

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
AND THE COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2014100094

MARK LEOPANDO,
a permanent certificated employee,

Respondent.

DECISION

The Commission on Professional Competence, consisting of complainant's designee, Helen Shepard, respondent's designee, Luciano Ortiz, and Jennifer M. Russell, Administrative Law Judge, Office of Administrative Hearings, heard this matter in Los Angeles, California on August 24, 25, 26, and 27.

Kristine E. Kwong, Attorney at Law, represented complainant Los Angeles Unified School District (District). Lawrence B. Trygstad, Attorney at Law, represented respondent Mark Leopando, who was present throughout the hearing.

The District seeks to dismiss respondent based on charges that, during the period October 17 through October 30, 2013, respondent manifested unprofessional conduct, immoral conduct, evident unfitness for service, and was persistent in his violation of or refusal to obey the District's reasonable regulations prescribed for the governance of the public schools by the State Board of Education. Respondent disputes the charges.

During the hearing, the Administrative Law Judge ruled on motions in limine. On complainant's unopposed motion, the Administrative Law Judge issued a Protective Order Sealing Exhibits 34, 35, 36, and 37. Complainant's Trial Brief was marked for identification as Exhibit 39. Respondent's Trial Brief was marked for identification as Exhibit BB. The record was closed and the matter submitted for decision on September 4, 2015.¹

¹ The record remained open consistent with an August 28, 2015 Post-hearing Order providing for the submission of a Confidential Name List. No Confidential Name List was submitted. To protect confidentiality an initial is used to identify certain testifying and non-testifying witnesses.

FACTUAL FINDINGS

1. Respondent is a 48-year old permanent certificated employee of the District. Respondent holds an undergraduate degree in biology from the University of San Carlos, which is located in the Philippines, where he was born and raised. After migrating to the United States, respondent pursued several unspecified courses of study without earning any additional diploma at several institutions, including Los Angeles Valley College, California State University—Northridge, and the University of Wisconsin at Madison, before he eventually obtained a multiple subject teaching credential. Since 2000, the District has employed respondent, and since 2001, respondent has been teaching at the 107th Street Elementary School located in the Watts neighborhood of the Los Angeles metropolitan area. Respondent's most recent performance evaluation, which was issued on June 20, 2012, indicates that respondent "Meets Standard Performance," that respondent "Provides rigorous lessons for students," and that respondent "Is frequently requested by parents to be their child's teacher." (Exhibit J.) Respondent has no training or experience investigating, assessing, or managing a potential threat to school safety. Respondent has no authority to make decisions regarding appropriate responses to rumors. Respondent has not been involved in any prior disciplinary actions. During the 2013/2014 academic year, respondent was assigned to teach a second grade classroom at the 107th Street Elementary School.

2. At all relevant times, the District required its employees, including members of the 107th Street Elementary School faculty to adhere to its directives articulated in Employee Code of Ethics (Revised 2/03), Workplace Violence, Bullying and Threats (Adult-to-Adult) (BUL-5798.0; dated July 16, 2012), Bullying and Hazing Policy (Student-to-Student and Student-to-Adult) (BUL-5212.1; dated September 17, 2012), Code of Conduct with Student (July 15, 2008), and October 1988 Board of Education Resolution to Enforce the Respectful Treatment of All Persons.

3. a. For the past three years, Alfonso Webb has served as an Operations Coordinator for the District. Mr. Webb's professional career includes teaching and other administrative positions in Watts. Mr. Webb's responsibilities as Operations Coordinator include supporting 107th Street Elementary School and its teachers to ensure a safe school environment within the Watts community.

b. Mr. Webb's testimony establishes that in 2013 "there were a high amount of tension" between the parents of 107th Street Elementary and the District. Parents had a tendency to be "loud," which Mr. Webb defined as "meaning yelling and screaming" during their interactions with school officials because "they didn't have middle class strategies" to negotiate through appropriate channels. Parents had a general mistrust of officials that resulted in their disproportionate response to issues concerning the community. As Operations Coordinator, Mr. Webb worked to support the 107th Street Elementary School environment "to avoid disruptive factors." Mr. Webb looked at trends, patterns, and data to determine an appropriate course of action or training. Concepts of restorative justice were employed to "equip students with skills" and to provide de-escalation and empathy training.

c. In case there were threats to safety at the school, the District's Standard Operating Procedure, which was created after collaboration among the District's senior deputy superintendent, human resources executive, mental health experts, and general counsel, sets forth a response protocol. The protocol includes directives governing the notification of law enforcement officials, assessments regarding the nature and credibility of a threat, the dissemination of information to faculty, parents, and students, and the circumstances under which closing the school would be deemed a necessary and appropriate course of action.

4. During the 2013/2014 academic year, the faculty at 107th Street Elementary School included Teacher L., who taught a kindergarten classroom. On a date not established by the evidence, respondent noticed that Teacher L. had a classroom helper in his kindergarten classroom, and respondent yelled at Teacher L. According to Teacher L.'s testimony, respondent expressed that he wished he had similar assistance in his second grade classroom.

5. On the morning of October 17, 2013, before the instructional day began, Teacher L. and another faculty member, Teacher P., conversed in the work room. During their conversation, Teacher L. stated to Teacher P., "If Mr. Leopando goes off, I hope he doesn't shoot up the place." Teacher L. went to his classroom after this conversation.

6. Teacher P. wrote a note to Principal Karin Diskin indicating that she needed to speak to Principal Diskin about an important matter. When Principal Diskin met with Teacher P., she told Principal Diskin that Teacher L. stated that he would not be surprised if someone came to the school and shoot up the school on Halloween. Teacher P. indicated to Principal Diskin that she did not know if the person shooting would be Teacher L., but Teacher P. expressed concern because she believed from prior conversations with Teacher L. that Teacher L. had a gun at his home.

