

BEFORE THE COMMISSION ON PROFESSIONAL COMPETENCE
SAN JUAN UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of:

DANIEL WESTOVER,

A Permanent Certificated Employee,

Respondent.

OAH No. 2008100579

DECISION

This matter was heard before a Commission on Professional Competence (CPC) of the San Juan Unified School District in Sacramento, California, on November 1, 2, 3, 5, 10, and 12, 2010. The CPC members were Michael Burchett, Charles Denonn, and Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings.

Diana D. Halpenny, Attorney at Law, represented the San Juan Unified School District (District).

Michael N. McCallum, Attorney at Law, represented Daniel Westover (respondent).

The matter was submitted for decision when the CPC concluded its deliberations on November 18, 2010. CPC Members Burchett and Brandt join in this decision. CPC Member Denonn has filed a separate dissent.

SUMMARY

Respondent is a high school math and economics teacher. The District seeks to dismiss him based primarily upon allegations that he had an excessive number of absences over a four-year period due to alcohol abuse, or periods of detoxification or treatment for alcohol abuse. The District proved by a preponderance of the evidence that respondent's absenteeism due to his alcohol abuse was excessive. The District also proved that, for certain of his absences, respondent failed to notify the school, order substitute teachers, and provide lesson plans. Respondent's excessive absenteeism, and failures to notify the school of his absences, order substitute teachers, and provide lesson plans constituted unprofessional conduct, persistent violations of District regulations, evident unfitness for service, and alcoholism that makes him unfit to instruct. Respondent is therefore dismissed from his position as a certificated employee of the District.

FACTUAL FINDINGS

1. Respondent began working as a teacher at Rio Americano High School (Rio) in 1995. Between 2004 and 2008, he taught Algebra 1A and 1B, Algebra 2, Geometry, Economics, and Advanced Placement (AP) Economics.

Excessive Absenteeism Due to Alcohol Abuse

2. During the 2004-2005 school year, respondent was absent 26 out of 180 school days. Of these absences, at least 21 were related to alcohol abuse, or periods of detoxification or treatment for alcohol abuse.¹

3. During the 2006-2007 school year, respondent was absent 27 out of 180 school days. Of these absences, at least 16 were related to alcohol abuse, or periods of detoxification or treatment for alcohol abuse.

4. During the 2007-2008 school year, respondent was absent 43 out of 180 school days. Of these absences, at least 39 were related to alcohol abuse, or periods of detoxification or treatment for alcohol abuse.

5. Respondent's absenteeism during the 2004-2005, 2006-2007, and 2007-2008 school years due to alcohol abuse, or periods of detoxification or treatment for alcohol abuse, was excessive.

Reporting for Duty Smelling of Alcohol

6. On November 1, 2004, respondent was assigned to supervise an after-school game at Rio.² He arrived smelling of alcohol. When he was questioned, he admitted that he had had a "couple of beers" before reporting to supervise the game. He was sent home. Another school employee performed his duties.

Failure to Attend the Last Day of Summer School Due to Alcohol Abuse

7. During the 2006-2007 school year, respondent was absent due to alcohol abuse, and detoxification and treatment for alcohol abuse from May 17 through June 8, 2007, the last day of the school year. After the end of the school year, respondent was scheduled to teach the second session of summer school. On July 31, 2007, the last day of summer school, teachers were required to turn in their students' final grades.

¹ The District did not charge respondent with excessive absenteeism due to alcohol abuse during the 2005-2006 school year.

² The parties submitted differing evidence on whether the game was a basketball or volleyball game, and whether respondent started his supervision responsibilities at 4:00 p.m. or 5:00 p.m. These differences are not relevant to the findings regarding this charge.

8. On the evening before the last day of summer school, respondent invited to his home for dinner individuals he had met during his stay in treatment in May and June. These individuals brought alcohol with them and drank during dinner. Respondent later went out with these individuals. Respondent relapsed and began drinking again. Due to his alcohol abuse, on July 31, 2007, the last day of summer school, respondent was absent from school. On that day, he did not give his students their final examination, or turn in their final grades as required.

Failures to Advise School of Absences, Order Substitute Teachers, and/or Provide Lesson Plans

9. Respondent failed to advise Rio of his absences on November 26, 2007; March 26, 2008; March 27, 2008; and March 28, 2008.

10. Respondent failed to order substitute teachers for his absences on October 12, 2006; September 17, 2007; November 26, 2007; November 27, 2007; March 26, 2008; March 27, 2008; and March 28, 2008.

11. Respondent failed to provide lesson plans for his absences on September 20, 2007; November 26, 2007; November 27, 2007; March 26, 2008; March 27, 2008; and March 28, 2008.

Respondent's Alcohol Abuse, Relapses, Detoxification, and Treatment

12. As set forth in Findings 2 through 5, during the 2004-2005, 2006-2007, and 2007-2008 school years, respondent missed at least 76 days of work due to alcohol abuse, relapses, detoxification, or treatment.

13. 2004-2005 School Year. Respondent missed 21 workdays from Friday, February 11 through Friday, March 18, 2005.³ Beginning on or about February 14, 2005, he was in New Dawn Recovery Center for approximately three days in detoxification, and about 30 days in a residential rehabilitation program. Respondent was discharged from New Dawn on Thursday, March 17, 2005.

14. 2006-2007 School Year. Respondent was in Kaiser's out-patient chemical dependency recovery program (CDRP) for approximately three to four months, from July 8 to October/November 2006. He completed the first phase of the program, but did not complete the second phase.

15. Respondent was absent from work on October 12, 2006. At the hearing, he testified that there was a "good chance" that he was drinking that day.

³ The weeks of February 21 through 26, and March 21 through 26, 2005 were school vacations.

16. Respondent was absent from work on Thursday, March 22, Friday, March 23, and Monday, March 26, 2007. Respondent admitted that there was a “decent chance” that these absences were alcohol-related.

17. Respondent missed 16 workdays from May 17 through June 8, 2007, the last day of school, for alcohol-related issues. From May 30 to June 29, 2007, respondent was in River City Recovery Center (River City), a residential treatment program.

18. As set forth in Finding 8, on July 30, 2007, thirty-one days after respondent completed River City’s residential treatment program, he relapsed and missed the last day of summer school.

