

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
HEMET UNIFIED SCHOOL DISTRICT
COUNTY OF RIVERSIDE

In the Matter of the Dismissal of:

JAY EDWARDS,

Respondent.

OAH NO. 2012060666

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (Commission) in Hemet, California, on January 22, 23, 24, and 28, 2013. The Commission consisted of the following members: Administrative Law Judge Mary Agnes Matyszewski, Maureen Eckholdt and Arthur Eddy.

Mark Thompson, Atkinson, Andelson, Loya, Ruud & Romo, represented the Hemet Unified School District (the district).

Jay Edwards (respondent) personally appeared and was represented by Fern Steiner, Smith, Steiner, Vanderpool & Wax.

Oral and documentary evidence was received on January 22-24, 2013. The Commission met in executive session to deliberate on January 28, 2013, after which the matter was submitted.

FACTUAL FINDINGS

Jurisdictional Matters

1. The Dismissal Accusation was filed by LaFaye Platter while acting in her official capacity as Deputy Superintendent, Human Resources.

2. Respondent is a permanent certificated employee of the district. At all relevant times, he was a resource specialist teacher¹ who taught at Hemet Elementary School and Hemet High School.

¹ Employment documents identified respondent as a resource specialist, even though the district asserted that respondent was a mild/moderate teacher. Over time the labels for

3. On May 1, 2012, the district's Board of Education (the board) approved service of a Notice of Dismissal and a Statement of Charges (charges) on respondent, notifying respondent of his proposed dismissal as a certificated employee. The board directed the superintendent to serve the charges on respondent pursuant to Education Code section 44936.

4. On May 11, 2012, a 30-Day Notice of Dismissal was served on respondent. The Accusation and Statement of Charges were served on June 18, 2012.

5. Respondent timely appealed the dismissal action by filing a Notice of Defense/Request for Hearing and the instant hearing ensued.

Arguments Regarding Pertinent Provisions of the Education Code

6. This matter arises out of a disagreement between the parties regarding the interpretation of Education Code sections 56362 and 56362.1. Section 56362 provides that the resource specialist program must include, but not be limited to, provision of a resource specialist who shall provide instruction and services for pupils whose needs are identified in their individualized education plans (IEPs); information and assistance to IEP students and parents; consultation, resource information and material regarding IEP students to their parents and staff members; coordination of special education services with the regular school program for each IEP student; monitoring of student progress on a regular basis, participation in the review and revision of IEPs, and the referral of students who do not demonstrate appropriate progress to the IEP team; and placing emphasis at the secondary school level on academic achievement, career and vocational development and preparation for adult life. The section also mandates that no resource specialist shall have a caseload which exceeds 28 students. Section 56362.1 provides that a caseload shall include, but not be limited to, all pupils for whom the resource specialist performs any of the services described in Section 56362.

The dispute between respondent and the district arose because each side defined "caseload" differently. The district, the Special Education Local Program Agency (SELPA) for the County of Riverside, and the California Department of Education (CDE) defined caseload as being determined by "the number of IEPs for which the resource specialist is responsible." Further, each entity concluded that a resource specialist may provide special education services to students not included on his or her caseload and may participate in the IEPs of students not included on his or her caseload, and that services to those students do not result in the students being considered part of the resource specialist's caseload. Alternatively, respondent contends that the Education Code does not so narrowly define caseload, and that providing special education services to students who are not formally on his caseload involves providing the type of services defined by the Education Code and

these certifications changed. Whatever respondent's status might be, neither party asserted that Education Code sections 56362 and 56362.1, both of which use the term resource specialist, did not apply to the issues raised in this proceeding.

requires that all of those students be counted as part of a caseload. Interpreting the statute as respondent contends results in his caseload greatly exceeding the 28 student limitation mandated by statute.

Having reviewed the clear language of Sections 56362 and 56362.1, the Commission determined that respondent's interpretation is reasonable. To interpret the statute as the district, SELPA and CDE espouse appears to be contrary to the legislative intent and the plain, unambiguous language of the two code sections at issue. It is the Commission's fervent hope that these two conflicting interpretations will be addressed at the legislative and executive levels to resolve this issue. Be that as it may, for purposes of this hearing, even though the Commission unanimously determined that respondent's statutory interpretation was not unreasonable, that does not end the analysis of whether cause exists to dismiss respondent from the district.

