

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2014020005

AMNUAY PORNBIDA,

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence (Commission) at Los Angeles, California, on September 14, 15 and 16, 2015. The Commission consists of the following members: Helen Shepard, teacher; Jimmy Marin, teacher; and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, who presided.

The Los Angeles Unified School District (District) was represented by Kristine E. Kwong, Attorney at Law. Respondent Amnuay Pornbida (Respondent) was present and was represented by Carl Joseph, General Counsel, United Teachers of Los Angeles.

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

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Vivian Ekchian, in her official capacity as Chief Human Resources officer of the District.

2. On January 22, 2014, Respondent was given written notice of the District's intention to dismiss him unless he demanded a hearing. Respondent submitted a timely demand for a hearing.

3. The Statement of Charges dated November 26, 2013 and the Accusation dated February 4, 2014, both recommend the dismissal of Respondent from the District for the following legal causes under Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) immoral conduct; (3) unsatisfactory performance; (4) evident unfitness for service; and (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 employing Respondent.

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

5. District contends that Respondent demeaned and humiliated students, was verbally abusive, feigned hitting students, coerced students into making written statements about other students, retracting allegations against him and writing new statements and failed to change his behavior despite specific directives to do so.

6. Respondent contends that he had a difficult group of students that made up stories about him. He also contends that although he often told students to "shut your front door," he did not make the other comments attributed to him. Respondent admitted obtaining statements from students, but asserts that some of the statements were needed to offer proof of a student's behavior to parents and others were to prove to administrators that students had lied about his conduct.

Background Information

7. Respondent has been a teacher in the District for approximately 12 years and is a permanent certificated employee. Respondent has a Bachelor's degree and a Master's Degree in Education. He also obtained a law degree in Bangkok, but never worked as a lawyer. Respondent has a multiple subject credential, a math supplement and a tier one administrative credential. Respondent worked as a substitute teacher for the District for two years. Respondent taught Math and Science in 6th, 7th and 8th grades at Curtis Middle School for two years. Respondent requested, and was granted, a transfer to South Gate Middle School. Both schools are in lower socio-economic areas and predominately comprised of ethnic minority students. At Curtis Middle School, the student population is predominately African-American and at South Gate Middle School, the student population is predominately Latino. Respondent taught sixth grade Math, Science, and Health during the time period at issue in this case. He also taught Saturday school.

8. On April 27, 2010, Leticia Galvan, Assistant Principal at South Gate Middle School, became aware of some complaints from students about Respondent. She asked the students to put their complaints in writing. She received the following complaints:

- (1) K [REDACTED] M¹. claimed that Respondent rolled up a paper and hit him for reading last semester grades he found on the ground.
- (2) L [REDACTED] H. claimed that he saw Respondent hit his friend in [on] the foot.
- (3) O [REDACTED] O. claimed that Respondent used inappropriate language in Saturday school.
- (4) D [REDACTED] O. claimed that Respondent used innapropriate language in Saturday school.
- (5) J [REDACTED] R. claimed that he heard Respondent use inappropriate language during class.

9. After receiving the written complaints, Ms. Galvan called the Los Angeles County Sheriff and made a suspected child abuse report. After investigation, the Sheriff concluded that there was not enough evidence to establish that a crime had taken place. Next, following District protocol, Ms. Galvan conducted an administrative investigation. Ms. Galvan's investigation consisted of interviewing the students who gave the statements as well as randomly selected students from Respondent's various classes. After her investigation, Ms. Galvan concluded that there was not sufficient evidence to substantiate the complaints.

10. Ms. Galvan held a conference with Respondent on April 27, 2010. In the conference, Respondent advised Ms. Galvan that J [REDACTED] R. was not his student, but had given him several problems and he was concerned about J [REDACTED] R. Respondent admitted telling other students not to hang around with J [REDACTED] R. because he was a bad influence. Respondent denied that he ever hit students. Respondent brought additional written statements from students to the conference. In the new statements, some of the students retracted their previous accusations against Respondent. Ms. Galvan told Respondent that he could offer advice to students, but could not influence students' choice of friends. Ms. Galvan provided Respondent with a copy of the District Code of Conduct with Students. She stressed that item number 5 of the Code of Conduct with Students provides that teachers should refrain from "making statements or comments, either directly or in the presence of student(s), which are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning." She further directed him not to retaliate against students or there would be disciplinary consequences. The conference was memorialized in a written conference memorandum dated April 28, 2010, which was provided to Respondent. (Exhibit 15)

11. On May 18, 2011, Respondent was evaluated by Assistant Principal Susan Marquez-Gawthrop. The evaluation was approved by Principal Musetta Malone.

¹ First names and last initials are used in the Accusation and the Decision to protect the privacy of minors.