7. Principal Diskin called Mr. Webb at approximately 9:30 a.m. According to Mr. Webb, Principal Diskin informed him that "a faculty member was having difficulty with another faculty member" and that "a teacher had a possible medical issue." Mr. Webb responded telling Principal Diskin that he was on his way to the school. Mr. Webb notified the police. Principal Diskin also called and informed the District's Instructional Director Carol Long, who served as her immediate supervisor, about the situation.

8. a. At approximately 10:00 a.m., Principal Diskin invited Teacher L. to her office, and she kept him there to await Mr. Webb's arrival. Principal Diskin told Teacher L. that she received a report that he made a statement regarding the safety of the school. Teacher L. became upset about the purported statement. Mr. Webb, school police, and officers from the Los Angeles Police Department arrived at the school and joined Principal Diskin with Teacher L. Mr. Webb and the officers interviewed Teacher L., who became aggrieved about the focus of the interview. Mr. Webb asked Teacher L. about his conversation with Teacher P. According to Teacher L., "They questioned me; they asked if I

was homicidal or suicidal. I said I had no intention of hurting myself or anyone else. I said I had a fiance who I loved.”

b. Mr. Webb “assessed the situation” and made a “low risk determination.” According to Mr. Webb, “There was no truth to the statements comprising the rumor. There was no evidence [Teacher L.] was going to harm himself or others.” Mr. Webb testified that he “verified that [Teacher L.] had not made any threat or response that could be considered violent.”

c. Mr. Webb advised Principal Diskin that it nonetheless made sense to follow up with the Psychological Mobil Response Team (PMRT) as a precautionary measure. According to Mr. Webb’s testimony, involving the PMRT was “a part of protocol” and he wanted to make sure that he was taking the right step “so that the situation didn’t go sideways.” Mr. Webb instructed Principal Diskin not to send out any notice regarding Teacher L.’s condition to the school community. During the hearing Mr. Webb opined that it would have been “horrible judgment” to share the specifics of [Teacher L.’s] condition with the school community because “parents would turn around and tear up the school.” Principal Diskin testified, “It is given that you don’t send out information universally about a staff’s illness. It is a matter of privacy.”

9. While Teacher L. was being interviewed, the school proceeded with its 10:00 a.m. morning recess. According to respondent, during the morning recess in the presence of several other teachers and assembled children, Teacher P. told him that she reported to Principal Diskin that Teacher L. said he was going to shoot himself in front of the children at the school on Halloween.

10. Once Mr. Webb determined that Teacher L. “didn’t present a threat to the school campus,” Mr. Webb left the school. After Mr. Webb departed the scene, the PMRT determined to take Teacher L. to the hospital. According to Teacher L., “they wheeled me out on a gurney in front of the whole school during dismissal time.” “I never made threats to any LAUSD employee, parent, or kids. It never even entered my mind.”

11. Respondent learned from Teacher P. and other parents that Teacher L. was taken from the school on a gurney. According the respondent, parents congregated at the school at the end of the instructional day. One parent stated to respondent that her son, who was in Teacher L.’s class, told her that Teacher L. was taken out by the police on a gurney. She asked respondent what was going on. She stated to respondent that she asked the administration, and that she was told nothing was going on. She said to respondent that she did not believe the administration because her son does not lie. Respondent instructed the parent, “I don’t know what is going on. Go ask the office.”

12. The next day, on October 18, 2013, respondent went to Principal Diskin’s office before the instructional day began. Respondent told Principal Diskin that parents approached him and that they were upset about Teacher L. Respondent represented to Principal Diskin that he told the parents “I don’t know what is going on. Please go the

principal for information.” Respondent wanted to know whether Principal Diskin would be notifying the school community that Teacher L. made a threat to the school. According to Principal Diskin, she “demurred.” Principal Diskin indicated to respondent that the police determined that Teacher L. “didn’t make any viable threat,” and that Teacher L. was sick, and that she could not send out a notice regarding a private matter. Respondent became agitated and told Principal Diskin that she had a duty to inform parents, and that “parents would go to the district and demand that they be informed.” Principal Diskin testified, “I interpreted his demeanor as threatening; he was threatening me about my responsibility. I wanted to be firm that I couldn’t breach someone’s civil rights when something was deemed not credible and that I was following protocol.”

13. Respondent claimed at the hearing that he had no intent to threaten Principal Diskin. According to respondent, “I was feeling the heat of the parents. They were not happy with the information coming from the office.” “My purpose was to tell [Principal Diskin] that parents needed more information.” “I was attempting to convey the parents’ mood. The parents were upset. They said if we don’t get answers we are going to the district. It was not my idea for parents to go to the district and demand action. It was the idea of the angry parents.” Respondent acknowledged that at the time Principal Diskin told him “Don’t worry. I’ll take care of it. Send them to me.”

14. On October 21, 2013, at approximately 2:00 p.m., school police officers arrived at the school’s main office. Principal Diskin asked, “Hey guys what are you doing here? We didn’t call you.” The officers told Principal Diskin that they were at the school to check on her. Principal Diskin explained, “They received an anonymous threat that was called into a radio or television station stating that someone was coming to the school to shoot me.” The officers remained at the school throughout the dismissal period.

15. On October 21, 2013, school police visited Teacher L. at his home, and they queried him about a rumored “threat to dress as a nun and set off a bomb during the Halloween parade.” It was the first time that Teacher L. heard about the rumor. Teacher L. testified, “I couldn’t believe it. I worried about my reputation in the community. I worried about possible firing and not having a job—all for something I didn’t say or thought.”

