2, and that the District counseled respondent and presented him with a plan on February 3, 2012.⁵

8. Complainant alleges at Charge 3 that, after respondent complained about mold and water damage and the District investigated and remediated all damaged portions of the facilities, respondent violated prior directives. “Respondent continued to use classroom time, and other forums, to discuss the facilities conditions, speak about his family’s ongoing personal issues, and otherwise to bad-mouth the District and/or administration. The Respondent’s comments were inappropriate and served to unnecessarily scare parents, students, and faculty into believing that there were serious health risks at CHS which the District was unwilling or had neglected to address. The Respondent did this despite being informed of the District’s ongoing efforts and progress to address these concerns.” (Ex. 4, p. 4.)

//

⁵ The evidence also established that respondent engaged in the activity complained of, with one exception: the evidence did not establish that respondent lacked justification for cancelling parent-teacher meetings. Because complainant does not allege at Charge 2 that respondent engaged in the activity described in that charge and recites only that the District received complaints about respondent, the evidence establishing that he committed the acts described in Charge 2 is not used as the sole support for any factual finding in this decision.

9. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 3.

10. Complainant alleges at Charge 4 that, in May 2012, “respondent’s failure to pay close attention to the students during administration of” an exam caused the following breaches of protocol: “a student in Respondent’s classroom had posted STAR test materials on the Internet using his cell phone.” Complainant alleges that respondent knew that “allowing such conduct is a serious security breach of testing protocol.” Complainant alleges further that “students reported that the testing environment was not appropriate in that Respondent allowed students to continue holding conversations with other students and have access to their cellular phones after commencement of the exam.” (Ex. 4, p. 4.)

11. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established that respondent’s failure to pay close attention to his students during administration of an exam caused a breach of protocol, in that it allowed a student in respondent’s classroom to post STAR test materials on the Internet using his cell phone. The evidence established that respondent knew that allowing such conduct is a serious security breach of testing protocol. The evidence established that students reported other testing improprieties.⁶

12. Complainant narrates in paragraphs 6 through 8 of the Second Amended Accusation that the District hired a private investigator, Nicole Miller and Associates, Inc., to investigate charges against respondent made in a petition signed by 49 CHS employees on March 22, 2013, and that the investigator found that the charges made in the petition were substantiated. This narration alone does not allege that respondent engaged in certain acts; it merely relates that CHS teachers signed a petition alleging certain acts, and that an investigator reached certain conclusions. (See Factual Finding 7, note 4.) Complainant alleges in Charge 5, however, that respondent did engage in the acts charged in the petition and in the investigation. Those acts are described in paragraph 7, as follows:

- a. Respondent’s behavior at the CHS campus has created a stressful and hostile work environment at CHS. . . [and] because of Respondent’s behavior on campus staff members: are concerned they will be “cornered” in areas of the campus and be lectured, pressed for information, and verbally harassed; avoid the staff work room after school and do not accept leadership and department positions; do not attend staff meetings or when they do, are fearful.
- b. Respondent’s performance in the classroom has declined to the point that CHS staff is concerned for the wellbeing of students.

⁶ The evidence also established that respondent allowed students to continue holding conversations and to have access to their cellular phones after commencement of the exam. (Ex. 37, pp. 4-5.) That evidence is not used to support any factual finding or legal conclusion in this decision. (See Factual Finding 7, note 4.)

- c. Respondent's behavior on the CHS campus has caused staff to be in fear for their (and their students) physical safety. (Ex. 4, pp. 5-6.)

Complainant alleges respondent's conduct "affected the ability of his co-workers to conduct their jobs and thereby negatively impacted the students of CHS," and, because staff members feared for their safety and the safety of students, "law enforcement professionals were required to be present during official meetings." (*Ibid.*)

13. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 5, as described in paragraphs 6 through 8 of the Second Amended Accusation.

14. Complainant alleges in Charge 10 that respondent has "'take[n] over' faculty meetings and acted 'hostile.'" Complainant alleges that the conduct was "off-putting to staff members." (Ex. 4, p. 6.)

15. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 10.

16. Complainant alleges in Charge 11 that respondent "raised his voice and acted in a dominating manner when interacting with fellow staff members." (Ex. 4, p. 6.)

17. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 11.

18. Complainant alleges in Charge 12 that respondent "consistently talked over others during meetings." (Ex. 4, p. 6.)

19. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 12.

20. Complainant alleges in Charge 13 that respondent "used a confrontational and aggressive tone of voice at said meetings." (Ex. 4, p. 6.)

21. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 13.

22. Complainant alleges in Charge 14 that teachers reported feeling bullied by respondent, and that respondent knows bullying is a violation of District policy.

23. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established that teachers reported feeling bullied by respondent, and that respondent knows bullying is a violation of District policy, as alleged in Charge 14.

24. Complainant alleges in Charge 15 that, "Due to the level of discomfort created by Respondent, Social Science Department meetings at CHS had to be held in two separate

rooms.” (Ex. 4, p. 6.)

25. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 15.

26. Complainant alleges in Charge 16 that teachers reported they “needed to lock their classroom doors and sit next to the exit at staff meetings” because they fear respondent. (Ex. 4, p. 6.)

27. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 16.

28. Complainant alleges in Charge 17 that respondent “yelled and confronted teachers in the CHS staff lounge.” (Ex. 4, p. 7.)

29. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 17.

30. Complainant alleges in Charge 18 that “CHS teachers have requested to be excused from attending staff meetings because of Respondent’s erratic and belligerent behavior.” (Ex. 4, p. 7.)

31. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 18.

32. Complainant alleges in Charge 19 that respondent’s students reported to other faculty that respondent “was not teaching the required curriculum.” (Ex. 4, p. 7.)

33. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 19. Respondent was not teaching the required curriculum. Students reported this to other faculty.

34. Complainant alleges in Charge 20 that respondent “spent classroom time talking about inappropriate and off-curriculum matters such as: his wife’s lawsuit, the alleged mold issue at CHS, religion, giving birth, ‘how to go to the bathroom in the woods’ and the ‘existence of alien life.’ Respondent showed a mold presentation in his class, told students that tenured teachers are impossible to fire and showed students the certificated staff salary schedules. These are inappropriate subjects for classroom instruction time. Respondent spending time discussing inappropriate and off-curriculum subjects impacts students’ ability to learn the required course curriculum. Further, Respondent’s discussions caused some of his students to worry and panic.” (Ex. 4, p. 7.)

35. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 20.

36. Complainant alleges in Charge 21 that respondent told his students, “‘Humans have code in our DNA and if we crack the code, we will be able to communicate with our

alien ancestors.’ These types of statements are unrelated to the social science department curriculum, and are inappropriate topics for classroom discussion. Moreover, these statements caused students and colleagues to become concerned about Respondent’s mental stability and ability to follow approved curriculum during instruction time.” (Ex. 4, p. 7.)

37. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 21.

38. Complainant alleges in Charge 22 that “Some students in Respondent’s classes have received grades that are not representative of their abilities and/or classroom performance. Witnesses state that low performing students in their classes received unexplained high grades in Respondent’s class. Further, a parent expressed concern regarding the lack of classroom instruction time and quality of instruction. This parent reported, ‘My son didn’t do work and Mr. Lukkarila put grades in for him to save his grade.’ This conduct is unacceptable, unethical, and a violation of the District’s grading policies and procedures. (Ex. 4, p. 7.)

39. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 22.

40. Complainant alleges in Charge 23 that teachers reported feeling that respondent is “unhinged” and would “lapse into erratic behavior” while at work at CHS. (Ex. 4, p. 8.)

41. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 23.

42. Complainant alleges in Charge 24 that respondent “has failed to properly and consistently keep track of student class attendance.” (Ex. 4, p. 8.)

43. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 24.

44. Complainant alleges in Charge 25 that respondent has “repeatedly dismissed students from his classes before the end of the classroom instruction period. Such conduct is improper and further compromises the school’s supervision plan which is staffed and predicated on students remaining in their classrooms during instruction time. As Respondent should be aware, release of students early creates a potential safety risk and further causes a potential lack of supervision concerning the students released.” (Ex. 4, p. 8.)

45. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 25.

46. Complainant alleges in Charge 26 that respondent “breached testing protocols” “during a test in one of his classes Specifically, Respondent called on a student, asked that student for the answer to a question on the test and then instructed the other students to

make sure to change their answer to the called on student's answer. This conduct is inappropriate, unethical, and encouraged students to cheat on the test. Furthermore, this yet another instance of Respondent's failure to adhere to testing rules and protocols." (Ex. 4, p. 8.)

47. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 26.

48. Complainant alleges in Charge 27 that respondent "failed to maintain an accurate and up to date grade book. The substitute teacher for his classes while Respondent has been on administrative leave stated that Respondent had entered very few grades into the grading system at the time he took over the classes. As Respondent should be aware, such information is vital to allowing other teachers to continue instruction when a teacher is absent." (Ex. 4, p. 8.)

49. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 27.

50. Complainant alleges in Charge 28 that on March 12, 2013, some of respondent's students reported to other CHS teachers that a student in respondent's class brought a gun into the classroom; the gun was variously described as an "Airsoft gun," a toy gun, and a water gun; and "instead of confiscating the gun from the student and reporting him to CHS administration, Respondent played with the gun in front of students and eventually gave it back to the student. Respondent's conduct and handling of this sensitive situation was highly inappropriate. Further, this behavior demonstrates a lack of proper judgment." (Ex. 4, pp. 8-9.)

51. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 28.