19. 2007-2008 School Year. Classes for the 2007-2008 school year began on August 20, 2007. From September 17 through 21, 2007, respondent was absent for five school days for alcohol-related issues. He was admitted to Kaiser on Thursday, September 20, 2007. On Saturday, September 22, 2007, he notified Richard Judge, a Rio Vice Principal, that he was in the hospital from Thursday until Saturday. Nina Fernald-Seibel, an English, AVID, and Civitas/Speech teacher at Rio, took respondent to detoxification at Kaiser on two occasions. At the hearing, she was not certain whether this was one of those occasions.

20. Respondent visited his parents for Thanksgiving on November 22, 2007. While there, he relapsed. He missed school on Monday and Tuesday, November 26 and 27, 2007, for alcohol-related reasons. He failed to advise the school that he would be absent on Monday. On that day, at 2:19 p.m., by email, Mr. Judge asked respondent: (1) if he planned on being at work the next day; and (2) if not, to order a substitute and provide lesson plans. On Tuesday at 2:22 a.m., respondent emailed Mr. Judge that he was “incapable of coming in or ordering a sub.” At 9:47 a.m., he emailed Mr. Judge that Ms. Fernald-Seibel was taking him to the hospital. At 9:50 a.m., Mr. Judge asked him by email whether he was ordering a substitute teacher or sending in lesson plans. At 10:36 a.m., respondent emailed Mr. Judge that he could not “do anything right now.”

21. Respondent was absent on March 24, 2008. On March 25, 2008, Larry Graser, the District’s Director of Human Resources, did a wellness check at respondent’s home. Respondent told Mr. Graser that he would return to work the next day. Mr. Graser noticed an open wound on respondent’s forehead. Respondent stated that he had not sought medical treatment for the wound. At 11:46 a.m., respondent emailed Mr. Graser:

Were it possible ... would an employee who thought it might be necessary to go in to rehab still have the option?

At 5:48 p.m., Mr. Graser emailed his response:

If you need rehab, I suggest that you get the help needed – regardless of what action the district takes. I can say that I will work with you as best I can because I am concerned about your

wellbeing. But the higher concern is for the education of the students at Rio and other schools.

At 9:40 p.m., respondent emailed Mr. Graser:

I'm taking rehab. I'm sorry for the difficulty.

22. As set forth in Findings 9, 10, and 11, on March 26, 27 and 28, 2008, respondent failed to advise Rio of his absences, failed to order substitute teachers, and failed to provide lesson plans.

23. Respondent entered D & A Detox Center, a residential alcohol detoxification program, on March 26, 2008. He entered D & A Treatment Center, a residential treatment program, on or about April 2, 2008. He completed a 28-day stay in that program on April 30, 2008.

24. On May 5, 2008, Mr. Graser sent respondent a notice that he was being placed on administrative leave. On May 14, 2008, respondent was served with a Statement of Charges and Notice of Intent to Dismiss.

25. Post-Notice of Dismissal Relapses, Detoxification, and Treatment. After respondent was served with the Notice of Intent to Dismiss, he continued to relapse.

26. On May 22, 2008, respondent's counsel informed the District that respondent would be entering Kaiser's alcohol treatment program.

27. From May 31 to June 6, 2008, respondent was in D & A Detox for detoxification.

28. Respondent was in Kaiser's CDRP for approximately one and one-half to two months, from June 9 to late August 2008. He did not complete the first phase of the program.

29. From August 15 to August 18, 2008, respondent was in D & A Detox for detoxification.

30. From September 9 to 14, 2008, respondent was in D & A Detox for detoxification.

31. From December 19 to 24, 2008, respondent was in D & A Detox for detoxification.

32. From December 25, 2008, to February 23, 2009, respondent was in a 60-day treatment program at D & A Treatment Center.

33. On March 9, 2009, respondent agreed with the District that he would maintain his sobriety and submit to random alcohol testing. Until August 6, 2009, respondent's random alcohol tests were negative. On August 6, 2009, respondent was notified to appear for an alcohol test. He failed to appear for this test. On August 7, 2009, respondent was notified to appear for an alcohol test. Respondent failed to appear for this test. Respondent consumed alcohol within 72 hours of the two days he was asked to submit to the tests on August 6 and 7, 2009.

34. From August 21 to 26, 2009, respondent was in D & A Detox for detoxification.

35. On November 1, 2009, respondent began living in a sober living facility run by D & A Sober Living.

36. From July 3 to 8, 2010, respondent was in D & A Detox for detoxification.

37. On August 31, 2010, respondent was notified that his deposition in this proceeding was going to be taken on September 10, 2010. Respondent failed to appear for his September 10, 2010 deposition due to his alcohol abuse.

38. The hearing in this matter was scheduled to begin on November 1, 2010. Respondent failed to appear for the first day of hearing due to his alcohol abuse.

Other Charges

39. Inadequate Lesson Plans. The District alleged that respondent failed to provide adequate lesson plans for substitute teachers on October 12, 2006; May 17 through June 7, 2007; and March 24 and 25, 2008.

40. On October 12, 2006, respondent sent an email to Karen Cassady, the principal's secretary, which, in total, included the following lesson plans for his absence that day:

For alg2/geo, students have an assignment sheet in place. If my sub would [sic] stay as close as possible to thst [sic], it could [sic] be great.

For AP econ, they may need to tread water for one more day.

41. On March 24, 2008, at 1:56 a.m., he sent an email to Ms. Cassady, which, in total, included the following lesson plans for his absence that day:

Alg 1A, p1 and 2: p407, all

Alg 1B, p5: 2-35, multiples of three

Economics: Have them complete their ripple effect work sheets
- - they have them already, but I'll attach the file in case they
don't.

At 2:11 a.m., he sent Ms. Cassady the following email:

I have apparently lost the file for the worksheet . . . my class can
work in groups for this, and enough of them will have it.

42. There was no evidence that the District has implemented or promulgated standards or requirements that notified teachers, in detail and with specificity, what must be included in lesson plans for substitute teachers. There was also no evidence that the District ever gave respondent detailed or specific instructions about how he was to prepare lesson plans for substitute teachers when he was absent. While respondent's lesson plans described in Findings 40 and 41 provided substitute teachers with little guidance or direction on how respondent expected them to conduct his classes during his absences, because the District failed to provide respondent with detailed and specific standards, requirements, or counseling about how he was to prepare lesson plans for substitute teachers, the District failed to establish a sufficient basis for disciplining respondent for the lessons plans he submitted on October 12, 2006; May 17 through June 7, 2007; and March 24 and 25, 2008. The charges relating to these lesson plans are therefore dismissed.