16. Later that evening when Principal Diskin was at her home, she realized that she did not know enough about the threat. “I felt foolish because I didn’t ask questions regarding the surrounding circumstances of the anonymous threat.” The next morning, on October 22, 2013, Principal Diskin called the desk sergeant and inquired further about the anonymous threat. According to Principal Diskin, “They deemed the whole thing not credible. The sergeant had misspoken. The threat was not specific to me; it was general. I asked again, ‘Do I have to worry?’ They said they found it non-credible and said I didn’t have to worry.”

17. A professional development day was previously scheduled for October 22, 2013, in the afternoon, and the faculty was expected to meet. At that meeting, Principal Diskin announced to the faculty in attendance that the police informed her about “a threat

that was deemed not credible.” Principal Diskin informed the faculty that the threat was made anonymously and that the police conducted an investigation. Principal Diskin assured the faculty that there was “nothing to be concerned about,” that “there would be police,” and that “the goal is to keep the school safe.” Respondent raised his hand to be recognized, and when Principal Diskin called on him, he proceeded to link Teacher L.’s name with the discredited anonymous threat. Principal Diskin corrected respondent stating “No, No. [Teacher L.] is sick. He made no threat. The two are separate things.” Respondent insisted that Principal Diskin “send out a letter to parents.” According to respondent, he stated to Principal Diskin, “Wouldn’t it be wise to tell the parents? They deserve to know the information.” Principal Diskin reiterated that “she would not tell parents.” “[Teacher L.] did not make a threat; the other threat was deemed not credible by the police.”

18. Respondent testified that he was concerned and confused. “In my mind she said it was still being investigated. Also, there was already this heat from the [Teacher L.] issue. Again, she is keeping this from the parents. I said it was worthy enough for the police to tell you; it was worthy enough for you to tell the whole staff; therefore, it is worthy enough to tell parents.”

19. One faculty member present at the October 22, 2013 meeting recalled that respondent was confrontational. Another faculty member recalled that respondent “had some words” with Principal Diskin, and that respondent “just kept repeating the same thing.” Some members of the faculty applauded when Principal Diskin said she didn’t want to abridge Teacher L.’s civil rights. Others thanked Principal Diskin “for shutting Mr. Leopando down.”

20. After the October 22, 2013 faculty meeting, respondent sought out Principal Diskin to insist that she notify parents that Teacher L. presented a threat to safety school. Respondent continued to tell Principal Diskin that parents would demand that the district address the threat to the school community. Principal Diskin responded that Teacher L. was ill and that everyone wished him a speedy recovery. Principal Diskin repeated to respondent that there was no credible threat to the school community.

21. Principal Diskin testified that it would have been “more than insubordinate” not to follow Mr. Webb’s directive against a universal notification. “His directive was already cleared by a very high administrator.”

22. Despite Principal Diskin’s multiple statements to respondent that there was no credible threat to safety at 107th Street Elementary School, between October 22 and October 30, 2013, respondent warned the school community to avoid the school on Halloween day. Respondent communicated with at least 50 parents, whom he contends approached him about a rumored Halloween shooting. According to one testifying parent, respondent “was trying to warn parents that [Teacher L.] was going to dress up as a nun and shoot people.” Respondent contends, “Even if there was nothing I can do, I had to validate their questions. I know that community longer than the principal [and two other named faculty members] combined. If the community respects me, their children will respect me. I didn’t just brush

them off. So, I said, 'I heard that too, but I know no more than you.' I have to show some respect. I can't say, 'I don't know,' because I work there."

23. Respondent warned his colleague Teacher B. not to come to school on Halloween day. Respondent asked Teacher B. whether she had a child, and when she responded that she does have a child, respondent informed her that she would leave her child motherless should she attend the school on Halloween day.

24. Respondent announced to the children in his classroom that they should tell their parents not to bring them to school on Halloween day, October 31, 2013. Child N. recalled hearing respondent say Teacher L. "was going to bomb the school and shoot little kids." Child N. immediately crawled under a table because he was scared, and Child N. asked for respondent's permission to remain under the table. Respondent granted Child N. permission to do so, and Child N. remained under the table for the rest of the day. Child J. testified that she heard respondent say that "a teacher insulted a teacher and that teacher would come around and shoot the school." Child J. was scared to go to school on Halloween day. Child M. testified she heard respondent say that "somebody is going to come to school on Halloween and shoot it up." Child M. was scared that she "was going to get shot."

25. The testimonies of Child N., Child J., and Child M. were corroborated by a drawing or written statement they prepared in accordance with respondent's instruction to them to do so. Child N. prepared a drawing of a figure inside a building with eviscerating lines. The words "solo sot" appears on the drawing. (Exhibit 14.) Child Y. wrote, "Mr. Leopando said the school was going to get shoot." (Exhibit 15.) Child M. wrote, "Mr Leopando seid that the shool was going to get shot up." (Exhibit 13.) The drawing and writing exercise was intended to serve as a reminder for the children in respondent's second grade classroom to tell their parents not to bring them to school on Halloween day. Child M. relayed to her parent that respondent "said kids shouldn't come to school on Halloween because there is going to be a shooting." According to Child M.'s parent, Child M. was crying, upset, and scared. Child M. "worried about something bad happening to her."