52. Complainant alleges in Charge 29 that during the last two academic years in which respondent taught, 2011-12 and 2012-13, "there was a substantial decrease in the number of students in his Advanced Placement (AP) classes that took the AP exam. Specifically, in the 2011-12 school year, only 21 of 74 students attempted the exam. This number continued to decrease significantly the next year with only 10 of 70 students (less than 1.6% [*sic*]) signing up to take the AP exam. This is a very low percentage compared to other AP courses where roughly 75% of students sign up to take the AP test in that subject and is an indication of Respondent's ineffectiveness and unfitness in the classroom." (Ex. 4, p. 9.)

53. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 29.

54. Complainant alleges in Charge 30 that "Law enforcement had to provide security at CHS staff meetings to alleviate staff fears about physical harm from Respondent due to Respondent's erratic behavior and yelling at prior staff meetings." (Ex. 4, p. 9.)

55. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 30.

56. Complainant alleges in Charge 31 that, “Shortly after the very-well publicized incidents involving rogue police officer Christopher Dorner, in or about February 2013, Respondent made statements to co-workers that Respondent ‘Understood what Christopher Dorner had to do because his union wasn’t helping him and the police department wasn’t helping. He was backed into a corner,’ and/or similar statements to the same effect. . . . Respondent’s statements about Christopher Dorner were highly insensitive and showed a tremendous lack of proper judgment. Further Respondent’s statements caused his co-workers to be fearful that Respondent would behave like Mr. Dorner.” (Ex. 4, p. 9.)

57. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 31.

58. Complainant alleges in Charge 32 that respondent “often has displayed, ‘erratic and manic’ behavior around his co-workers that is so intense and loud that his co-workers feel fearful.” (Ex. 4, p. 9.)

59. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 32.

60. Complainant alleges in Charge 33 that “Staff at CHS has become fearful that Respondent may bring a gun to school based on his erratic behavior and statements about Christopher Dorner, and other aberrant and threatening conduct and behavior.” (Ex. 4, p. 10.)

61. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 33.

62. Complainant alleges in Charge 34 that, “On multiple occasions, Respondent has demonstrated resistance and acted in a highly inappropriate manner in response to District personnel’s and site administrator’s directives. Respondent continued erratic and manic behavior coupled with his resistance to follow directives negatively impacts the morale of CHS.” (Ex. 4, p. 10.)

63. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 34.

64. Complainant alleges in Charge 35 and 36: On March 25, 2013, respondent “was scheduled to meet Mr. Ward and Mr. Bateman in the parking lot outside his classroom at 3:30 pm to retrieve items from his classroom,” but in violation of directives respondent had received from the District earlier on the same date in a notice of administrative leave (see Factual Finding 116), respondent “entered the building at approximately 3:20 pm and spoke with two staff members. These staff members knew Respondent had been put on leave earlier that day and were scared by Respondent’s sudden appearance in the quad, without District administration.” (Ex. 4, p. 10.)

65. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 35 and 36.

66. Complainant alleges in Charge 37 that respondent violated the District's March 25, 2013, directives, in that, when Nicolle Miller and Associates, an investigative firm hired by the District, contacted respondent to arrange to interview him, "Respondent failed to respond to email and registered mail resulting in the District contacting Respondent regarding scheduling an interview on his first day of service for the 2013-14 school year." (Ex. 4, p. 11.)

67. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 37.

68. Complainant alleges in Charge 38 that, "Despite the March 25, 2013 directives, [Assistant Superintendent] Ward was forced to reschedule eleven (11) interviews with the investigator. Each time Respondent was scheduled for interview, Respondent would contact the District, many times just before the interview was scheduled to occur, with various reasons Respondent would not attend. Despite Mr. Ward's numerous attempts and directives to attend the scheduled interviews with Ms. Miller, Respondent refused to do so. Respondent's failure to attend the interviews is insubordination [and] has impeded [Investigator] Miller's, and the District's, ability to conduct an investigation into the allegations made against Respondent by his co-workers in the Petition." (Ex. 4, p. 11.)

69. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 38.

70. Complainant alleges in Charge 39 that, "Since Respondent was placed on administrative leave, Respondent has committed multiple violations of the directives given in the March 25, 2013, notice of administrative leave. Additionally, Respondent has corresponded numerous times with the District asking who Respondent may or may not contact while on leave. Specifically, Respondent has contacted multiple District staff, in direct violation of an order not to have any contact with any District student or staff member" (Ex. 4, p. 11.)

71. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 39.

72. Complainant alleges in Charge 40, that on October 29, 2013, respondent "sent written correspondence to Frank D'Emilio, a teacher at Vista del Valle Elementary School. In this correspondence, Respondent discussed a number of topics including his 2010 Master Grievance and other grievances filed with the District, the District's investigation into his conduct, as well as various other communications between Respondent and District administrators and/or his Association representatives. . . . Such conduct is completely inappropriate and clearly breaches the directives provided in the notice of administrative leave." (Ex. 4, p. 12.)

73. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 40.