43. Personal Disclosure on April 24, 2007. On April 24, 2007, Mr. Judge, by email, informed respondent that a parent had called about respondent's sharing a "very personal issue" in his daughter's class about respondent's earlier absence. In an email dated April 25, 2007, respondent stated that he believed that he told his students that he "was on [a] medical hold in the emergency room because they were concerned that [he] might be suicidal." Respondent recognized that "this may have overstepped a bound," and that he would "take a rebuke on his one" because "it may have been too much info." Mr. Judge did not document this conduct because respondent was "contrite" in his email.

44. While respondent provided more information about his personal life than was appropriate in a high school classroom, the District did not establish that respondent's disclosure to his students on April 24, 2007, warrants disciplinary action. This charge is therefore dismissed.

45. Emails re: One-Day, Pre-Approved, District-Initiated Absence. Rio teachers who taught AP classes were required to prepare audits for the College Board to ensure that their classes would be accepted for AP credit. AP audit preparation is a time-consuming process. Rio offered teachers a one-day, pre-approved, District-initiated day off to perform this work.

46. Because respondent had already prepared his AP Economics audit, on or about May 27, 2007, he sent an email to Mr. Judge asking if he could use the pre-approved day off in lieu of taking sick leave for an absence. On May 28, 2007, at 12:20 a.m., respondent sent

a second email retracting his request. From the evidence, it appeared that respondent may have retracted his request before Mr. Judge responded to his first email.

47. Because respondent quickly retracted his request to use the one-day, pre-approved, District-initiated absence in lieu of sick leave, the District did not establish cause for disciplinary action. This charge is therefore dismissed.

Notices, Warnings, Counseling, and Directives

48. The District issued respondent notices, warnings, counseling, and directives relating to his alcohol abuse, excessive absenteeism, and failures to notify the school of his absences, order substitute teachers, and provide lesson plans.

49. On November 16, 2004, Mr. Judge issued a Draft Letter of Concern to respondent relating to his reporting for duty after consuming alcohol on November 1, 2004. (Finding 6.) On December 17, 2004, Mr. Judge issued a Letter of Reprimand to respondent regarding that incident. In the Letter of Reprimand, Mr. Judge stated:

Your use of alcohol prior to executing a non-instructional duty had the potential to impair your judgment and damage your professional reputation. You placed at risk the welfare of the students you were to supervise. In addition, with a detectable amount of alcohol on your breath, you placed your professional reputation in danger with every conversation you had with students, parents, and staff members....

When we met on November 5, you stated that you are now seeing a counselor weekly to treat alcoholism. You said that you are also looking into other treatments, including an out-patient program. As of the meeting you had not determined the next course of action. I urge you to vigorously address this illness so that it no longer negatively impacts your job performance. I am willing to be of assistance in this cause....

Therefore, if this behavior occurs in the future, you will be subject to progressive disciplinary steps that can lead up to and include dismissal from the District.

50. On April 13, 2007, Mr. Judge issued a Summary of Meeting Regarding Days of Absence to respondent. In this summary, Mr. Judge informed respondent that he had missed nine days of work due to illness. Mr. Judge notified respondent that he would be required to provide medical verification if he were absent for illness for 10 days or more.

51. On April 26, 2007, Mr. Judge gave respondent his Professional Evaluation Report for the 2006-2007 school year. In the report, Mr. Judge checked that respondent met or exceeded District standards, and was recommended for continuation. Mr. Judge included a handwritten note in respondent's report that stated:

[Respondent] has worked to provide his students a quality experience in the areas of math and economics. His focus for professional growth was improved student comprehension in geometry, specifically in the area of deductive reasoning and other methods of proof.

[Respondent's] personal issues regarding depression and substance abuse are being addressed. If left unattended they will likely impact his performance in the classroom, as well as his attendance to his job. To date, the impact on the standards have been minimal, specifically to standard 2⁴ and the SJUSD Prof. Duties & Responsibilities.⁵ I encourage and will support [respondent's] continued efforts to overcome these personal hardships so that he can avoid the potential for detrimental

⁴ Standard 2 set forth in the report stated:

Creating and maintaining effective environments for student learning.

2-1 Creating a physical environment that engages all students.

2-2 Establishing a climate that promotes fairness and respect.

2-3 Promoting social development and group responsibility.

2-4 Planning and maintaining standards for student behavior.

2-5 Planning and implementing classroom procedures and routines that support student learning.

2-6 Using instructional time effectively.

⁵ The SJUSD Professional Duties and Responsibilities set forth in the report stated:

1. Attends required meetings.

2. Supervises students outside of classroom.

3. Maintains records punctually and accurately.

4. Maintains materials and equipment.

5. Works with colleagues cooperatively and effectively.

6. Communicates effectively with students, parents, and staff.

7. Fulfills board-adopted Code of Ethics of the Teaching Profession.

impact on his teaching performance. However, since that potential does exist, [respondent] needs to be aware that these issues cannot be treated as irrelevant to future evaluations.

52. On April 23, 2007, Mr. Judge issued a Medical Verification of Absences to respondent. In this document, Mr. Judge informed respondent that, because he had accumulated 10 days of illness absences for the 2006-2007 school year, he was required to provide written verification for any further absences during the remainder of the school year.

53. On September 25, 2007, Mr. Judge issued a Medical Verification of Absences to respondent. As of that date, respondent had accumulated five days of illness absences during the first five weeks of the school year. Mr. Judge notified respondent that, “Due to this pattern of excessive absences,” respondent was required “to provide medical verification for any day of illness absence henceforth.” Mr. Judge also notified respondent that “any day of personal necessity leave will require 48 hours advanced notice.”