Factual Findings Based on the Testimony and Documents Presented During the Hearing

Relevant Prior Employment History

7. On or about May 25-26, 2011, respondent served a two-day suspension without pay for his willful failure to perform assigned duties, his violation of, or refusal to obey the school laws of the state or reasonable regulations, and for other acts or omissions which constituted unprofessional conduct. Respondent's specific misconduct and prior disciplinary history included:

An October 1, 2003, letter of reprimand was served on respondent for his lack of professionalism and courtesy to his then assistant principal;

An August 28, 2006, a written reprimand was served on respondent for his combative style and insistence on debating issues with supervisors during the 2005-2006 and 2006-2007 school years which included his criticism of his principal's performance and treating administration with disdain;

A March 22, 2007, warning of unsatisfactory performance was served on respondent that related to his failure to perform his duties in that he failed to fully and properly implement individualized education plans (IEPs);

A June 4, 2009, letter of reprimand was served on respondent for his failure to complete IEPs, his submission of irrelevant dissenting opinions, his insubordination in canceling an IEP without good cause, his disrespectful treatment of others in e-mails and conversations, his discourteous behavior in IEP meetings, including making false statements and using inappropriate tones, and his refusal to follow established agenda and failure to give proper notice of IEP meetings. Respondent was directed to complete IEPs, act in a respectful manner, give proper notice of IEP meetings and comply with all directives;

A January 3, 2011, letter of reprimand was served on respondent for pushing a student, invading students' personal spaces, and for making students feel uncomfortable. Respondent was directed to avoid touching students and stay at arms' length distance; and

An April 20, 2008, letter of reprimand was served on respondent for allowing a student to take a restroom break during STAR testing, falsely advising administration that he had not been trained in STAR testing, glaring at proctors during STAR testing, and making a female employee so uncomfortable that she refused to report for duty the following day. Respondent was directed to review the STAR test directions and be prepared to properly administer STAR tests.

8. Between August 24 and August 26, 2011, respondent served a three-day suspension without pay for his willful failure to perform assigned duties in violation of or refusal to obey school laws. In addition to the misconduct and prior disciplinary history referenced in Finding of Fact No. 6, respondent also willfully failed to perform his assigned duties in that 13 of his 21 IEPs and two of his 21 triennial assessments were out of compliance.

9. On December 17, 2004, respondent was issued a conference summary report as a result of his inappropriate comment to, and loud argumentative tone with, an assistant principal. Respondent was directed to be professional in all of his interactions with others.

10. On June 2, 2011, respondent was issued a notice of unprofessional conduct pursuant to Education Code section 44938 in which he was directed to follow all previous and future directives given to him by site or district administrators; remain in compliance with all IEPs; work cooperatively and professionally with all administration, peers and students; turn in lesson plans to his principal each Monday; communicate in a manner that promotes cooperation for the purpose of focusing on the needs of students; timely notify all pertinent IEP team members of upcoming IEPs and be present to conduct IEPs for students assigned to his case load; and communicate specific training or curriculum needs directly to his principal.

The District's Charges

11. By a vote of 2:1, the Commission found that respondent engaged in unprofessional conduct.

Throughout the 2010-2011 and 2011-2012 school years, respondent engaged his superiors in an ongoing dispute over his caseload. He was repeatedly told by his supervisors at the site and district administration level that his complaints and allegations were incorrect and without merit. Respondent took his complaints to SELPA and CDE, each of which repeatedly advised him that his complaints and allegations were without merit. Despite these responses, respondent continually alleged that the district and his supervisors were violating the law.

Respondent was directed on numerous occasions to focus his efforts towards providing services to his students and ensuring compliance with all IEP requirements and related timelines. However respondent's IEPs were out of compliance, a fact he readily admitted. Respondent's defense to his noncompliance was related to his claim that his caseload exceeded 28 students, making it impossible for him to comply with IEP requirements.²

Throughout the 2010-2011 and 2011-2012 school years respondent sent numerous e-mails, many of which were discourteous, sarcastic and unprofessional in their tone. Respondent admitted that as he reads his e-mails now, they might be interpreted as being sarcastic, but he claimed that was never his intent. It became clear from his testimony that respondent failed to appreciate social nuances or that an e-mail comes across much differently than a verbal comment. Respondent testified that in the future he would refrain from sending such e-mails and that he would think carefully before writing any e-mail.

Even though the Commission believed that respondent's position on the definition of "caseload" was not unreasonable, once his supervisors directed him how to proceed and he refused to follow those directives, his actions became insubordinate and constituted unprofessional conduct. Furthermore, once SELPA and CDE weighed in on the argument, taking a position contrary to respondent, it was all the more incumbent upon respondent to follow his superiors' directives. Moreover, respondent's continuing to send e-mails which contained sarcastic comments was unprofessional.

12. By unanimous vote, the Commission found that respondent did not engage in dishonesty. The district asserted that respondent's repeated claims that the district was violating the law constituted dishonesty. However, the Commission determined that respondent was consistent and he was a fervent advocate for his interpretation of the word "caseload" as used in the Education Code sections at issue. Respondent's consistent position, even in the face of the SELPA and CDE interpretations, was not dishonest, but rather demonstrated his unwavering belief in the correctness of his statutory interpretation of the word "caseload."

13. By unanimous vote, the Commission found that respondent was not evidently unfit for service. Prior to the 2010 school year, respondent had been a resource specialist in an elementary school setting and a preponderance of the evidence did not demonstrate that respondent ever failed in his duties to his students in that setting. After Hemet Elementary School closed, and after respondent returned from a medical leave, he was assigned to Hemet High School. Once there, for the first time in his career, he was assigned to teach classes and was responsible for assisting students with IEPs who were not assigned to his caseload.