74. Complainant alleges in Charge 41 that, “Despite being counseled and informed on multiple occasions that such conduct was expressly prohibited, Respondent continued to contact staff in violation of the directives. On or about December 21, 2013, Respondent sent written correspondence to Joe Tonan, another employee of the District. In his correspondence, Respondent discussed his ongoing and prior grievances with the District. Moreover, Respondent made threatening and harassing comments towards Mr. Tonan and his wife stating ‘[i]n time, your shameful behavior will be exhibited.’ The next day, Mr. Tonan reported Respondent’s conduct to the District, characterizing it as ‘threatening,’ ‘extortion’ and ‘blackmail.’ He indicated that he was concerned about his safety at work and requested that the District intervene in order to stop any further contact.” (Ex. 4, p. 12.)

75. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 41.

76. Complainant alleges in Charge 42 that respondent’s actions “violate the requirements of Board Policy 4119.21-Personnel Professional Standards. . . . Respondent does not meet the standards of Board Policy 4119.21. Further, Respondent’s actions demonstrate a propensity to engage in threatening, dangerous and immoral behavior and an escalating disregard for the health, safety and welfare of students, staff and parents at CHS.” (Ex. 4, pp. 12-13.)

77. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 42.

78. Complainant alleges in Charge 43 that, on May 26, 2014, respondent “sent a threatening, hostile, and disturbing email to David Chamberlain, a teacher at CHS and president of the Claremont Faculty Association (‘CFA’) and at least 350 other District employees (nearly all of the District’s certificated personnel) in which Respondent targets School Board member Sam Mowbray. Among other hostile statements, Respondent stated that in his ‘opinion, Dr. Mowbray—a despicable coward—stomps on the due process rights of the Bill of Rights. Dr. Mowbray sends a clear message to every teacher in Claremont . . . your dreams can be destroyed by evil. I say Dr. Mowbray represents evil by his willingness to interfere with due process.’ Respondent further stated that he couldn’t ‘wait for . . . [Dr. Mowbray] . . . to show-up in any courtroom. . . . Even if I lose, I will piss and shit right on your gravestone. . . . To me, . . . [Dr. Mowbray] . . . represent[s] the epitome of a political coward, looking for final fame. Fuck you sam.’” (Ex. 4, p. 13.)

79. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 43.

//

//

80. Complainant alleges in Charge 44 that, in his May 26, 2014 email, respondent “also stated the following:

‘All CFA members should, not only carry legal pickets outside of Dr. Mowbray's home and children's, but CFA members should legally picket his personal gravestone.’

‘Dr. Mowbray has not just spit and shit on former Principal, Frank D’Emilio’s career and family.’

‘Fuck you Sam Mowbray.’

‘Sam, please, don't be shocked by simple language . . . [y]ou squat, shit, and piss like the rest of us.’

‘What you have done to destroy the real career and reputation of Mr. D’Emilio, his ancestors, his kids, and beyond is reprehensible. . . . Today, you try to do the same to me and my family. . . . Fuck you Sam. . . . Fuck your family too. . . . you shit and pissed on Mr. D’Emilio’s career and legacy. . . . You shit and piss on mine.’

‘I can’t wait to fight you. . . . You are the ultimate political coward.’

‘You—an experience philosopher-king—knew what you did to Mr. D’Emilio’s career and legacy.’

"I repeat, fuck you Sam, along with your family’s legacy."

‘Sam, you are not a doctor but a thug. . . . I can’t wait for you to sue me so I can humiliate, piss, and shit on you in any real court room in the United States. . . . In the long-run I will defeat your arrogance and cowardice.’

‘I will pull out my dick and piss and shit on your family’s legacy like you even dared to pull out your dick to piss and shit on Mr. D’Emilio’s family legacy and my family’s legacy. . . . Bring it on Sam, I look forward to defeating you—with short-term-losses—in several court-rooms. . . . In the long-run I will defeat your alleged Claremont nobility and fame. . . . I, having no income and benefits will defeat you. . . . Fuck you. . . . You are not a doctor—you are a coward.’” (Ex. 4, pp. 13-14.)

81. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 44.

82. Complainant alleges in Charge 45 that respondent also stated in his May 26, 2014 email that “‘Dr. Mowbray, along with his family should be shunned, wherever he turns;’ that Dr. Mowbray’s willingness to tolerate unknown incident reports of CFA members, anonymous petitions of CFA members, and armed-private investigators conducting interrogations of CFA members, reflects his willingness ‘to shun and stomp on the American dream;’ and that ‘Mr. Mowbray was elected as one of Plato’s ‘Philosopher Kings,’ but in reality he is the, ‘Mouse-King.’” (Ex. 4, p. 14.)

83. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 45.

84. Complainant alleges in Charge 46 that respondent concluded his May 26, 2014, email by stating that “in his opinion, Mr. Chamberlain was a ‘back-stabbing coward, 10X worse than Dr. Mowbray. I, along with 345 others—pay \$345,000 to defend us from Mr. Mowbray’s hostility. . . I look forward to defeating you, too.’” (Ex. 4, p. 14.)

85. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 46.

86. Complainant alleges in Charge 47 that respondent “has repeatedly demonstrated a propensity to become aggressive and agitated in his interactions with District employees. Respondent’s hostile behavior and course of conduct during the 2011-2013 school years has disrupted operations at CHS staff meetings and caused a ‘hostile and stressful work environment.’ Furthermore, Respondent’s course of conduct has caused District employees to fear for their physical safety and the safety of District students.” (Ex. 4, p. 14.)

87. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 47.

88. Complainant alleges in Charge 50 that respondent “has made numerous annoying telephone calls to District staff and administrators on May 15, May 22, May 23 and May 26, 2014. During several of these telephone calls Respondent used intimidating and forceful language causing staff, already well aware of his issues from being included on emails, to be in fear.” (Ex. 4, p. 16.)

89. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 50.

90. Complainant alleges in Charge 51 that on June 10, 2014, “the District filed a motion for a workplace restraining order against Respondent in the California Superior Court of Los Angeles, Eastern District. The court granted Petitioner’s temporary restraining order (TRO).” (Ex. 4, p. 16.)

91. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 51.

92. Complainant alleges in Charge 52 that on July 20, 2014, respondent “sent another threatening, hostile, and disturbing email. This time Respondent’s email was addressed to the CFA Executive Board Members, which includes David Chamberlain, a teacher at CHS and president of CFA and at least 350 other District employees (nearly all of the District's certificated personnel) in which Respondent targets Assistant Superintendent of Human Resources, Kevin Ward. Among other hostile statements, in one of his many post scripts, Respondent stated:

‘Mr. Ward is a real a dick [sic]-a penis-and will rape you.’

‘Mr. Ward is an unlawful dick.’

‘Fuck you Kevin.’” (Ex. 4, p. 16.)

93. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 52.

94. Complainant alleges in Charge 53 that in the July 20, 2014 email, respondent also wrote: “‘Fuck you Peter Weinberger.’ Mr. Weinberger is the publisher of the Claremont Courier. . . . This email is a further violation of the directives contained in the May 28, 2014 Letter of Reprimand in which Respondent was reminded that ‘although, [he] is currently on unpaid suspension from [his] teaching position with the District pending the hearing on the dismissal charges against [him]; [he] still remains an employee of the District and appropriately the District expects that [he] communicate and interact with District employees, students, parents, Board Members, and others related to District concerns in a competent, courteous and civil manner at all times.’” (Ex. 4, pp. 16-17.)

95. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 53.

96. Complainant alleges in Charge 54 that on July 21, 2014, respondent “sent another harassing and threatening email correspondence. This email was addressed to what appears to be at least one hundred CFA members with the subject ‘Sent to my family.’ In this email rant, Respondent states:

‘All CFA Members Should Understand, If I Lose This Fight Without Financial Support, you [sic] Immediate Family and Extended Family will be Threatened.’

‘Fuck you Kevin Ward.’

‘Fuck you Kevin.’

‘I am not a criminal. You are.’

‘Mr. Ward is a real dick-a penis-and will legally rape you with CUSD taxpayer dollars.’ Respondent goes on to ask for financial support for his family.” (Ex. 4, p. 17.)

97. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 54.

98. Complainant alleges in Charge 55 that on July 22, 2014, respondent “sent another threatening, hostile, and disturbing email. This time Respondent’s email was addressed to the CFA Representative, Kim Breen, with a carbon copy to at least 350 other District employees (nearly all of the District’s certificated personnel). In this email, Respondent proceeds to make the following inappropriate, hostile, unprincipled, threatening and uncalled for statements to Ms. Breen:

‘Kim, please . . . fuck-off . . . quit trying to rape my career and family like Kevin Ward.’

‘God (forgive me) you must hit them like a lode-stone.’

‘If there is a hell, I hope the devil—on behalf of union members—whose careers were devastated by CTA officials, shoves that cross in your eye.’

‘I told CFA President Chamberlain that he was 10X worse than CUSD School Board Member Mowbray. Kim, you are 100X worse than Sam Mowbray.’

‘Kim, I am not alone, just ask me and I will introduce you to several CTA members that may wish far worse upon you, your family and Dean Vogel.’

‘What the fuck do you know, except for gossiping and a bitterness about life.’

‘Throughout history, whores have done well. I will not let you fuck my career. . . Kim, I move forward, despite your whoring. Keep whoring to CUSD Kim, in time, douching over protected activity will be ineffective.’” (Ex. 4, pp. 17-18.)

99. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 55.

100. Complainant alleges in Charge 56 that respondent’s July emails “are a further example of Respondent’s continuing highly inappropriate and reckless behavior and inability to conduct himself in competent, courteous and civil manner.” (Ex. 4, p. 18.)

//

101. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 56.