12. On February 9, 2012, Assistant Principal Audrey Criss had a conference with Respondent regarding complaints made by Students to her about Respondent's conduct on February 1, 2012 and February 3, 2012. Students made the following allegations:

13. In the February 9, 2012, conference, Respondent denied hitting any student, yelling at students or calling anyone "stupid." Respondent informed Assistant Principal Criss that M [REDACTED] A. often interrupted class instruction and threw papers at Respondent.

and that he spoke to M [REDACTED] A. outside of the classroom in a calm and quiet voice. Respondent also acknowledged that he had tried to get the students to give him the water balloons without success. He advised Ms. Criss that the students had "made up stories." At hearing, Ms. Criss testified that she had no reason not to believe the students. A report of suspected child abuse was made to the Los Angeles County Sheriff as is standard District policy in such cases. The Sheriff's Department did not find evidence of a crime. During the conference, Ms. Criss gave Respondent copies of the District Child Abuse and Neglect Reporting Requirements Bulletin, District Board Resolution Regarding Respectful Treatment of All Persons, District Code of Conduct with Students, District Employee Code of Ethics and District Abolition of Corporal Punishment Bulletin. During the conference Assistant Principal Criss directed Respondent to adhere to the written policies provided to him, treat all school stakeholders with courtesy and respect, not to use profanity or demean and/ or insult any school stakeholder, and not to retaliate against anyone who provided information about the complaints. Ms. Criss also gave Respondent a book about Classroom Management written by Rick Morris. Mr. Morris was a trainer that had provided a seminar on classroom management at the school. (Exhibit 17)

14. On April 23, 2012, Principal Malone issued a Notice of Unsatisfactory Act to Respondent alleging failure to follow district/school policies and procedures, poor judgment and inappropriate language based upon the above referenced complaints by students about his conduct on February 1, 2012 and February 3, 2012 as set forth in conference memorandum of February 9, 2012. Respondent refused to sign the acknowledgment of receipt of the Notice. (Exhibit 22.)

15. On May 3, 2012, Respondent was evaluated by Assistant Principal Criss. The evaluation was approved by Principal Musetta Malone. Respondent received a "meets standard performance" evaluation with notations of needing improvement in two areas. The areas that were designated for improvement were in (1) "Classroom Performance" where it was noted that Respondent needed to improve in the areas of establishing and maintaining standards for student behavior and creating a climate that promotes fairness and respect and (2) in "Developing as a Professional" where it was noted that he needed to improve in communication with colleagues, staff, parents and students in an appropriate manner. (Exhibit 14.)

16. On May 24, 2012, Principal Malone held a conference with Respondent concerning the written statements from students that Respondent had presented in the April 23, 2012 meeting with Ms. Malone. Also in attendance were Assistant Principal Stephen Foster and United Teachers of Los Angeles (UTLA) Chapter Chair Dimitrios Manikas. During the conference, Ms. Malone discussed the written statements that Respondent had obtained from student M [REDACTED] A.'s classmates during class time. The statements were obtained to contradict M [REDACTED] A. and support Respondent's position. Some of the statements were retractions of earlier written statements. Ms. Malone stressed that it was inappropriate for Respondent to use class time to obtain statements and that it was coercive for him to have students write statements because he controlled their class grades. The statements concerned the February 9, 2012 allegation that Respondent yelled at student

M█████A. and made remarks concerning his home life. Ms. Malone gave Respondent another copy of February 9, 2012 conference memorandum, the District Code of Conduct with Students, and the District Code of Ethics. Principal Malone also gave Respondent written directives as follows:

(a) I am directing you again to follow the directives given to you in the February 9, 2011 conference memo.

(b) I am directing you again not to discuss this incident, retaliate against students, parents, and/or staff members who have provided information, were involved, and/or gave statements.

(c) I am directing you to use instructional time appropriately and not to interview students during class time and or have them write statements for your personal purpose.

(d) I am directing you to follow the district Code of Conduct with Students.

(e) I am directing you to follow the district Employee Code of Ethics. Do not to (sic) to discuss this incident, retaliate against students, parents, and/or staff members who have provided information, were involved, and/or gave statements.

At the conference, Respondent said he would provide a written response to the allegations. Principal Malone memorialized the conference in a memorandum dated May 30, 2012. (Exhibit 18.) While there was no evidence of a written response, Respondent filed a grievance through his union. The outcome of the grievance was not established by the evidence offered in the case.

17. On a date not established by the evidence, Ms. Criss made Respondent aware that there were allegations that he had videotaped students in his classroom. On February 22, 2013, Respondent provided Ms. Criss with a written memorandum wherein he denied the allegations. Respondent wrote:

Regarding to photo (sic) taking in my classroom: I've never took (sic) Any(sic) pictures of students in or outside of my classroom during the period of November 2012, December 2012, January 2013 and February 2013

18. On March 7, 2013, Assistant Principal Criss issued a directive to Respondent "to cease photographing students in any manner, students attending South Gate Middle School" and warned that "Failure to make immediate and sustained improvement regarding this directive may lead to the issuance of a Below Standard Evaluation and/or discipline such as a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the Los Angeles Unified School District." (Exhibit 20.)

19. On March 15, 2013, Assistant Principal Criss held a conference with Respondent. UTLA representative Tobie Priest and Assistant Principal James Hooker also attended the conference. At the conference, Ms. Criss discussed the following conduct which had been reported to her by the students.