54. On September 28, 2007, Mr. Judge issued a Draft Letter of Concern to respondent regarding respondent’s five-day absence from September 17 through 21, 2007, and his failure to order a substitute for his September 17, 2007 absence. On October 3, 2007, respondent responded to the Draft Letter of Concern. On October 15, 2007, Mr. Judge issued a Letter of Warning. In the Letter of Warning, Mr. Judge stated:

Your failure to secure a guest teacher in a timely fashion put an unnecessary burden on the site staff and disrupted the education for your students. The administration had to secure coverage for your classes in the minutes prior to the start of school. To do this we had to use other teachers, depriving them of the full use of their prep period. Without guest teacher prepared to implement lessons, the quality of education in your classes was negatively impacted.

In the Letter of Warning, Mr. Judge directed respondent to follow the District’s policy and the Collective Bargaining Contract in securing substitute teachers in a timely fashion for every absence.

55. On November 29, 2007, respondent met with Mr. Graser, Mr. Judge, and Steven Duditch, a union representative. During the meeting, respondent was informed that the District was taking his issues “seriously,” and that he had to report to work in a sober condition. Mr. Graser notified respondent that the District was considering giving respondent a 45-day notice (i.e., a notice of unprofessional conduct), and, if respondent’s issues persisted, moving toward termination. When respondent asked how close the District was to issuing a 45-day notice, Mr. Graser told him that the District Office was still investigating if it was applicable based on the facts, and that it would depend on the District’s “legal services.” Mr. Duditch informed respondent that: (2) the matter was “serious;” (2) the District was “putting [him] on notice”; and (3) the matter would not be explored if the District Office “did not think they had a basis.”

56. On November 29, 2007, Mr. Judge issued a Draft Letter of Concern to respondent regarding respondent's absences, failures to order a substitute teacher, and failures provide lesson plans on November 26 and 27, 2007. On December 12, 2007, respondent responded to the Draft Letter of Concern. On December 14, 2007, Mr. Judge issued a Letter of Reprimand to respondent. In the Letter of Reprimand, Mr. Judge stated:

Your failure to secure a guest teacher in a timely fashion and to provide lesson plans put an unnecessary burden on the site staff and disrupted the education for your students. The administration had to secure coverage and content for your classes in the minutes prior to the start of school. To do this we had to use other teachers, depriving them of the full use of their prep period. Without guest teacher prepared to implement lessons, the quality of education in your classes was negatively impacted.

In the Letter of Reprimand, Mr. Judge again directed respondent to follow the District's policy and the Collective Bargaining Contract in securing substitute teachers in a timely fashion for every absence. The Letter of Reprimand notified respondent that:

Failure to follow the aforementioned directives will subject you to progressive disciplinary steps that can lead up to and include dismissal from the District. (Bolding in original.)

57. On January 22, 2008, Mr. Graser served respondent with a Notice of Unprofessional Conduct. In the Notice of Unprofessional Conduct, Mr. Graser stated that the District was taking the action "as a result of [respondent's] conduct relating to [his] use of alcohol." In addition, Mr. Graser told respondent that:

Despite the fact that you have received at least two letters of reprimand and two letters of warning over the past two school years, you have continued to fail and/or refuse to improve your conduct. Based on these findings, I have concluded that your conduct is unacceptable and has been unprofessional, and extensive intervention has failed to result in professional conduct. Due to this conclusion, I am sending this Notice of Unprofessional Conduct.

Mr. Graser included a "Directive/Improvement Plan" in the Notice of Unprofessional Conduct, which included the following directives:

1. You are directed to report to work on each and every day which is identified as a work day for teachers, other than when you are absent due to illness or injury.... When you are working, you are to be drug and alcohol free.

2. If you are absent from work due to illness or injury, you are directed to provide medical verification as directed in the September 25, 2007, letter from Judge....
3. When you are absent from work for any reason whatsoever, you are directed to arrange for a substitute in a timely manner before the absence.
4. When you are absent from work for any reason whatsoever, you are directed to leave appropriate instructions, meaningful lesson plans and all necessary materials and supplies for the substitute.

To assist respondent in meeting the above directives, Mr. Graser enclosed: (1) information about the District's Employee Assistance program (EAP); and (2) the District's procedures for requesting a substitute.

In the Notice of Unprofessional Conduct's conclusion, Mr. Graser stated:

This is an extremely serious and job-threatening situation. Unprofessional conduct is cause for discipline up to and including dismissal, as authorized by Education Code Section 44932. (Bolding in original.)

There was no evidence that, during the 45 days after service of the Notice of Unprofessional Conduct, respondent took advantage of the District's EAP or participated in any other treatment program focused on rehabilitation and relapse prevention.

58. On April 30, 2008, Mr. Judge completed a Professional Evaluation Report for respondent for the 2007-2008 school year. Respondent did not sign this report because he was on leave, receiving treatment for his alcohol abuse. On the report, Mr. Judge checked that respondent did not meet District standards and was not recommended for continuation. Mr. Judge also checked that respondent did not meet SJUSD Professional Duties and Responsibilities. In the report, Mr. Judge wrote:

On a number of occasions this school year (2007-2008), [respondent] has failed to report to work without ordering substitute coverage. This occurred on September 17, ..., November 26, November 27, March 26, March 27, and March 28.

On several occasions this school year (2007-2008), when he was absent, [respondent] left no lesson plans for a substitute to use. This occurred on September 20, ..., November 26, November 27, March 26, March 27, and March 28.

The incidents cited above are part of a pattern of unprofessional conduct by [respondent] during the last several years due to personal issues. They were addressed in his summary evaluation for the 2006-2007 school year as well. At that time [respondent] stated he was seeking assistance to remedy this problem. However, because there has been no change and, indeed, his conduct has worsened, it is clear [respondent] has been unable to satisfactorily meet the criteria established for SJUSD Duties and Responsibilities. Specifically, he has violated the Code of Ethics of the Teaching Profession due to unprofessional conduct.

Based upon his unsatisfactory performance in this area, [respondent] is not recommended for continuation.

District Policies

59. The District has alleged that respondent persistently violated or refused to obey the following policies adopted by the District's Governing Board (Board): (1) District Board Policy 4115.1, Teaching Performance Standards; (2) District Board Policy 4020, Drug-Free Workplace; and (3) District Board Policy 5131.6, Alcohol and Other Drugs.