102. Complainant alleges in Charge 57 that on July 23, 2014, in the California Superior Court, County of Los Angeles, Eastern District, Department A, Judge Steven D. Blades issued a permanent Workplace Violence Restraining Order (WVRO) protecting Sam Mowbray and David Chamberlain from respondent. “The WVRO included the following personal conduct orders to not do the following things to Mr. Mowbray and Mr. Chamberlain, ‘harass, molest, strike, assault, batter abuse, destroy personal property of, or disturb the peace of the person.’ Further, the WVRO ordered Respondent to not enter District offices, facilities or campuses. Respondent was also ordered to stay at least 100 yards away from Mr. Mowbray, Mr. Chamberlain, their respective immediate family members, and all District facilities and campuses.” (Ex. 4, p. 18.)

103. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 57.

104. Complainant alleges in Charge 58 that, “notwithstanding the WVRO, Respondent continued his threatening and harassing behavior.” (Ex. 4, p. 18.)

105. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 58.

106. Complainant alleges in Charge 59 that on April 14, 2015, respondent “sent written correspondence to over 150 District employees. In his correspondence, Respondent discussed his ongoing and prior grievances with the District. The correspondence was addressed, ‘Dear Assistant Supt. Of Business Services Shoemaker.’ Among other hostile statements, Respondent states:

‘It will only be a matter of time before someone is hurt beyond repair.’

Calls Ms. Shoemaker ‘Black Widow.’

‘Maybe, your husband . . . killed himself for a reason.’

‘I will—deservedly—harm you because of it.’” (Ex. 4, pp. 18-19.)

107. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 59.

//

//

108. Complainant alleges in Charge 60 that on April 14, 2015, respondent “sent written correspondence addressed to Mike Bateman, District Assistant Superintendent, Student Services and another 200 recipients. In this correspondence, Respondent, referring to Mr. Bateman, wrote:

‘Fuck long-term friends.’

‘I do not carry a gun under my jacket or associate with AR-15.com web-sites.’

Respondent also again discussed his ongoing and prior grievances with the District and another school district where his spouse was employed.” (Ex. 4, p. 19.)

109. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 60.

110. Complainant alleges in Charge 64 that “on April 20, 2015, a Criminal Protective Order was issued against Respondent. The Criminal Protective Order provides that Respondent ‘must not harass, strike, threaten, assault, follow, stalk, molest, destroy or damage personal or real property, disturb the peace, keep under surveillance, or block the movements of . . .’ District Assistant Superintendent Business Services Ms. Shoemaker; District Assistant Superintendent of Human Resources, Kevin Ward, Board Member Sam Mowbray; District employee Dave Chamberlain; Kim Breen; and District employee Barbara Bilderback. The Criminal Protective Order also provides that Respondent ‘must have no personal, electronic, telephonic or written contact with the protected persons.’” (Ex. 4, p. 20.)

111. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charge 64.

112. Complainant alleges in Charges 65 through 67 that the Superior Court of California, County of Los Angeles, in case number KA109511, issued a temporary restraining order (TRO) against respondent on May 5, 2015, on behalf of Superintendent, James Elsasser, and Assistant Superintendents, Lisa Shoemaker, Kevin Ward and Michael Bateman, and that, on August 3, 2015, after a hearing, Judge H. Don Christian “found reasonable proof of a credible threat of violence by Respondent” and “issued a permanent Workplace Violence Restraining Order (‘WVRO’) protecting Superintendent, James Elsasser, and Assistant Superintendents, Lisa Shoemaker, Kevin Ward and Michael Bateman from Respondent for the next three years. The WVRO included the following personal conduct orders to not do the following things to Mr. Elsasser, Ms. Shoemaker, Mr. Ward and Mr. Bateman, ‘harass, molest, strike, assault, batter abuse, destroy personal property of, or disturb the peace of the person.’ Further, the WVRO ordered Respondent to not enter District offices, facilities or campuses for the next three years. Respondent was also ordered to stay at least 100 yards away from Elsasser, Ms. Shoemaker, Mr. Ward and Mr. Bateman, their respective immediate family members, homes, and all District facilities and campuses.” Complainant alleges that, “Accordingly, it has become impossible for Respondent to report to work at the District without violating civil and criminal orders against him.” (Ex. 4, pp.

20-21.)

113. The evidence, including testimony, corroborative documents, and matters deemed admitted by respondent, established the facts alleged in Charges 65 through 67.

114. Paragraph 9 comprises narrative. Paragraphs 48 and 49 describe a letter of reprimand the District issued to respondent; the letter is addressed at Factual Finding 117. Paragraphs 61 through 63 address legal actions taken by the District and actions taken by police and the court; these are addressed at Factual Finding 119.

Notices Issued to Respondent and Other Actions Taken by the District

115. At a February 3, 2012, counseling meeting, described in a February 14, 2012, memorandum from Vice Principal Steven Patterson to respondent, respondent was directed to refrain from addressing his personal problems with students, to be conscientious of timelines, and to complete his in-service training. (Ex. 5.)