26. Respondent additionally caused an October 29, 2013 flyer to be distributed to the children in his second grade classroom. The October 29, 2013 flyer contains a two-year old picture of Teacher L. with school children that was previously used in an appeal for donations. The flyer contains the following English statement along with a Spanish translation:

Dear Parents,

This is regarding a situation regarding 107th Street Elementary School. We have been informed that there is kindergarten teacher name [Teacher L.] who threatened the teachers, administration and students of our school. His threat is coming into campus on Halloween day of our carnival. [Teacher L.] is planning to use a costume as a disguise and killed [*sic*] staff on the premise. He will harm anyone in his way. For the safety of our children, and ourselves

please do not bring your children to school on Thursday October 31, 2013.
Lets [sic] spread the word!

Sincerely,
A very concerned parent

(Exhibit 11.) Child Y. credibly testified that she went to the restroom and that when she returned to the classroom the October 29, 2013 flyer was on her desk. Child Y. was “super scared.” Child Y. gave the flyer to her parent.

27. On October 30, 2013, at 8:10 a.m., after the instructional day began, Mr. Webb observed respondent standing at the school gate handing a copy of the October 29, 2013 flyer to a parent. At that time, respondent was expected to be in his classroom providing instruction to his students.

28. Children in Teacher M.’s third grade classroom told her that respondent instructed them not to attend school on Halloween Day because a man would be coming to the school to shoot them. The children in Teacher M.’s classroom were frightened and worried. During the week leading up to Halloween, Teacher M. spent 45 to 60 minutes each day calming down the children in her classroom.

29. On October 30, 2013, Principal Diskin learned from several children enrolled in the after-school program that respondent was actively informing them that a shooting would occur at the school on Halloween or that something bad would happen on Halloween. Principal Diskin reassured the children that “nothing was going to happen to them on Halloween.” Respondent claimed at the hearing that he had no discussions about a rumored Halloween shooting with the children in the after-school program, but maintains that if he did he would have stated, “I don’t know any more than you do. The only solution I have is—please tell your parents.” Respondent asserted he “only wanted to validate” the children.

30. Principal Diskin sought guidance from Mr. Webb, who determined that students should be invited to write about what they heard from respondent. Principal Diskin was assisted by another faculty member who instructed the children to “just write whatever you know about Halloween.” All of the participating children wrote that respondent told them about a school shooting that would occur on Halloween. For example, Child R.D. wrote the following, which is unedited for spelling, grammar, and punctuation:

I think it was october 23 on wensday mr. leopando said did you here what was on the news and I said no. Then he said did you here what was going to happen at school on Halloween. I said yes then I said we have to bring are costum to school in halloween. He said no not that the other thing then I said I don’t now what your talking aboat then. He called his student to come up and she told me about that they are gona shoot kid’s at school for halloween but I didn’t beleave her then I left.

(Exhibit 32-22.)

31. At the direction of Mr. Webb, Principal Diskin additionally prepared a child abuse report because it became apparent that “there was more than just a few complaints; it was wide-spread.” Respondent was telling the children that their safety was threatened, and such conduct, according to Principal Diskin, constitutes child abuse because “it was a threat to mental health and safety.” Concomitant with her preparation of a child abuse report, Principal Diskin contacted the Los Angeles Police Department, which in turn generated an Injury Investigation report. Principal Diskin advised the responding officer that it has been “alleged”² that Teacher L. would be coming to shoot up the school on Halloween. The responding officer notes in the Injury Investigation report that a sergeant communicated to him “that two teachers [respondent and Teacher L.] do not like each other which has provoked a rumor that [Teacher L.] was going to dress up as a nun and shoot the school up.” (Exhibit 30.)

32. In collaboration with the District’s Administrator of Operations, Daryl Narimatsu, the District’s Instructional Director, Carol Long, and Mr. Webb, Principal Diskin prepared a School Interoffice Memo addressing the school’s support for students for distribution to the school community on October 31, 2013. In pertinent part the memo states the following:

Staff: Our school community has encountered vast misfortunes in the past few weeks. Namely, our school climate has shifted with unproven notions that foster panic and distress amongst our teachers, staff, parents, and students. Subsequently, our students and families are in more need of your support to reduce any possible distress. Please take a moment to review this memo regarding our students’ safety and well-being. I am asking every teacher to read the following statement to their class at the beginning of our school day.

Class:

In the past few weeks, we have heard many stories about bad things that are going to happen at our school. Please understand that our principal, Dr. Diskin, and other adults at 107th Street Elementary School are doing everything they can to be sure you are safe. For your safety and the safety of others, it is very important for you not to share stories that you are not sure about. If you hear a bad story from your friends or another person at school, you must tell the principal

² Principal Diskin credibly testified that she used the word “allegedly” when she reported the matter to the Los Angeles police officer preparing the report. The officer, however, wrote “there is a possibility that a teacher . . . is going to come to shoot up the school tomorrow (10/31/2013).” (Exhibit 30.) Principal Diskin’s live hearing testimony is credited over the hearsay statements in the Injury Investigation Report. (See *Lake v. Reed* (1997) 16 Cal.4th 448.)

immediately. Our students at 107th Elementary School are very important to us and so we will put your safety first.

Carefully review the attached handout on Psychological First Aid (PFA). It is strongly recommended that you use these tools to best support your students.

(Exhibit 18.)

33. Mr. Webb telephoned respondent at his home during the evening of October 30, 2013, with the intention of advising respondent that he was doing a “preliminary pull,” and that respondent should not attend 107th Street Elementary School the following day on October 31, 2013. Respondent hung up the telephone before Mr. Webb was able to communicate that message to him.