² Respondent's defense would have had more merit if he had been in IEP compliance for those students who were formally on his caseload and if he could not assist other resource specialists with their IEP caseloads; but, this was not the case. Respondent was out of compliance for the IEPs of both students on his formal caseload and those students who were on other resource specialists' formal caseloads.

Requiring respondent to be responsible for students who were not on his formal “caseload” ultimately led to his inability to perform his work. The Commission determined that placing respondent in the high school was a mis-assignment and that he was clearly better suited to provide resource specialist services at the elementary school level. Although it lacks the power to do so, the Commission was hopeful that rather than being dismissed, respondent could be re-assigned as a resource specialist at an elementary school. Respondent’s misconduct was not the result of any irremediable trait of character.

The evidence demonstrated that respondent allowed other resource specialists to send difficult students and their IEP students to his computer class. Respondent’s willingness to assist his colleagues made his computer class little more than a “dumping ground” that other teachers used to foist their unwanted students on respondent. Respondent was very willing to help his colleagues and did not appreciate that his colleagues were taking advantage of him.

Respondent was very willing to help students. His department chair testified that respondent offered to place a difficult student in his computer class, which was “very helpful.” The department chair testified that respondent was very willing to assist her with this placement. Even in the midst of his ongoing caseload dispute, respondent was willing to do whatever was best for a student, thereby demonstrating that he was not evidently unfit for service. Other than respondent engaging in an ongoing dispute over his caseload, respondent was capable of performing his duties as a resource specialist.

14. By unanimous vote, the Commission found that respondent persistently violated and refused to obey the school laws of the state and reasonable regulations. There was a chain of command. Respondent was aware of that chain of command. Respondent was informed by his district, SELPA, and CDE that his caseload constituted only those students for whose IEPs he was responsible. Respondent was repeatedly advised that the district was not violating the Education Code. Despite those repeated advisements, respondent continued to accuse the district of violating the law. He repeatedly refused to follow reasonable direction from his supervisors, whose contrary interpretation of the law did not pose a clear and present danger to any student or to the district. Respondent failed to process IEPs in a timely manner. Respondent’s insisting on having his own way involved unprofessional conduct under the circumstances.

LEGAL CONCLUSIONS

Due Process under the Education Code

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

Under Education Code section 44944, subdivision (b), the dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of

the Commission must be non-district teachers, one chosen by the employee and one by the district, and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

When a school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subd. (c)(1)-(3).)

Burden and Standard of Proof

2. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) This standard requires a party to convince the trier of fact that the existence of a fact is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.)

Relevant Statutory Authority

3. Education Code section 44932 provides in part:

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

(1) Immoral or unprofessional conduct.

...

(3) Dishonesty.

...

(5) Evident unfitness for service.

...

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

Relevant Judicial Authority

Unprofessional Conduct

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

5. Unprofessional conduct has been defined as conduct, measured by the *Morrison* factors, which indicates unfitness to teach. (*Board of Education v. Jack M.* (1970) 19 Cal.3d 691, 696-697; *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-1174.)

6. In *Board of Education v. Jack M.*, *supra*, the court delineated the process to be considered in determining fitness to teach. This opinion upheld the standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his conduct but other relevant factors are analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct.

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

Dishonesty

8. Not every falsehood constitutes "dishonesty" within the meaning of Education Code section 44932, subdivision (a). For that reason, dishonesty must also to be evaluated in light of the *Morrison* criteria. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn. 12).

9. Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal. Dishonesty denotes the absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray. (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717, citations omitted.)

Evident Unfitness to Teach

10. Evident unfitness for service under Education Code section 44932, subdivision (a)(5), is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct indicates unfitness for service. "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident,' i.e., whether the offensive conduct is caused by a defect in temperament." (*Id.*, at 1445.)

Persistent Violation of or Refusal to Obey Laws

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

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

Cause Exists to Dismiss Respondent

13. Cause exists for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (1), because respondent’s conduct constituted unprofessional conduct.

14. Cause does not exist for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (3), because respondent’s conduct did not constitute dishonesty.

15. Cause does not exist for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (5), because respondent’s conduct is not the result of fixed traits of character, temperamental defects or inadequacies.

16. Cause exists for dismissal pursuant to Education Code section 44932, subdivision (a), subsection (7), because respondent’s conduct involved persistent violations of laws, rules, regulations and policies related to education.

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ORDER

Respondent's dismissal from employment with the Hemet Unified School District is upheld.

Dated: February 12, 2013

MARY AGNES MATYSZEWSKI
Administrative Law Judge
Office of Administrative Hearings

Dated: February , 2013

Maureen Eckholdt
Commission Member

Dated: February , 2013

Arthur Eddy
Commission Member