116. On March 25, 2013, Mr. Ward issued to respondent a Notice of Paid Administrative Leave and Related Directives. The letter notified respondent that he was on paid administrative leave effective immediately. The letter also notified respondent that he “may not enter Claremont High School, any of the District’s campuses, buildings or the District Office for any reason, unless directed by me.” The letter instructed respondent not to access the District’s computer, or to “have any contact (in person, via phone or via email/electronic means) with any District employees, student, or parents,” other than Mr. Ward or Mr. Chamberlain. (Ex. 12.) The letter further directed respondent to return all District property in his possession to Mr. Ward, and that, “[i]n the event that you need to retrieve any personal items from CHS, please let me know and I will retrieve them for you.” (*Ibid.*) Respondent was directed to remain available by telephone during working hours, and was advised that “any failure to comply with the aforementioned directives could be subject to disciplinary measures up to, and including, dismissal.” (*Ibid.*)

117. On May 28, 2014, the District issued to respondent a Letter of Reprimand as a result of his May 26, 2014 emails to Mr. Chamberlain, School Board Member Dr. Sam Mowbray, and numerous District staff and faculty members, which the District found to be disrespectful, rude, and inappropriate. The letter stated that respondent’s emails violated standards applicable to a public school teacher and directed respondent to:

(1) utilize proper judgment as a school teacher (regardless of his present duty status) and maintain a professional demeanor at all times; (2) not use profanity, threats, or other abusive language in his communications with the District, its employees, parents, students and Board Members; (3) at all times, publicly model a standard of personal and professional behavior that is consistent with District standards for employees and in accord with conventional values. (Ex. 23.)

The letter also stated that,

although, [respondent] is currently on unpaid suspension from [his] teaching position with the District pending the hearing on the dismissal charges against [him]; [he] still remains an employee of the District and appropriately the District expects that [he] communicate and interact with District employees, students, parents, Board Members, and others related to District concerns in a competent, courteous and civil manner at all times.” (*Ibid.*)

118. The Board on a date not clear from the evidence issued a Professional Standards Policy, which states that:

The Board of Education expects district employees to maintain the highest ethical standards, exhibit professional behavior, follow district policies and regulations, and abide by state and federal laws. Employee conduct should enhance the integrity of the district and advance the goals of the district’s educational programs. Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students. (Ex. 21.)

119. The District contacted the Claremont Police Department and notified them of respondent’s April 14, 2015, emails threatening Ms. Shoemaker and Mr. Bateman. Respondent was shortly thereafter arrested, arraigned, and charged with 13 counts, including two counts of felony criminal threats, two counts of felony stalking, and nine counts of making annoying telephone calls, all of which are misdemeanors. Bail was set at one million dollars (\$1,000,000). (See Ex. 4, paras. 61-63.) The court issued the Workplace Violence Restraining Order described at Factual Finding 112.

120. Except as set forth in this Decision, all other allegations in the Second Amended Accusation and all other contentions by the parties lack merit or constitute surplusage.

LEGAL CONCLUSIONS

Jurisdiction

1. The Commission has jurisdiction to proceed in this matter under section 44944. (Factual Findings 1 through 3.)

//

Burden of Proof

2. The District has the burden of proof in this matter, since it is seeking to dismiss respondent from employment as a certificated employee. The District must prove its case by a preponderance of the evidence. (*Gardiner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040.)

Statutory Grounds for Dismissal

3. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in section 44932, subdivision (a), or 44939 is established. In the Second Amended Accusation, the District alleged five of those causes: immoral conduct, dishonesty, evident unfitness for service, persistent violation of school laws or regulations, and willful refusal to perform regular assignments without reasonable cause. (Factual Finding 5.) The definitions of some of those causes have been further elucidated by the courts and by the legislature.

IMMORAL CONDUCT

4. “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.)

DISHONESTY

5. “An approved definition of dishonesty connotes a disposition to deceive. [Citation omitted.]” (*Midway School Dist. of Kern County v. Griffeath* (1946) 29 Cal.2d 13, 18 [absent teacher who went deer hunting acted dishonestly by telling school he was ill; discharge not warranted by single incident in context of 20 years of service]); see also *Bassett Unified School Dist. v. Comm. on Professional Competence* (1988) 201 Cal.App.3d 1444, 1450-1453 [teacher acted dishonestly when using paid sick leave at her school while teaching at other schools].)

EVIDENT UNFITNESS FOR SERVICE

6. Evident unfitness for service is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) “‘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 expectations of the employing school district.” (*Id.*)

PERSISTENT VIOLATION OF SCHOOL LAWS OR REGULATIONS

7. To establish cause for discipline based on the violation of school rules, there must be a “showing of intentional and continual refusal to cooperate.” (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) The violation must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317 (*Bourland*).)

WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE

8. The plain meaning of this cause for dismissal under section 44939, subdivision (b), applies. (See *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 556 [teacher who declined to accept teaching assignments subject to dismissal].)