A. Students L■■■■B., A■■■■F., Y■■■■G., A■■■■J., J■■■■L., and C■■■■L. reported that during fourth period on March 6, 2013, Respondent asked for student volunteers and subsequently allowed the student volunteers to search the backpacks of the class looking for a wallet belonging to Y■■■■G. that had been reported stolen.

B. Students S■■■■F., R■■■■R. and B■■■■V. reported that on January 22, 2013, Respondent used his cell phone to videotape students in his class as documentation to provide to their parents to demonstrate their behaviors.

C. Students K■■■■R. and B■■■■V. reported that Respondent asked them to prepare letters to the parents of Student K■■■■M. about K■■■■M.'s behavior and to write in the letters that Respondent "did not pick on K■■■■." It was also reported by the students that Respondent requested that the students maintain confidentiality regarding his requests for the letters.

D. Students A■■■■F. and B■■■■V. reported that Respondent often screams and yells at students and makes negative remarks about students' physical characteristics in front of the class. The students also reported that during the first semester in January 2013, Respondent said to A■■■■M. "When I see you I only see black" and referred to R■■■■R. as fat by making remarks such as "Stop eating. You're too big. I'm going to tell Mr. Howe to make you run more laps."

E. B■■■■V. reported that Respondent said "I wish it were the time of hitting so I can smack you" and Students C■■■■L, R■■■■R., and A■■■■S. reported that Respondent said he wished he could hit students and routinely walked up to students and moved his hand forcefully up to their faces as if he was going to hit them and stopped short of hitting them in the face.

At the conference, Respondent denied the allegations and his union representative said that a written response would be made. Assistant Principal Criss gave Respondent copies of the District Child Abuse Bulletin, Board Resolution on the Respectful Treatment of all Persons, District Code of Conduct with Students, District Code of Ethics and District Abolition of Corporal Punishment Bulletin and directed him to adhere to the policies. Ms. Criss also

directed Respondent to treat all school stakeholders with courtesy and respect, not to use profanity or demean or insult any school stakeholder and not to retaliate against anyone who provided information concerning the matters. The conference was memorialized in a memorandum dated March 20, 2013. (Exhibit 21)

20. On April 10, 2013 Respondent was issued a Notice of Unsatisfactory Service or Acts and a 15 day suspension based upon allegations of conduct from August 14, 2012 to March 6, 2013. The Notice also included a recommendation by Principal Malone that Respondent be dismissed from employment with the District. Respondent filed a grievance through his union, but the outcome of the grievance was not in evidence. (Exhibit 23)

21. On April 25, 2013, Respondent received his annual evaluation. The evaluation rated Respondent's performance as below standard. Assistant Principal Criss was the evaluator and Principal Mallone was the approving administrator. According to the evaluation, Respondent needed improvement in five areas of: (1) guides all students to be self-directed and assessing their own learning, (2) provides an effective classroom environment, (3) establishes professional goals and demonstrates continuous growth, (4) communicates regularly with students and parents about instructional goals and student progress, and (5) follows district and state policies, laws and regulations. Assistant Principal Criss also rated Respondent as falling below standards in the following three areas: (1) establishes and maintains standards for student behavior and creates a climate that promotes fairness and respect, (2) provides effective supervision of students and (3) communicates and interacts with colleagues, staff, parents, and students in an appropriate manner. (Exhibit 15)

22. On September 18, 2013, James Noble, Ed.D., Administrator of Operations for the District, conducted an administrative review of the proposed dismissal of Respondent. As part of the review, Dr. Noble met with Respondent and reviewed the following documents: (1) Notice of Unsatisfactory Acts issued on April 10, 2013, (2) Notice of Suspension for 15 days issued on April 10, 2013, (3) Notice of Unsatisfactory Acts issued on April 23, 2012, (4) Notice of Suspension dated April 23, 2012, (5) Conference memorandum issued by Assistant Principal Audrey Criss dated March 7, 2013, (6) Written Directive issued by Assistant Principal Audrey Criss dated March 7, 2013, Below Standard Evaluation dated April 29, 2013 issued by Assistant Principal Audrey Criss, Evaluation dated May 4, 2012 issued by Assistant Principal Audrey Criss and Evaluation dated May 18, 2011 issued by Assistant Principal Susan Marquez-Gawthrop. Respondent's UTLA representative Scott Gerber and District's Field Director for the Office of Staff Relations, Dr. Maribel Luna, were also present. At the meeting, Respondent provided Dr. Noble with copies of the student statements he had obtained in an effort to dispute the allegations made against him and denied that he had engaged in any of the conduct of which he had been accused. Dr. Noble asked Respondent where he had obtained the statements and Respondent informed him that the statements were obtained from the students as evidence. At hearing, Dr. Noble testified that he was concerned about the statements that Respondent obtained from the students. Dr. Noble asserted that it was inherently coercive for Respondent, a teacher who has control of the students' grades, to ask students for statements in his support and to ask them to retract statements. After consideration, Dr. Noble forwarded the proposed disciplinary action to the

District Board of Education for action. Respondent felt that Dr. Noble did not give any real consideration to his evidence.