60. District Board Policy 4115.1. Pursuant to District Board Policy 4115.1, Teaching Performance Standards, the Board has adopted teaching standards in the areas of: (1) a safe and positive learning environment; (2) clear and organized curriculum; (3) planned instruction for all students; (4) varied learning opportunities for all students; (5) evaluation for student progress; and (6) community participation and professional development. One of the standards set forth in District Board Policy 4115.1 is that a teacher will "develop conceptually clear, developmentally appropriate lesson plans which set high student expectations." As set forth in Finding 11, respondent failed to provide lesson plans for his absences on September 20, 2007; November 26, 2007; November 27, 2007; March 26, 2008; March 27, 2008; and March 28, 2008. The District counseled him about these failures. (Findings 56 and 57.) Given these facts, the District established that respondent persistently violated or refused to obey District Board Policy 4115.1.

61. District Board Policy 4020. District Board Policy 4020, Drug-Free Workplace, in relevant part, provides:

Employees must report to work in a fit condition for duty. Being under the influence of alcohol or drugs is prohibited. Alcoholism and drug abuse are recognized as illnesses or disorders, and the district accepts responsibility for providing channels of help, but it is the employee's responsibility to seek help. If the employee seeks help prior to discovery, then confidentiality, job security, and promotional opportunities will be protected when the law permits. But if the employee does

not seek help and the problem in some way comes to the attention of the district, then disciplinary action will result.

Respondent argued that that this policy applies only when an employee comes to work under the influence of alcohol. Respondent's argument was not persuasive. In its first sentence, the policy states that employees "must report to work in a fit condition for duty." On 76 days over three school years (Finding 2 through 5), respondent did not report to work because he was not in a fit condition for duty either due to alcohol abuse, or because he was in detoxification or treatment for alcohol abuse. On one occasion, November 1, 2004, (Finding 6), he reported to work after consuming alcohol.

Moreover, respondent did not seek effective help to overcome his alcohol abuse before the District discovered it. Instead, because respondent repeatedly relapsed, on numerous occasions (Findings 12 through 24), the District advised respondent to obtain the help he needed to maintain his sobriety. (Findings 49 and 51.) Respondent failed to maintain his sobriety and, as a result, was excessively absent during the 2004-2005, 2006-2007, and 2007-2008 school years.

Given these facts, the District established that respondent persistently violated and refused to obey District Board Policy 4020.

62. District Board Policy 5131.6. Distinct Board Policy 5131.6, Alcohol and Other Drugs, sets forth the Board's intention to keep District schools free of alcohol and other drugs.⁶ It directs the Superintendent to develop a comprehensive prevention program, and to communicate that program to students, staff, and parents/guardians. The District did

⁶ District Board Policy 5131.6, in relevant part, provides:

Alcohol and Other Drugs

Because the use of alcohol and other drugs adversely affects a student's ability to achieve academic success, is physically and emotionally harmful, and has serious social and legal consequences, the Governing Board intends to keep district schools free of alcohol and other drugs.

The Board desires that every effort be made to reduce the chances that our students will begin or continue the use of alcohol and there drugs. Alcohol, like any other controlled substance, is illegal for use by minors. The Superintendent or designee shall develop a comprehensive prevention program, including prenatal substance abuse prevention, that encompasses instruction, intervention, recovering student support, and enforcement/discipline. The Superintendent or designee shall clearly communicate to students, staff and parents/guardians all Board policies, regulations, procedures and school rules related to this prevention program. ...

not establish that respondent persistently violated or refused to obey District Board Policy 5131.6.

Adverse Impact on Students, School Administrators, Teachers, and School Staff

63. Respondent's alcohol abuse, excessive absenteeism, and failures to notify the school of his absences, order substitute teachers, and provide lesson plans adversely affected students, school administrators, teachers, and school staff.

64. Adverse Impact on Students. There were no students or parents who testified on behalf of the District. Pamela Krayenbuhl testified on behalf of respondent. Ms. Krayenbuhl was in respondent's Algebra 2 class during the 2003-2004 school year, when she was a sophomore. She was in his AP Economics class during the 2005-2006 school year, when she was a senior. She was the Salutatorian of her class. She described respondent as being "very involved" with his students, and "aware of what each student needed." She hoped that her younger sister would have respondent as her math teacher. She did not remember that respondent was absent much when he was her teacher. Ms. Krayenbuhl had substitute teachers in most of her classes. She testified that the days she had substitute teachers were "not the most productive."

There are no allegations against respondent relating to the school years (2003-2004 and 2005-2006) when respondent was Ms. Krayenbuhl's teacher. Because respondent was not Ms. Krayenbuhl's teacher during the school years at issue in this case (2004-2005, 2006-2007, and 2007-2008) her testimony is given little weight.

65. The District submitted copies of the following emails that it received from parents when respondent was absent for the last 16 days of the 2006-2007 school year due to alcohol-related issues:⁷

(a) On May 22, 2007, a mother of a student in respondent's Algebra 2 class wrote an email stating that her daughter was "concerned about how his absences will impact her final grade." The mother stated further that the "kids were under the impression that he may not be returning to work, and [her daughter was] worried that the retake last Tuesday of a test he lost, will not make it into the grade book." The mother wanted to know "what part of her concerns [were] valid, and what assurances [she] could have that the kids [would] be evaluated fairly." The mother also stated that respondent had "been willing to help [her daughter] when she has sought him out for additional instruction," and that as a "parent [she] really appreciate[d] him and any of [Rio's] staff that take their job beyond the actual period of instruction to help their students."

⁷ The District also received an email from a parent dated June 7, 2004, which, in relevant part, stated that respondent "is by far the worst teacher for [Algebra 2] available." Because this email relates to the 2003-2004 school year, it is given little weight.

(b) On May 23, 2007, a father wrote an email stating that he “wanted to make sure that [respondent’s] existing grading system will stay in place with the new sub.” On May 24, 2007, Mr. Judge responded that he was working with respondent “to see how [respondent] is going to assign his grades,” and that what respondent told the students would “most likely be.” On June 1, 2007, the parent responded, stating that his daughter was “very concerned about the outcome [of her math class] due to the change in teaching staff.”

(c) On May 23, 2007, a mother wrote an email to Mr. Judge, in which she stated that she was “very concerned over [respondent’s] departure three weeks before the end of the semester.” She stated further that:

With less than two weeks instruction time, it would seem very unfair to change testing and instruction methods at this time. It also concerns me that a teacher who has not dealt with these students all year will possibly be grading. I can appreciate this is a difficult situation for the administration but I would appreciate knowing how this situation is going to be handled.