34. On October 31, 2013, Halloween day, fifteen members or 25 percent of the faculty, including Teacher B., did not report to work at 107th Street Elementary School. Respondent did not report to work at 107th Street Elementary School on Halloween day. Only eight of the students in respondent’s second grade classroom attended school.³ Child N., Child J., and Child M. were among the students absent from respondent’s second grade classroom. According to the testimony of one fifth grade classroom teacher, four-fifths of his students were absent on Halloween Day, and he spent at least 10 minutes at the beginning of the instructional day reassuring those students present that “the school would protect them” and “that everything would be okay.” In total, three hundred and forty-five students or more than 37 percent of the student population were absent from 107th Street Elementary School on Halloween day, which absence in turn resulted in a subsequent \$10,000 reduction in funds allotted to the school.

35. Principal Diskin announced over the school’s public address system that faculty in attendance should look out for the School Interoffice Memo in their mailboxes. Principal Diskin explained that she wanted the faculty to be aware that some children might be in stress and that they should not hesitate to provide counseling. District administrators, including Mr. Webb, were present at 107th Street Elementary School on Halloween Day to “reassure everyone that it would be a calm day.” The 107th Street Elementary School October 31, 2013 Halloween activities proceeded without any shooting incident.

36. On October 31, 2013, Halloween day, Teacher L. was at his home recovering from a broken hip he sustained in an October 25, 2013 motorcycle accident. According to Teacher L.’s credible testimony, he was so disabled from his injuries he “couldn’t even change his underwear.” “I had to use pliers to put my socks on.” When Teacher L. subsequently recovered from his injuries, the District re-assigned him to another school because, as Mr. Webb’s testimony establishes, it would have been “difficult to provide for [his] safety in light of the incident.” “He could not be placed back at 107.”

³ The evidence admitted at the hearing did not establish the total number of students assigned to respondent’s second grade classroom.

37. After October 31, 2013, Child N. felt unsafe attending 107th Street Elementary School. He was absent 40 to 50 school days. His grades declined. Ultimately, Child N.'s family moved their home so that he could attend school in another district where he feels safe. Child N.'s mother observed changes in his behavior. Child N. awakens three to four times throughout the night screaming. Child N. is fearful when he sees any scenes involving guns on television.

38. Mr. Webb's testimony establishes that "the rumors affected the trust relationship between the school and the parent community." "Based on the fact that the principal didn't share the specifics of [Teacher L.'s] condition, parents believed the school was withholding information." The rumor "caused parents to take action to challenge the school leadership." The 107th Street Elementary School "is now a charter" outside the District's jurisdiction and operated by another entity.

39. On December 16, 2013, in the presence of Mr. Webb and a United Teachers Los Angeles representative, Principal Diskin conducted a conference in which she interviewed respondent about the events occurring between October 17 and 31, 2013. At the conference, Principal Diskin provided respondent with directives, including instructions to comport himself with the District's policy bulletins set forth in Factual Finding 2, and with an opportunity to respond. The conference is memorialized in "Summary of Conference on Monday, December 16, 2013." (Exhibit 21.) Respondent expressed a preference to provide a written response, and he was notified to do so before December 23, 2013.

40. On December 20, 2013, respondent provided Principal Diskin with "Response to Summary of Conference on Monday, December 16, 2013." In general, respondent's response attributes "only one source and trajectory of all this information" to "the school principal's staff and office." Respondent's response expressed his perception of "being railroaded into a scapegoat," which he notes is defined to mean "a person who is unfairly blamed for what others have done." (Exhibit 23.)

41. On April 1, 2014, the District issued two notices, a Notice of Unsatisfactory Acts of Certificated Employee (Exhibit 25) and a Notice of Suspension of Certificated Employee (Exhibit 26), both of which state, among other things, that respondent "Encouraged and participated in spreading a rumor that someone was going to shoot down the school and that children and staff should stay home on Thursday, October 31, 2013."

42. At the hearing Principal Diskin expressed that respondent's conduct was "repugnant." She recommended respondent's dismissal because she had "never encountered anyone who caused so many to fear for their children. Just nye a terrorist activity. There were so many people who have a tenuous connection to the school and this event upended that connection. We tried so hard to make the school a strong, nurturing place. [Respondent's conduct] compromised the children's sense of safety in the school environment." Principal Diskin emphasized that "regardless of whether [respondent] was an excellent academician, or received teacher of the year award, or was liked by parents," she

“wouldn’t change her recommendation because [respondent’s actions] were heinous actions.” According to Principal Diskin, the magnitude of respondent’s actions warranted more than a memorandum directing respondent to refrain for similar conduct in the future. “These particular actions were beyond what a mere memo would be used for.” Respondent “caused students to have nightmare; he caused students to come to me, essentially a stranger, and cry.” Respondent “caused students to relive memories of past trauma in the community.”

43. By letter dated May 23, 2014, the District’s Administrator of Operations Daryl Narimatsu notified respondent of a meeting scheduled for June 3, 2014, 2:30 p.m., to discuss respondent’s possible dismissal and immediate suspension by the Los Angeles Board of Education (Board). Respondent requested rescheduling the June 3, 2014 meeting, and his request was granted. A new meeting date was set for June 11, 2014. Respondent did not appear at the June 11, 2014 meeting. By letter dated June 12, 2014, Mr. Narimatsu informed respondent that failure to meet constituted a waiver of respondent’s opportunity for an administrative review. Mr. Narimatsu additionally informed respondent that, having reviewed all the available information, he determined that “the recommended discipline should be sustained” and that the dismissal recommendation would be forwarded to the Board for adoption. (Exhibit 38.)