23. On a date not established by the evidence, Respondent was removed from the classroom and "housed" at a local District office. A Notice of Intention to Dismiss was served on Respondent on January 22, 2014.

24. The Commission found the testimony of Assistant Principal Criss credible. Ms. Criss reluctantly followed through with the evaluation of Respondent. The number and seriousness of the student complaints made it impossible for her to ignore Respondent's conduct. During her observations, Ms. Criss noted that Respondent did not post student work, the classroom was not clean and the environment was chaotic. She observed students out of their seats and generally an environment that was noisy and chaotic. When asked about her opinion of Respondent, Ms. Criss opined that Respondent was untruthful and never "owned up to anything." She also opined that Respondent was not fit to be a teacher.

25. The Commission found the testimony of Principal Mallone credible. Ms. Mallone also observed Respondent's classroom to be chaotic and out of control. After observing Respondent's class Ms. Mallone concluded that Respondent had no command of the classroom and no classroom management skills. She was concerned about the allegations made by students about Respondent's behavior and became more concerned when she learned that Respondent had asked students to retract statements and/or prepare statements for him.

26. Student B [REDACTED] V. credibly testified that Respondent frequently displayed anger. In her experience, Respondent spoke in a loud voice which she described as a "9" on a scale of 1 to 10. He also hit her desk with a ruler in a display of anger. He sent her to an adjacent unoccupied classroom with dim lights as a disciplinary measure on more than one occasion. B [REDACTED] V. wrote a statement about Respondent's conduct and then retracted it at his request. At hearing, she credibly testified that her original statement was truthful. Although B [REDACTED] V. saw backpacks searched by students in the classroom, her backpack was not searched.

27. Student L [REDACTED] A. credibly testified that Respondent used the word "stupid" often in reference to student activities or behavior. L [REDACTED] A. never heard Respondent call a student stupid. L [REDACTED] A. often saw Respondent strike desks with rulers, feign striking students with his hand, and often told students to "shut up." L [REDACTED] A. did not feel intimidated by Respondent and stated that "I knew he wouldn't hit us." However, he did not like Respondent and testified that Respondent was "not my kind of teacher." Respondent called L [REDACTED] father on at least one occasion which resulted in L [REDACTED] being disciplined at home. L [REDACTED] A. opined that Respondent did not care about the students and expressed that being in Respondent's class made him "feel bad." Respondent once told L [REDACTED] A., "Just fail, I don't care." L [REDACTED] A. remembered that Respondent had authorized students to search backpacks for a lost wallet on one occasion. He was not comfortable with the backpack search because he was concerned that someone would steal his things from his backpack. L [REDACTED] A. admitted that

he did not like Respondent and opined that many of the students did not like Respondent because of Respondent's behavior. Ultimately, L■■■A. failed Respondent's class.

28. Student A■■■S. credibly testified that Respondent raised his hand to students, stopped close to their faces, and pretended to hit them in the face. A■■■S. opined that Respondent had an angry expression on his face when he pretended to hit the students. A■■■S. also heard Respondent talk about the "old days" when a teacher was allowed to physically discipline students. A■■■S. had Respondent as her teacher for Math and Science during third and fourth periods. A■■■S. witnessed Respondent making comments about student A■■■M.'s dark skin and Student R■■■R. being fat. A■■■S. was in class the day that student Y■■■G.'s wallet was missing. The students were not allowed to leave the classroom until the back packs were searched. She thought it was wrong that the backpacks were searched and reported the incident to the Dean.

29. Student D■■■A. wrote a statement about Respondent's conduct and later retracted it at Respondent's request because he told her the statement would result in him losing his job. D■■■A. retracted her statement at his request for that reason. D■■■A. credibly testified that Respondent commented that she had "vampire teeth" and told her that if she was concerned about other people calling her a "Hoochi Mama" then she should not dress like a "Hoochi Mama." According to D■■■A., Respondent was very loud in the classroom and used the words "stupid" and "shut up" a lot. Nevertheless, D■■■A. did return with friends to visit Respondent's classroom on occasion when she was no longer a student of his.

30. Respondent was the only defense witness proffered. The Commission found Respondent's testimony not credible for the most part. He was inconsistent and seemed to change his answers to questions as his testimony progressed. Respondent admitted that he had a cellphone in the classroom, but denied videotaping the students. He offered the telephone to Ms. Criss during a meeting and told her she was free to search for video of the students on his telephone. At hearing, Respondent denied telling students to "shut up," but seemed to be amused by describing the many times he told his students to "shut your front door" to quiet them down and "make them think." Respondent also admitted that one of his classroom management tools was to loudly talk over the students until he got their attention.