(d) On May 24, 2007, a mother wrote an email to Mr. Judge that stated that she hoped he understood the “seriousness of this disruption at this point in the year.” She also stated that her daughter had struggled the last semester and that respondent had been “very helpful and was working with her in order to pass the class.” She stated further that respondent “used a very student friendly grading system” that gave his students the “greatest chance possible to do well.”

66. These emails show that respondent’s alcohol-related absence from school three weeks before the end of the 2006-2007 school year created significant stress for some students and their parents about the students’ final grades. The majority of respondent’s students hoped to go to four-year colleges. Their grades were an important factor in determining which colleges they would get into. The parents’ emails to the District established that respondent’s alcohol-related conduct had an adverse impact on students.

67. Adverse Impact on Administrators. Respondent’s alcohol-related conduct adversely affected District and school administrators. The volume of emails, notices, warnings, counseling, and directives submitted in this matter attests to how much time and effort administrators devoted to addressing the difficulties respondent’s excessive absenteeism and alcohol-related conduct created for Rio and the District.

68. Respondent’s alcohol-related conduct imposed the greatest adverse impact on Mr. Judge. He spent time with respondent counseling him and preparing the documents described above. (Findings 49 through 56.) He received and sent numerous emails relating to respondent’s absences. (See e.g., Finding 65.) Whenever respondent did not show up for work, order a substitute, or submit lesson plans, Ms. Cassady would notify Mr. Judge. Mr.

Judge would open respondent's classroom and cover his classes as best he could until a substitute or another teacher was available. Mr. Judge had a difficult time finding consistent substitutes to replace respondent when respondent was absent, particularly during his extended absences.

69. Respondent was absent on Thursday, May 17, 2007. The next day was a rally day at Rio. When Mr. Judge got to work, he saw respondent. Respondent did not look well and asked to talk to Mr. Judge. Respondent told Mr. Judge that he "was really needing some help." Respondent admitted that he had been drinking the previous day and that he "was losing the battle" against alcohol. Mr. Judge took respondent to Kaiser and sat with him until he was admitted.

When respondent was out of school for the last 16 days of the 2006-2007 school year, Mr. Judge had to scramble to enlist the support of other Rio teachers to put together lesson plans, create a final, and prepare the students for the final.

Respondent entered River City on May 30, 2007. River City is in Galt, a 40-minute drive from Rio. Mr. Judge travelled to River City on three occasions, either on a Saturday or after 5:00 p.m. on a workday, to bring materials to respondent to grade, and take graded materials back.

70. Even though respondent was out for the last 16 days of the 2006-2007 school year, at Mr. Judge's request, respondent was permitted to teach the second session of summer school. When respondent missed the last day of summer school due to alcohol abuse, Mr. Judge was given the responsibility of grading the students' finals. Because respondent did not leave an answer key, Mr. Judge had to prepare one. Mr. Judge determined the students' final grades based upon their final examinations and previous test scores.

As set forth in Finding 7, the students' final grades were due on July 31, 2007. On August 2, 2007, Mr. Judge tried to contact respondent by telephone and email to discuss the students' final grades. Respondent did not respond to Mr. Judge's phone call or email. On August 13, 2007, two weeks after respondent was supposed to submit his final grades, he sent an email to the District, which set forth final grades that were different from what Mr. Judge had assigned. Because the District had already issued the students' final grades based on Mr. Judge's calculations, their final grades were not changed.

71. When respondent did not report to work on March 26, 2008, Mr. Judge wrote the following email to three Rio teachers, Curt Cassazza, Dag Friedman and Robyn Cox:

[Respondent] did not arrive to work today nor has he communicated with us regarding lesson plans for his classes. We had teachers cover his 1A class 2nd period. And while we just had a sub show up for econ 4th and 6th, we have nothing for those kids today. Curt is there anything you can provide us for the sub? Please let me know ASAP.

This sub will remain on call with us for the week in case we do not hear from [respondent]. To help him and us out, can you e-mail something to [Ms. Cassady] for him to use in econ (Curt), alg 1A (Robyn), and 1B (Dag)? Let me know if you can help out.

Unfortunately, there may be a need for me to ask for additional assistance in the future if a long-term sub is assigned. I apologize for having to make this request for the umpteenth time. I hope to have this resolved soon....

The next day, Mr. Judge emailed these teachers that respondent would be out for the remainder of the school year and that the District was working on obtaining a long-term substitute. He told them that he was “going to need [their] help to provide lessons, at least until the sub is in place.” He asked each of them to “take a course (Dag – 1B, Robyn – 1A, Curt – Econ) and send something along to [Ms. Cassady] to give the sub for all next week...” Mr. Judge thanked these teachers. He told them that they had been “great in the past” and that he “hate[d] asking [them] to help again with this situation.”

72. Adverse Impact on Fellow Teachers. As can be seen from the above emails (Finding 71), when respondent was absent due to alcohol abuse, his fellow teachers provided respondent’s substitutes with lesson plans and his students with materials to study. Respondent’s fellow teachers were repeatedly called upon to give up their prep periods to cover his classes. At times, they had to teach classes that included both their students and respondent’s.

73. Adverse Impact on School Staff. Every school day, Ms. Cassady, as the principal’s secretary, had the responsibility to ensure that all classrooms had teachers. If a teacher was going to be absent, it was the teacher’s responsibility to order a substitute through the District’s automated system. Each morning, Ms. Cassady would check the automated system to determine if any teachers were absent and had ordered substitutes. She would prepare all the paperwork required for the substitutes. This paperwork might include lesson plans that an absent teacher left for the substitute.

On the days when respondent was absent but failed to order a substitute, Ms. Cassady would be notified by a campus monitor using a walkie-talkie that there were students waiting outside respondent’s classroom. Ms. Cassady would contact Mr. Judge, who would open respondent’s classroom and cover for respondent until a substitute could be found. She would work with Mr. Judge to find a substitute.

Ms. Cassady testified that it was “rare” for teachers other than respondent to fail either to order substitutes or to leave lesson plans when they were absent. The failure of respondent to order substitutes and leave lesson plans when he was absent was “significant” by comparison.

On occasion, respondent would leave his lesson plans on Ms. Cassady's voicemail. Mr. Cassady would have to transcribe these lesson plans for respondent's substitute. The morning is usually the busiest time for Ms. Cassady. Ordering substitutes for respondent and transcribing his lesson plans took time from her busy morning schedule.