44. By letter dated September 16, 2014, the Board notified respondent that he was suspended without pay and of its intention to dismiss him thirty days from the date of the letter. Accompanying the letter was a specification of charges setting forth the specific instances of conduct alleged to constitute respondent’s immoral conduct, unprofessional conduct, evident unfitness for service, and persistent refusal to obey the Board’s regulations for the District. On September 29, 2014, respondent demanded a hearing on the charges pursuant to Education Code section 44943. Thereafter, on October 8, 2014, the District filed and served an Accusation incorporating the charges contained in the September 16, 2014 notice. On October 9, 2014, respondent filed a notice of defense. Thereafter, this dismissal proceeding ensued.

45. As indicated above, throughout his testimony at the proceedings, respondent maintained that he sought to “validate” parents and students querying him about the rumored threat to 107th Street Elementary School. Respondent claimed he acted out of concern because he was aware of other incidents involving school shootings. Respondent asserted that without warning he did not know his conduct set forth in the charges was wrongful and in need of correction.⁴ On direct examination respondent denied the charges in the Accusation. Under cross-examination, however, respondent rambled as he admitted his ignorance and lack of personal knowledge about the origin and the specific character of the anonymous threat Principal Diskin learned about on October 22, 2013. Respondent admitted

⁴ It is unimaginable that a teacher of respondent’s experience could have failed to realize the wrongfulness of his acts. “Teachers, particularly in the light of their professional expertise, will normally be able to determine what kind of conduct indicates unfitness to teach.” (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 233.)

to his dissatisfaction with Principal Diskin for not informing parents about the threat. Respondent was apologetic without specifying the act or acts for which he offered an apology. Respondent asserted that he "may have been misunderstood" and that "looking back [he] could have projected a different impression."

LEGAL CONCLUSIONS

1. Education Code section 44932 provides that a permanent employee shall not be dismissed except for, among other causes, immoral conduct, unprofessional conduct, evident *unfitness for service*, and persistent violation of, or refusal to obey, reasonable regulations prescribed by the governing board of the school district employing him or her.

2. "Immoral conduct" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Board of Education of the San Francisco Unified School District v. Weiland* (1960), 179 Cal.App.2d 808, 811.)

3. "Unprofessional conduct" is conduct which violates the rules or ethical code of a profession or conduct unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) The conduct in question must indicate an unfitness to teach in order to amount to "unprofessional conduct." (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. "Evident unfitness for service" means "'clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.'" "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. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

5. "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" as cause for dismissal requires more than a single violation of a school board's rules by a permanent school teacher. (*Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, rehearing denied 28 Cal.App.3d 77.) In addition, persistent violation of, or refusal to obey, a district's governing board's reasonable regulations requires a "showing of intentional and continual refusal to cooperate." (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

6. a. In *Morrison v. State Board of Education*, *supra*, 1 Cal.3d at 235, the California Supreme 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 either students, school employees, or others who might be affected by his actions as a teacher.” The *Morrison* court made clear that abstract characterizations of a teacher’s conduct as “unprofessional” or “immoral” were insufficient grounds for removal from the teaching profession. Any such conduct must indicate a teacher’s evident unfitness to teach. The *Morrison* court therefore required a rational connection or nexus between alleged misconduct and a teacher’s competence or ability to effectively teach.

b. *Morrison* involved a teaching credential revocation proceeding; however, its holding applies to proceedings, such as this, involving dismissal from a single school district. (See *Board of Education v. Jack M.* (1977) 19 Cal.3d 691 indicating that the determinative test in teacher discharge cases is whether the person is fit to teach and upholding the factors delineated in *Morrison* for consideration.) Consequently, before respondent is subjected to dismissal from the District, the following several factors should be considered: the likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of credential held or applied for by the person involved; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; and the publicity or notoriety given to the conduct.

c. All *Morrison* factors need not be present to reach a determination that respondent is unfit to teach. In other words, an item by item analysis of each established individual fact is not required. Rather, *Morrison* calls for a comprehensive analysis of the accumulated established facts. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th at 1457.)

7. Complainant has the burden of proving by a preponderance of evidence that cause exists pursuant to Education Code section 44932 to dismiss respondent, a permanent certificated employee, from the District. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ (Citations.) . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) (Emphasis in text.) In meeting the burden of proof by a preponderance of the evidence, the complainant “must produce substantial evidence, contradicted or uncontradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

8. a. In this dismissal proceeding, the credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: the demeanor and

manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given.

b. In particular, the manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. (See Evid. Code, § 780.) The carriage, mannerisms, tone of voice and hesitation, eye contact, and facial expressions of a witness are “wordless language,” which although difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness, are not only part of the evidence for consideration, but also evidence on which the outcome of a case may be determined. (See *Dyer v. MacDougall* (2d. Cir., 1952.) 201 F.2d 265, 268-269.)

c. “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.)⁵

d. The Commission 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 Commission 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, 777.) Further, the Commission may even reject testimony that is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

e. “Although impeaching evidence in the nature of contradictions or otherwise has been received, it is still the right as well as the duty of the [Commission] to determine to what extent they believe or disbelieve the testimony. [Citations.] [The Commission] may likewise give credence to a witness . . . [citation] whose testimony contains contradictions or inconsistencies.” (*Hansen v. Bear Film Co.* (1946) 28 Cal.2d 154, 184.)

9. Complainant has established by a preponderance of evidence that respondent engaged in the conduct set forth in the Charges in the Accusation in this matter.