31. Respondent also admitted that he discussed corporal punishment administered in school and in other countries with his students. Respondent asserted that the discussion was important and related to social studies, however he did not teach social studies. Respondent denied ever raising his hand to students or pretending to hit them. Respondent admitted asking students to prepare written statements for his defense and admitted asking students to retract their statements. Respondent denied ever kicking students. Respondent asserted that students frequently attempted to trip him as he walked around the classroom and it was possible that during one of those episodes he made accidental contact with a student's foot.

32. With respect to M[REDACTED] A., Respondent asserted that M[REDACTED] A. was off-task and he asked M[REDACTED] A., "what do you need?" He claimed to have noticed that M[REDACTED] "was not himself" and sent him to the counselor. When M[REDACTED] A. returned from the counselor's office he threw a piece of paper on a table. Respondent determined that M[REDACTED] A. was still "not ready to be there" and told him to go back to the counselor's office. Respondent stated that he asked M[REDACTED] A. "What is bothering you?" and M[REDACTED] A. told him that he would be leaving to go to another school. Respondent claimed not to know that M[REDACTED] A.'s father was not in the home and he did not comment on M[REDACTED] A.'s father. Respondent asserted that M[REDACTED] A. did not usually do his classwork and was disruptive.

33. Respondent also admitted that he asked two students that were friends of K[REDACTED] M. to write statements about K[REDACTED] M.'s behavior in the classroom so that he could give the statements to K[REDACTED] M.'s mother. Respondent rationalized his request because K[REDACTED] M.'s mother did not believe him, he assumed that she would believe the students that were familiar to her. When he raised the concept with K[REDACTED] M.'s mother, she told him that she would be interested in seeing such statements.

34. Respondent testified about an incident wherein student Y[REDACTED] G. was upset and crying about a lost or stolen wallet that was given to him for his birthday by his father. Respondent testified that he told Y[REDACTED] G. to tell the dean and that he was aware some students had searched backpacks of other students as the bell rang, but he had not instructed them to do so. Respondent's testimony was not credible on this point.

35. Respondent testified inconsistently about placement of B[REDACTED] V. in an adjacent classroom. Early in his testimony, he asserted that B[REDACTED] V. was removed from the classroom because she needed to be separated from her friends. Later in his testimony, he asserted that B[REDACTED] V. was asked to sit in the adjacent classroom only once or twice to take tests. He insisted that the classroom was not dark, he could adequately supervise her in the adjacent classroom, and that it was not a room he used for discipline.

Findings related to Specific Allegations

36. In paragraph 1 of the Accusation, Complainant alleges:

On or about April 21, 2010, PORNBIDA rolled up a newspaper and struck student K[REDACTED] M. after K[REDACTED] M. was observed reading last semester grades found on the floor.

37. Complainant failed to establish by a preponderance of the evidence that Respondent struck student K[REDACTED] M.

38. In paragraph 2 of the Accusation, Complainant alleges:

On or about March 24, 2010, PORNBIDA kicked student L[REDACTED] H. as L[REDACTED] walked by.

39. Complainant failed to establish by a preponderance of the evidence that Respondent kicked student L [REDACTED] H.

40. In paragraph 3 of the Accusation, Complainant alleges:

During the month of March 2010, PORNBIDA said to student J [REDACTED] R., "Get the fuck out of my class."

41. Complainant failed to establish by a preponderance of the evidence that Respondent made the statement alleged in paragraph 3 to student J [REDACTED] R.

42. In paragraph 4 of the Accusation, Complainant alleges:

On or about February 1, 2012, PORNBIDA made the following statements to student M [REDACTED] A.:

a. As M [REDACTED] was talking and raising this hand, PORNBIDA yelled, "What's wrong with you? Is somebody at your house not living with you?"

b. M [REDACTED] responded that his father is not living with him. PORNBIDA replied, "That is why you are so messed up." M [REDACTED] then informed PORNBIDA that he wanted to see his counselor.

43. It was established by a preponderance of the evidence that M [REDACTED] was upset when he came to Respondent's class, that Respondent had a conversation with M [REDACTED] about M [REDACTED]'s father, and that Respondent made reference to M [REDACTED]'s father not being in the home and that being why M [REDACTED] was having problems that day. However, Complainant failed to establish by a preponderance of the evidence that Respondent made the exact statements alleged in paragraph 4.

44. In paragraph 5 of the Accusation, Complainant alleges:

On or about February 1, 2012, student M [REDACTED] A. returned from the counselor and approached PORNBIDA with his note, PORNBIDA told him to go back to the counselor because PORNBIDA believed that M [REDACTED] threw his note down.

45. It was established by a preponderance of the evidence that M [REDACTED] A. was upset when he returned from the counselor's office and Respondent told him to return to the counselor's office because he did not believe that M [REDACTED] A. was ready to be in the class.

46. In paragraph 6 of the Accusation, Complainant alleges:

On or about February 1, 2012, PORNBIDA slammed his classroom door and walked outside with student M [REDACTED] A. after M [REDACTED] A. returned from the counselor's office, PORNBIDA yelled at M [REDACTED] and called him "stupid."

47. It was not established by a preponderance of the evidence that Respondent yelled at M [REDACTED] or called him "stupid." However, it was established that Respondent frequently used "stupid" and yelled in the classroom.