74. Three times – at the end of the 2006-2007 school year, at the end of summer school in July 2007, and at the end of the 2007-2008 school year – respondent, due to his alcohol abuse, substantially abandoned his teaching responsibilities. Respondent's conduct had the potential for significantly greater adverse impact upon his students. Much of this impact was averted because respondent's fellow teachers and, especially, Mr. Judge assumed respondent's teaching duties. At the hearing, respondent demonstrated little insight into the burden that his alcohol abuse imposed upon the District. In sum, respondent's excessive absenteeism, and failures to notify the school of his absences, order substitute teachers, and provide lesson plans had an adverse impact on students, school administrators, fellow teachers, and school employees.

Likelihood of Recurrence

75. Respondent has had a long history of alcohol abuse, relapse, detoxification and treatment. (Findings 12 through 38.) At the hearing, he was candid about his alcohol abuse and relapses. He admitted that he would generally relapse into alcohol abuse for about a week before he went into detoxification. He is currently attending daily Alcoholics Anonymous (AA) meetings and has been living in a sober living environment since November 2009. He has been seeing a counselor for about a month. He has not had a sponsor for seven or eight months, but he averred that he had a list of friends and other individuals that he can contact if he needed assistance maintaining his sobriety.

76. Kristopher Moore is the Program Director of D & A Treatment Center. He wrote a letter on respondent's behalf, dated October 15, 2010, which stated that respondent "successfully completed" the center's 60-day treatment program on February 23, 2009. According to Mr. Moore, while at the center, respondent was "given more than enough tools, for a solid beginning in living a sober life."

Mr. Moore is a former alcohol abuser. He has been clean and sober for five years. At the hearing, Mr. Moore testified that, once an alcoholic starts drinking, due to his alcohol addiction and cravings, he has no choice about continuing to drink. But Mr. Moore explained that an alcoholic has a choice about whether to take the first drink. According to Mr. Moore, "[u]ltimately it will be [respondent's] responsibility to maintain his recovery."

Mr. Moore believes that the most important things for an alcoholic to do to maintain his sobriety are to: (1) attend 12-step meetings; (2) become actively involved in a rehabilitation program; (3) work with others to remain sober; (4) seek out a sponsor; and (5) live in a clean and sober environment. According to Mr. Moore, respondent has been given enough tools to maintain his sobriety; if respondent fails to maintain his sobriety, it is his choice. Mr. Moore did not appear to be aware of respondent's recent relapses.

77. Since 2005, respondent has been in detoxification or treatment at least 15 times. Even with this detoxification and treatment, he is still abusing alcohol. He failed to show up at his deposition on September 10, 2010, and the first day of hearing on November 1, 2010, due to his alcohol abuse. Respondent's repeated recent relapses, notwithstanding the significant treatment he has received, show that, if he were to return to teaching, the likelihood of recurrence of his excessive absenteeism due to alcohol abuse is extremely high.

Other Factors Demonstrating Unfitness to Teach

78. At the hearing, respondent argued that alcoholism is a disease. He asserted that he should not be disciplined for the time he spent in detoxification or rehabilitation programs because the District encouraged him to seek treatment for his alcoholism. He asserted further that disciplining him for seeking treatment for his alcoholism would have an adverse impact and chilling effect upon other teachers who may wish to seek help for similar diseases.

Respondent's argument was not persuasive. The District allowed respondent to take 21 days off from work during the 2004-2005 school year, and 16 days off from work during the 2006-2007 school year for detoxification and treatment. Despite this detoxification and treatment, respondent continued to relapse and abuse alcohol. As Mr. Moore explained, while an alcoholic may not have much choice about continuing to drink once he has started, he has a choice about taking the first drink. Respondent repeatedly chose to take that first drink after receiving detoxification and treatment. He chose not to apply the tools for rehabilitation that he was given during treatment. Given the ample opportunity the District gave respondent for rehabilitation, disciplining him for his excessive absenteeism and unprofessional conduct due to his repeated relapses would not have an adverse impact or chilling effect upon other teachers who may wish to seek help for their diseases.

79. Respondent asserted further that his absences in the 2007-2008 school year were due to personal matters, including the fact that his wife divorced him. The evidence established that respondent's wife divorced him primarily due to his alcohol abuse. While it is unfortunate that respondent experienced adverse personal issues, respondent responded to those issues by repeatedly relapsing. The District offered respondent ample opportunity to seek treatment to address his personal issues. Respondent failed to take advantage of the treatment he was offered and cease his alcohol consumption. Respondent's personal problems cannot be used as extenuating circumstances to mitigate his continuing alcohol abuse and unprofessional conduct.

80. Respondent asserted that he was a good teacher. The District did not dispute that, when respondent maintains his sobriety, he is a good teacher. But respondent did not maintain his sobriety and, as a result, missed an excessive number of school days. A teacher who is absent as much as respondent was cannot be a consistently effective teacher.

81. Respondent also asserted that he was honest with the District about his alcoholism and relapses. The District did not dispute respondent's honesty. At the hearing, he was candid about his relapses. But respondent's honesty does not excuse his excessive absenteeism and other alcohol-related conduct.

82. Respondent is a high school teacher. High school students are often faced with issues relating to alcohol and drug use. The teen years are an impressionable time. Respondent's repeated relapses and excessive absenteeism due to alcohol abuse are of serious concern given the nature of respondent's credential and the age of his students.

83. Respondent's continuing alcohol abuse is clearly not praiseworthy. As Mr. Moore explained, it was respondent's responsibility to maintain his sobriety. Although respondent was candid about his alcoholism, he did not assume full responsibility for his drinking. He did not demonstrate a sufficient commitment to sobriety or dedication to doing the hard work necessary to overcome his alcohol abuse. He repeatedly made excuses for his relapses. He did not fully recognize the significant impact that his absenteeism had on Mr. Judge, Ms. Cassady, his fellow teachers, and his students. Respondent's inability to maintain control over his drinking appeared to be due to a defect in temperament. Given the adverse affect upon students and fellow teachers, the proximity of his recent relapses, the likelihood of recurrence, the type of credential he holds, and the absence of legitimate extenuating circumstances, the District established that respondent, due to his alcohol abuse, is evidently unfit to instruct children.