⁵ As observed in *Broadcast Music v. Havana Madrid Restaurant Corp.* (2d. Cir., 1949) 175 F.2d 77, 80, the best and most accurate record or hearing transcript is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was dried.

a. Charge 1: On or about October 18, 2013, LEOPANDO told Principal Karin Diskin, "If you don't send a letter to parents to tell them about [Teacher L.], they're going to go the District and demand action." After being told that the Principal would not send letters to the community about an employee's illness, LEOPANDO continued to assert in a threatening tone that it was Principal Diskin's responsibility to notify the community of any threats and that the parents would demand answers from the District. (See Factual Finding 12.)

b. Charge 2: On or about October 22, 2013, LEOPANDO disrupted a faculty meeting by conflating two separate incidents (one involving [Teacher L.] and one involving an anonymous threat), insisting that [Teacher L.] had been the person who threatened the school community, and became visibly angry when told that the police were [sic] investigating the anonymous threat and that there was no credible threat from [Teacher L.] (See Factual Findings 17 and 19.)

c. Charge 3: During the period commencing on or about October 21 through October 30, 2013, LEOPANDO told his second grade students that someone was coming to the school to shoot the school down on Halloween, causing only 8 students from his class to attend school on October 31, 2013. (See Factual Findings 24, 25, and 34.)

d. Charge 4: During the period commencing on or about October 21 through October 30, 2013, LEOPANDO approached [Teacher B.], a third grade teacher at 107th St ES and said, "Do you have a child? You might be leaving your child without a mother if you come to work on Halloween," causing [Teacher B.] to become frightened and not report to work on October 31, 2013. (See Factual Findings 23 and 34.)

e. Charge 5: During the period commencing on or about October 21 through October 30, 2013, LEOPANDO approached student [C.] during the after school program and told [her] to tell [Child R.D.] and [Child R.S.], also students in the after school program, that someone was going to shoot down the school on Halloween, causing [Child R.D.] and [Child R.S.] to become frightened and not attend school on October 31, 2013. (See Factual Findings 29 and 30.)

f. Charge 6: During the period commencing on or about October 21 through October 30, 2013, LEOPANDO encouraged and participated in spreading a rumor that someone was going to shoot down the school on Halloween and that children and staff should stay home on October 31, 2013. (See Factual Findings 22 through 30.)

g. Charge 7: On or about October 30, 2013, at approximately 8:10 a.m., LEOPANDO handed a flyer through the school fence to a parent. The flyer included a picture of an ill 107th St ES teacher and alleged that this same teacher would be coming to the school on Halloween, would be wearing a costume, and would kill staff and others on the campus. (See Factual Findings 26 and 27.)

h. Charge 8: On or about October 30, 2013, at approximately 8:10 a.m. LEOPANDO left his students waiting for him on the yard and failed to provide instruction to these same students while LEOPANDO was distributing a flyer through the school fence to a parent, as LEOPANDO's instructional day starts at 8:00 a.m. (See Factual Finding 27.)

10. Complainant has established by a preponderance of evidence that adverse consequences, including those set forth in the Charges in the Accusation in this matter, resulted from respondent's conduct.

a. Charge 9: On or about October 31, 2013, there were 348 students (30% of the student population) and 14 staff members (24% of staff) absent from school as a result of LEOPANDO spreading the rumor that someone was going to shoot down the school on Halloween and that children and staff should stay home on October 31, 2013. In 2012, only 8 percent of the student population and 6 percent of the staff were absent on Halloween. (See Factual Finding 34.)

11. a. Complainant has established by a preponderance of evidence that respondent's conduct set forth in Legal Conclusion 9 constitutes "immoral conduct" within the meaning of Education Code section 44932.

b. "A board of education is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental and physical welfare of the pupils during school hours." (*Johnson v. Taft School Dist.* (1937) 19 Cal.App.2d 405, 408.) Thus, the judiciary has long recognized that "[a] teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under . . . [the teacher's] care and protection." (*Board of Education of the City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 552.)

c. As a professional educator with nearly two decades of teaching experience in the District, it is not unreasonable to infer that respondent is aware of the impact of his words and actions on the children in his care and protection at 107th Street Elementary School. Respondent himself intimated that he cultivates a relationship with the community in order to gain the children's respect. Yet, without regard for his professional standing as a teacher, respondent repeatedly and systematically disseminated to children attending 107th Street Elementary School a rumor that there would be a threat to their safety at the school on Halloween day, October 31, 2013. Most significantly, respondent perpetuated the rumored threat after school administrators, who consulted with law enforcement officials and who were knowledgeable about and in possession of intelligence regarding the rumored threat, communicated to respondent on multiple occasions that the rumored threat was not credible. Respondent's words and actions kept the rumored threat alive, and in doing so, respondent fomented fear, especially in young children ill equipped with coping skills.

d. Children attending 107th Street Elementary School manifested anxiety, fearfulness, and worry that were both immediate and long lasting. Child N., for example, reflexively sought refuge under a desk in the classroom when he heard respondent's words.

Other than allowing Child N. to spend the instructional day hidden beneath the desk, respondent did nothing to comfort Child N., who was later plagued with sleeplessness, which interfered with his learning. Child N. lagged in his academic development. Ultimately, Child N. had to leave 107th Street Elementary School altogether.

e. Thirty percent of the children attending 107th Street Elementary School were so fearful they did not attend school on Halloween day, and as a consequence, they received no academic instruction on October 31, 2013. Respondent's words and actions incited fear in his colleagues. Fifteen percent of the faculty at 107th Street Elementary School did not report to work on Halloween day, October 31, 2013. Respondent's words and actions spreading unfounded rumors are inconsistent with rectitude, and as such, they constitute "immoral conduct."