48. In paragraph 7 of the Accusation, Complainant alleges:

On or about February 1, 2012, when student D [REDACTED] A. asked PORNBIDA if he could speak to students in that matter, PORNBIDA responded, "I just did. Didn't I?"

49. Complainant established that in some context Respondent said "I just did. Didn't I." However, the context and what the statement was in response to were not established by a preponderance of the evidence.

50. In paragraph 8 of the Accusation, Complainant alleges:

On or about February 3, 2012, while confiscating water balloons during nutrition, PORNBIDA shouted at student G [REDACTED] M., "Don't fuck around with me!"

51. The preponderance of the evidence established that Respondent confiscated water balloons during nutrition on February 3, 2012 and was not happy that students were throwing water balloons. However, the preponderance of the evidence did not establish that he shouted "Don't fuck around with me!" at student G [REDACTED] M.

52. In paragraph 9 of the Accusation, Complainant alleges:

On or about February 3, 2012, PORNBIDA pushed at least three students [REDACTED] with his fist and lined them up against the wall.

53. Complainant failed to establish the allegations of paragraph 9 by a preponderance of the evidence.

54. In paragraph 10 of the Accusation, Complainant alleges:

On or about March 6, 2013, student Y [REDACTED] G. alleged that his wallet had been stolen. PORNBIDA asked students in his third period class to volunteer to through the backpacks and pockets of other students in class

In an effort to recover the wallet.

55. Complainant established the allegations set forth in paragraph 10 by a preponderance of the evidence.

56. In paragraph 11 of the Accusation, Complainant alleges:

On or about March 6, 2013, PORNBIDA directed the student volunteers in his third period class to search through the backpacks of students in the class in an effort to recover student Y■■■■G's missing wallet.

57. Complainant established by a preponderance of the evidence that on or about March 6, 2013, students in Respondent's third period class searched through the backpacks of students in the class in an effort to recover student Y■■■■G's missing wallet. While Complainant failed to establish that Respondent directed the students to make the search, it was clear that Respondent made no effort to stop the search.

58. In paragraph 12 of the Accusation, Complainant alleges:

On or about January 22, 2013, PORNBIDA used his cell phone to make video recordings of his students. He claimed he intended to use the video to show parents how their children behaved in class. He had previously been directed not to do so.

59. Complainant established by a preponderance of the evidence that Respondent had a cellphone out in class and that the flashlight from the cellphone was on leading some of the students to believe that he was videotaping them, but it was not established by a preponderance of the evidence that Respondent made any actual recording of the students.

60. In paragraph 13 of the Accusation, Complainant alleges:

During the period commencing on or about January 7, 2013, and ending on or about March 6, 2013, PORNBIDA instructed students K■■■■R. and B■■■■V. to write statements about the behavior of another student, K■■■■M., so that PORNBIDA could share the statements with K■■■■M.'s parents.

61. Complainant established the allegations set forth in paragraph 13 of the accusation by a preponderance of the evidence.

62. In paragraph 14 of the Accusation, Complainant alleges:

During the period commencing on or about January 7, 2013, and ending on or about March 6, 2013, PORNBIDA referred to one or more students as a "piece of crap."

63. Complainant failed to establish the allegations set forth in paragraph 14 by a preponderance of the evidence.

64. In paragraph 15 of the Accusation, Complainant alleges:

During the period commencing on or about January 7, 2013, and ending on or about March 6, 2013, PORNBIDA told student A [REDACTED] M., "When I see you, I only see black."

65. Complainant failed to establish the allegations set forth in paragraph 15 of the accusation by a preponderance of the evidence. However, Complainant did establish by a preponderance of the evidence that Respondent referred to A [REDACTED] M.'s skin color in a negative way.

66. In paragraph 16 of the Accusation, Complainant alleges:

During the period commencing on or about August 14, 2012, and ending on or about January 7, 2013, PORNBIDA made the following comments to student R [REDACTED] R.:

"Stop eating."

"You're too big."

"I'm going to tell Mr. Howe to make you run more laps."

"[Y]ou can be a sumo wrestler."

67. The preponderance of evidence established that Respondent told Respondent to "stop eating" and said "I'm going to make you run more laps." These statements were made by Respondent in the context of a discussion about R [REDACTED] R.'s weight. Although it was not shown that the other two specific statements were made-the statements are consistent with the tone and content of the conversation about R [REDACTED] R.'s weight. Complainant's witness B [REDACTED] V. credibly testified that she heard Respondent call R [REDACTED] R. "fat" in the classroom and that she heard Respondent tell R [REDACTED] R. to stop eating donuts.

68. In paragraph 17 of the Accusation, Complainant alleges:

During the period commencing on or about January 7, 2013, and ending on or about March 6, 2013, PORNBIDA stated to student B [REDACTED] V., "I wish I could go back in time so that I could hit you."