The Morrison Factors

9. To determine whether there is cause for dismissal under section 44932, subdivision (a), based on immoral conduct or evident unfitness for service as alleged here, the Commission must evaluate whether the teacher’s alleged misconduct demonstrates the teacher’s unfitness for service using factors that the Supreme Court enunciated in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230 (*Morrison*).

10. The *Morrison* factors are: the likelihood that the conduct had or may have an adverse effect on students or fellow teachers; the degree of the adverse effect; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.⁷

11. The *Morrison* court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to students, school employees, or others who might be affected by his actions as a teacher.” (*Id.*, at p. 235; see also *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d

⁷ There is no reason to apply the *Morrison* factors to analyze causes for dismissal for persistent violation of laws and regulations (*Morrison, supra*, 1 Cal.3d at pp. 227-230), or for willful refusal to perform regular assignments without reasonable cause. It may be presumed that such conduct is related to fitness to teach.

208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at pp. 1444-1445; *Bourland, supra*, 174 Cal.App.3d at p. 321.)

12. Not all *Morrison* factors need be present for the *Morrison* test to be satisfied. (*Governing Bd. v. Haar* (1994) 28 Cal.App.4th 369.) Nor must the *Morrison* analysis be conducted on each individual fact established; it may be applied to the accumulated facts established collectively. (*Woodland, supra*, 2 Cal.App.4th at p. 1457.)

Analysis

13. The Second Amended Accusation charged respondent with various acts to support the five statutory grounds for dismissal. The Commission examined each charged act to determine whether it was proven. For each charged act proven, the Commission considered whether the act supported one or more of the statutory bases for dismissal as alleged, and applied the *Morrison* factors where appropriate.

14. Complainant established by a preponderance of the evidence that all the acts alleged in the Second Amended Accusation occurred, with a single exception: complainant did not establish that respondent lacked justification for cancelling parent-teacher conferences. (Factual Findings 4-120.)⁸

15. Respondent's acts constituted immoral conduct and evident unfitness for service. Applying the *Morrison* factors, respondent's immoral conduct and his evident unfitness for service relate to his fitness to teach. Among other things, respondent's conduct has had and would likely continue to have a severe adverse effect on students and their parents and on faculty and staff at CHS and throughout the District, causing them fear as a result of his verbal and physical actions and threats. Respondent has continued to engage in the objectionable conduct despite directives from the District and despite court orders that he cease engaging in that conduct. Respondent's continued and repeated violation of assistance, guidance, and directives from school administrators, of District policies, and of court orders, is an aggravating factor. Respondent has persistently violated or refused 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, including the District's Professional Standards Policy. Respondent has repeatedly behaved threateningly, stubbornly, and willfully. It is highly likely that his impermissible conduct will continue. The evidence does not support a finding that disciplinary action would have an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

//

⁸ The Commission unanimously agreed on the findings of fact and unanimously found cause to dismiss.

16. Cause for dismissal of respondent exists under section 44932, subdivision (a)(1), based on immoral misconduct, as set forth in Factual Findings 4 through 120 and Legal Conclusions 1 through 13.

17. Cause for dismissal of respondent exists under section 44932, subdivision (a)(1), based on dishonesty, as set forth in Factual Findings 4 through 120 and Legal Conclusions 1 through 13.

18. Cause for dismissal of respondent exists under section 44932, subdivision (a)(5), based on evident unfitness for service, as set forth in Factual Findings 4 through 120 and Legal Conclusions 1 through 13.

19. Cause for dismissal of respondent exists under section 44932, subdivision (a)(7), based on persistent violation of or refusal to obey reasonable regulations prescribed for the government of the public schools by the governing board of the school district employing him, as set forth in Factual Findings 4 through 120 and Legal Conclusions 1 through 13.

20. Cause for dismissal of respondent exists under section 44939, based on willful refusal to perform regular assignments without reasonable cause, as set forth in Factual Findings 4 through 120 and Legal Conclusions 1 through 13.

21. Even where, as here, a school district has established cause for dismissal, the Commission has broad discretion to determine whether dismissal is warranted. (*Fontana, supra*, 45 Cal.3d at pp. 220-222.) “The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citing *Fontana*.] ‘[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.’ [Citation].” (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343-344.)

22. Dismissal is warranted in this case in order to protect students, parents, and District faculty and staff, in view of the serious nature of respondent’s misconduct and because of the likelihood that respondent will continue to engage in similar conduct in the future.

//

//

ORDER

The Second Amended Accusation and Statement of Charges against respondent Dave Lukkarila are affirmed. Respondent Dave Lukkarila's employment with the Claremont Unified School District is terminated.

DATED: April __, 2016

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

I concur with the Decision and Order set forth above:

DATED: April __, 2016

KRISTI HARABEDIAN
Commission Member

I concur with the Decision and Order set forth above:

DATED: April __, 2016

RAY GALLARDO
Commission Member