12. a. Complainant has established by a preponderance of evidence that respondent's conduct set forth in Legal Conclusion 9 constitutes "unprofessional conduct" within the meaning of Education Code section 44932.

b. Although lacking the intelligence law enforcement officials and District and school administrators possessed, respondent disagreed with the course of action adopted for best managing the discredited rumored threat. Even recognizing respondent's prerogative to disagree with those District employees authorized to determine whether, when, and how to respond, respondent went beyond any legitimate expression of dissention. Respondent was confrontational with the school's principal when his uninformed opinion was set aside. Respondent contravened and undermined District administrators' and the principal's informed determination not to issue any universal notice of the discredited rumored threat or confidential information regarding another teacher when he caused the distribution of an inflammatory flyer to the children in his second grade classroom and to parents. In essence, respondent yelled "Fire!" when there was no fire. Respondent upended legitimate efforts to maintain calm and civility among the 107th Street Elementary School faculty, student body, and parents. These instances of respondent's defiance illustrate conduct unbecoming a member of the teaching profession in good standing, and as such, respondent's conduct constitutes "unprofessional conduct."

c. Pursuant to Education Code section 44938, respondent was entitled to notice and an opportunity to correct his behavior constituting "unprofessional conduct." In pertinent part section 44938 provides:

(a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge.

d. Since October 31, 2013, respondent has not taught at 107th Street Elementary School or at any other school in the District. Respondent, therefore, has had no opportunity to correct his faults or to overcome the grounds for the charge of “unprofessional conduct” prior to the Board’s September 16, 2014 letter notifying him of the charges alleged for his dismissal. Consequently, as provided for in section 44938, the dismissal of respondent from the District may not be premised on “unprofessional conduct.”

13. a. Complainant has established by a preponderance of evidence that respondent’s conduct set forth in Legal Conclusion 9 renders respondent “evidently unfit for service” within the meaning of Education Code section 44932.

b. Respondent was dogged and righteous about his uninformed opinion. Respondent was indifferent to the likely impact his promulgation of a false rumor would, and did, have on the 107th Street Elementary School community. The totality of respondent’s conduct evinces respondent’s contempt for those with the authority, knowledge, and accountability to decide and execute policies and directives for the protection of school safety and welfare. In turn, respondent’s contempt manifests an irremediable defect in temperament that renders respondent “evidently unfit for service.”

14. a. Complainant has established by a preponderance of evidence that respondent’s conduct set forth in Legal Conclusion 9 constitute a persistent violation of, or refusal to obey, the reasonable regulations prescribed the District within the meaning of Education Code section 44932.

b. Respondent’s refusal to abide by the District and school administrators’ determination not to widely disseminate notice of a disreputable rumor was persistent in that it occurred over an extended period of time—fourteen days.

15. a. Comprehensive analysis of the accumulated established facts indicates that respondent’s conduct demonstrates his unfitness to teach. Respondent, who holds a multiple subject credential, has no history of prior discipline. Respondent’s most recent teaching evaluation indicates that respondent “Meets Performance Standard.” Nonetheless, the calamitous consequences of respondent’s conduct, set forth in Legal Conclusions 9 through 14, so negatively impacted students, parents, and faculty of 107th Street Elementary School, that they dwarf respondent’s performance record.

b. Respondent’s conduct disseminating the discredited rumored threat is notorious. Respondent’s conduct caused children to suffer visible psychological harm—they experienced anxiety and stress—which in turn disrupted their education. Because of respondent’s conduct, the District had to re-assign a member of the 107th Street Elementary School faculty to another school because the safety of that faculty member could not be assured at 107th Street Elementary School. The partnership that District and school administrators sought to foster with the community fractured and parents successfully petitioned for the release of 107th Street Elementary School from the District’s jurisdiction. The motives for respondent’s conduct, to the extent that such motives were discernible from the established

facts, are unpraiseworthy. Respondent was evidently persuaded in his own mind that there was cause for concern about school safety on Halloween day in October 2013. In order to maintain the illusion of impending threat, respondent steadfastly ignored all informed indication to the contrary. Respondent's conduct is recent occurring just three academic years ago. As a result, respondent's conduct and its consequences continue to resonate throughout the community. Respondent's demonstrated irremediable temperament suggests a high likelihood that, presented with the opportunity, respondent would again engage in such conduct. As recognized in *Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th at 1445, discipline in the form of warnings and reprimand is unlikely to reform a flaw of temperament. Respondent offered a vacuous apology in which he made no attempt to name or even take ownership of his conduct. There is no evidence remotely suggesting that disciplining respondent would have any chilling effect on a constitutional right. Based on the foregoing analysis of the accumulated established facts in this case, the preponderance of evidence indicates respondent's unfitness to teach.⁶

16. By unanimous vote, the Commission determines that cause exists pursuant to Education Code section 44932, by reason of Factual Findings 1 through 45 and Legal Conclusions 1 through 11 and 13 through 15, to dismiss respondent from employment with the District as a permanent certificated employee for immoral conduct, for evident unfitness for service, and for persistent violation, or refusal to obey reasonable regulations.

⁶ This is in distinct contrast to *Board of Education of the Sunnyvale Elementary School v. Commission of Professional Competence* (1980) 102 Cal.App.3d 555, where the accumulated established facts in that case did not support a determination that a teacher falsely reporting that an explosive had been hidden in a school was unfit to teach when conflicting testimony was resolved in favor of the teacher. The *Sunnyvale* case does not preclude the Commission's determination of unfitness in this case as suggested by respondent's trial brief. (See Exhibit BB at p. 3.)

ORDER

Mark Leopando is dismissed as an employee of the Los Angeles Unified School District.

Dated: October 2, 2015


JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings


HELEN SHEPARD
Commissioner
Commission on Professional Competence


LUCIANO ORTIZ
Commissioner
Commission on Professional Competence