69. The preponderance of the evidence established that Respondent had discussions with students about times "back in the day" and in other countries including

China, South Korea, England, Japan and Thailand, that students were hit as physical discipline and he discussed the caning of a prisoner in South Korea. These discussions were not germane to or related to the curriculum. Although he discussed physical discipline with the class, it was not proven by a preponderance of the evidence that he told B [REDACTED] V. that "I wish I could go back in time so that I could hit you."

70. In paragraph 18 of the Accusation, Complainant alleges:

During the period commencing on or about January 7, 2013, and ending on or about March 6, 2013, PORNBIDA walked up to students in his class on more than one occasion, moved his hand forcefully toward their faces as if to strike them, then stopped just short of making contact with their faces.

71. Complainant established the allegations set forth in paragraph 18 of the Accusation by a preponderance of the evidence.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter pursuant Education Code² section 44944. (Factual Findings 1 through 4.)

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

3. District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709.)

4. The Accusation and Statement of Charges does not set forth specifically which of District's factual allegations relate to each of the five alleged grounds for dismissal: (1) unprofessional conduct, (2) immoral conduct, (3) unsatisfactory performance, (4) evident unfitness for service, and (5) refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district.

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

5. Section 44932, as amended, provides in pertinent part:

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

(1) Immoral conduct, including but not limited to, egregious misconduct....¶

(2) Unprofessional conduct.

...[¶]...[¶]

(5) Unsatisfactory Performance

(6) Evident unfitness for service.

...[¶]...

(8) 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 or by the governing board of the school district employing him or her.

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

7. “Unprofessional conduct” as used in section 44932, subdivision(a)(2), as amended, may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553; *Perez v. Commission on Professional Competence* (1983) 149 Cal. App. 3d 1167, 1174.)

8. “Evident unfitness for service,” within the meaning of section 44932, subdivision (a)(6), as amended, means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.) Evident unfitness for service requires that unfitness be attributable to a defect in temperament which connotes a fixed character trait, presumably not remedial upon receipt of notice that one’s conduct fails to meet the

expectations of the employing school district. (*Id.* at p. 1444.)

9. Under section 44932, subdivision (a)(8), as amended, the violation of school rules must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App. 3d 77, 84.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

10. With respect to determination of witness credibility: On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability. (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

11. Even where unprofessional conduct or evident unfitness for service are established, it must also be established that such unprofessional conduct, or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal. 3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal. 3d 208; *Woodland, supra*, 4 Cal.App. 4th at pp. 1444-1445.) Under the facts of the *Morrison* case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

12. In *Morrison*, the California Supreme Court noted that legislation authorizing disciplinary action against the holders of a variety of certificates, licenses and government jobs other than teaching contain general terms. The Court had not attempted to formulate explicit definitions of those terms, but had given those terms more precise meaning by referring to the particular profession or specific governmental position to which they were

applicable. (*Ibid.*, at p. 220). With regard to such general terms "immoral" or unprofessional conduct" and "moral turpitude," those terms had to be interpreted in a manner bearing upon the teacher's fitness to teach. "Without such a reasonable interpretation, the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state." (*Ibid.*, at p. 225.) Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal. 3d. at 220.) The *Morrison* factors are analyzed with Respondent to Respondent's conduct as follows:

(a) *Morrison* Factor: *The likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity.* The conduct had an adverse effect on students, fellow teachers, and the educational community as a whole. The students in Respondent's class experienced the negative effects of Respondent's lack of classroom management and inappropriate conduct. Fellow teachers were effected by his conduct when the students moved to the next class after having been in the chaotic environment that existed in Respondent's classes. Fellow teachers had to work with students to readjust expectations for classroom behavior. The entire educational community and the community loses confidence in the school and the teacher when such behavior occurs. Respondent's conduct had a significant impact on students and a moderate impact on fellow teachers and the community.

(b) *Morrison* Factor: *The proximity or remoteness in time of the conduct.* The conduct was proximate in time and repeated.

(c) *Morrison* Factor: *The type of teaching certificate held by the teacher.* Respondent held a multiple subject credential and a math supplement which were the appropriate credentials for the teaching assignment.

(d) *Morrison* Factor: *The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct.* The conduct went on for an extended period of time while the administration failed to monitor and intervene appropriately and expeditiously, which resulted in an escalation of the situation. Furthermore, the administration did not support the students and teacher and intervene in an appropriate manner. There was not any publicity about Respondent's conduct.

(e) *Morrison* Factor: *The praiseworthiness or blameworthiness of the motives resulting in the conduct.* There was nothing praiseworthy about Respondent's conduct. Respondent displayed poor judgment and inappropriate behavior in multiple situations by raising his hand to students, calling students "stupid," using the word "stupid" often, yelling, engaging in inappropriate discussion, and lack of impulse control.

(f) *Morrison* Factor: *Likelihood of Recurrence:* The conduct is likely to reoccur unless Respondent makes significant changes. However, Respondent might be assisted by

concentrated and extensive training in classroom management, impulse control and anger management. Such training should provide specific direction and guidance.

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

13. The Commission found that Complainant did not establish by a preponderance of the evidence that Respondent's conduct was immoral. It was not established that Respondent's conduct was inconsistent with rectitude, indicative of corruption, indecency, depravity, dissoluteness; nor that he displayed willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community or an inconsiderate attitude toward good order and the public welfare. The Commission determined that cause does not exist to dismiss Respondent for immoral conduct, pursuant to section 44932, subdivision (a) (1), for the reasons set forth in Factual Findings 1-71 and Legal Conclusions 1-6.

14. The Commission found that Complainant established by a preponderance of the evidence that Respondent's conduct was unprofessional. Respondent's demeanor, comments, lack of classroom management and conduct associated with obtaining statements from students occurred over a substantial period of time and constituted conduct unbecoming of a member of a profession in good standing pursuant to section 44932, subdivision (a)(2). (Factual Findings 1-71 and Legal Conclusions 1, 2, 3, 5, 7, 10, 11, and 12.)

15. The Commission found that Complainant established by a preponderance of the evidence that Respondent's service was unsatisfactory pursuant to section 44932 (a)(5). Respondent was given several opportunities and clear directives about his conduct, demeanor, and comments, but he failed to improve. (Factual Findings 1-71 and Legal Conclusions 1, 2, 3, 5, 7, 10, 11 and 12.)

16. The Commission found that Complainant established by a preponderance of the evidence that Respondent is unfit to teach. It was established that Respondent has a defect in his temperament and a fixed character trait that makes him unfit to teach as demonstrated by his disturbing behavior with students, refusal to change his conduct and apparent failure to comprehend the seriousness of his misconduct. The Commission determined that cause exists to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(6), for the reasons set forth in Factual Findings 1-71 and Legal Conclusions 1, 2, 3, 5, 8 and 10-12.

17. The Commission determined that cause exists to dismiss Respondent for persistent violation of school laws of the state or the reasonable regulations prescribed by the government of the public schools by the state board or by the board of the school district

employing him pursuant to section 44932, subdivision (a)(8), for the reasons set forth in Factual Findings 1-71 and Legal Conclusions 1, 2, 3, 5, 9-12.

18. Even where cause for dismissal has been established, the Commission has broad discretion to determine whether dismissal is warranted. (*Fontana, supra*, 45 Cal.3d at pp. 220-222.) 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. (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 343-344.)

19. The Commission found that Respondent's practice of yelling at students, raising his hands to students, calling students "stupid," and making demeaning and humiliating comments to them was unacceptable. Respondent displayed a complete lack of classroom management skills and placed the students at risk by allowing such a chaotic environment. Respondent also displayed no respect for the privacy of his students when he allowed students to search backpacks of others during class time instead of contacting the administration. Additionally, Respondent failed to comprehend that it was inappropriate and coercive to ask students to write statements about the behavior of their friends and classmates and to retract or write new statements for his defense. Respondent's behavior is disturbing and indicative of bully behavior that must not be tolerated. The Commission determined that the instances of unprofessional conduct, unsatisfactory performance, violation of school laws and board policies continued, despite repeated opportunities and specific direction from the administrators for Respondent to correct his practices. By his conduct, Respondent has demonstrated an unfitness to teach, and as such warrants dismissal under section 44932, subdivisions (a)(2), (5), (6) and (8). The Commission members agree unanimously that dismissal is necessary to protect students, and to deter Respondent from engaging in similar conduct in the future. Accordingly, all evidence having been considered, the Commission found that Respondent is unfit to teach and should be dismissed.

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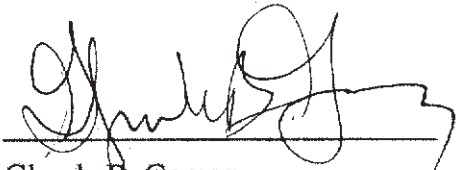
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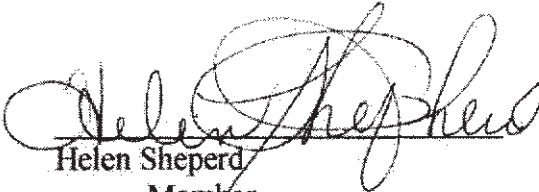
ORDER

The Accusation and Statement of Charges are affirmed. Amnuay Pornbida shall be dismissed from his position as a permanent certificated employee of the Los Angeles Unified School District.

Dated: November 30, 2015


Glynda B. Gomez
Administrative Law Judge
Commission on Professional Competence

Dated: November 13, 2015


Helen Sheperd
Member
Commission on Professional Competence

Dated: November _____, 2015

Jimmy Marin
Member
Commission on Professional Competence

ORDER

The Accusation and Statement of Charges are affirmed. Amnuay Pornbida shall be dismissed from his position as a permanent certificated employee of the Los Angeles Unified School District.


Dated: November ____, 2015

Glynda B. Gomez
Administrative Law Judge
Commission on Professional Competence

Dated: November ____, 2015

Helen Sheperd
Member
Commission on Professional Competence

Dated: November 24, 2015


Jimmy Marin
Member
Commission on Professional Competence