LEGAL CONCLUSIONS

1. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for unprofessional conduct. Respondent's (1) excessive absenteeism (Findings 2 through 5); (2) arriving for supervisory duties on November 1, 2004, after consuming alcohol (Finding 6); (3); failure to attend the last day of summer school and submit his grades on July 31, 2007 (Finding 7); and (4) failures to advise his school of his absences, order substitute teachers, and provide lesson plans (Findings 9 through 11) constitute unprofessional conduct.

2. Pursuant to Education Code section 44932, subdivision (a)(7), a school district may discipline a permanent certificated employee for persistent violation of or refusal to obey reasonable regulations prescribed by a school district's governing board. As set forth in Finding 60, the District established that respondent persistently violated and refused to obey District Board Policy 4115.1 by failing to submit lesson plans for substitute teachers. As set forth in Finding 61, the District established that respondent persistently violated and refused to obey District Board Policy 4020 by his excessive absenteeism due to his alcohol abuse and his reporting to work on November 1, 2004, after having consumed alcohol.

3. Pursuant to Education Code section 44932, subdivision (a)(5), a school district may discipline a permanent certificated employee for evident unfitness for service.

4. Pursuant to Education Code section 44932, subdivision (a)(11), a school district may discipline a permanent certificated employee for alcoholism that makes the employee unfit to instruct children.

5. In order to determine whether the District established cause to discipline respondent under Education Code section 44932, subdivisions (a)(5) and (a)(11), the criteria established by the courts in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*), and *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429 (*Woodland*) must be analyzed.

6. In *Morrison, supra*, 1 Cal.3d at p. 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 court listed the following factors as relevant when determining whether a teacher’s conduct indicates that he or she is not fit to teach: “[1] the likelihood that the conduct may have adversely affected students or fellow teachers, [2] the degree of such adversity anticipated, [3] the proximity or remoteness in time of the conduct, [4] the type of teaching certificate held by the party involved, [5] the extenuating or aggravating circumstances, if any, surrounding the conduct, [6] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [7] the likelihood of the recurrence of the questioned conduct, and [8] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.” (*Id.* at pp. 229-230.)

7. In *Woodland, supra*, 2 Cal.App.4th at p. 1444, the Third District Court of Appeal defined the term “evident unfitness for service,” as used in Education Code section 44932, subdivision (a)(5), to mean “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” The court found that the term “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.” (*Ibid.*) The court held that the *Morrison* factors “must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service.” (*Id.* p. 1445.) As the court in *Woodland* explained, “[i]f 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.” (*Ibid.*)

8. As the Third District Court of Appeal explained in *Broney v. California Commission of Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476, when evaluating a teacher’s conduct, only the pertinent *Morrison* factors need to be analyzed. In addition, when applying the first *Morrison* factor relating to adverse impact, only the “likelihood” that the teacher’s conduct “may” have adversely affected students and other teachers, and not actual adverse impact, needs to be found. (*Id.* at p. 477.)

9. An analysis of the *Morrison* factors demonstrates that:
- (1) Respondent's unprofessional conduct had an adverse impact on students, school administrators, fellow teachers, and school staff. (Findings 63 through 74.)
 - (2) Respondent's conduct had the potential for significantly greater adverse impact upon his students, although much of this impact was averted because Mr. Judge and his fellow teachers assumed respondent's teaching duties. (Finding 74.)
 - (3) Respondent's alcohol abuse was very recent in time, continuing up to the first day of hearing. (Finding 77.)
 - (4) Because respondent is a high school teacher and high school is an impressionable time for teenagers, respondent's repeated relapses and excessive absenteeism due to alcohol abuse are of serious concern given the nature of his credential and the age of his students. (Finding 82.)
 - (5) Although respondent sought to excuse his unprofessional conduct by blaming it upon his disease and personal issues, because respondent repeatedly chose to drink after receiving sufficient tools to address his alcoholism, he failed to establish that there were any legitimate extenuating circumstances surrounding his conduct. (Findings 78 and 79.)
 - (6) Because respondent chose not to utilize the tools he was given to maintain his sobriety, he is responsible for his repeated relapses, excessive absenteeism, and other unprofessional conduct. (Findings 76, 77, and 83.)
 - (7) Respondent's repeated recent relapses establish that the likelihood of recurrence of his excessive absenteeism due to alcohol abuse is extremely high. (Findings 75 through 77.)
 - (8) Given the ample opportunity the District gave respondent for rehabilitation, disciplining him for his excessive absenteeism and unprofessional conduct due to his repeated relapses would not have an adverse impact or chilling effect upon other teachers who may wish to seek help for their diseases. (Finding 78.)

This analysis of the *Morrison* factors establishes that respondent is not fit to remain a teacher for the District.

10. Respondent's inability to maintain control over his drinking appeared to be due to a defect in temperament. (Finding 83.) The District therefore established that respondent is evidently unfit under the reasoning set forth in *Woodland*.

11. In sum, when all the factors set forth in *Morrison* and *Woodland* are analyzed, the District proved that respondent, due to his alcohol abuse, is evidently unfit to teach children. The District therefore established cause to discipline respondent under Education Code section 44932, subdivisions (a)(5) and (a)(11).

12. Given respondent's evident unfitness to teach children, the District established cause to dismiss respondent under Education Code section 44932, subdivisions (a)(1), (a)(5), (a)(7), and (a)(11).

ORDER

Respondent Daniel Westover is DISMISSED as a permanent certificated employee of the San Juan Unified School District pursuant to Legal Conclusions 1 through 12, jointly and individually.

DATED: December 8, 2010

MICHAEL BURCHETT, Member
Commission on Professional Competence

KAREN J. BRANDT, Chair
Commission on Professional Competence

DISSENT OF CHARLES E. DENONN

1. With respect to the facts of possible Unprofessional Conduct by Daniel Westover, Respondent:

Charge 1: Respondent admitted to being on school grounds for noninstructional duty after having consumed two beers earlier in the afternoon but the District provided no evidence that Respondent was either under the influence of alcohol or drunk when he reported to duty.

Charge 2: Respondent admitted that he was absent approximately six times because of the symptoms of his alcohol use and another 19 times because of his participation in alcohol rehabilitation in 2004-2005.

Charge 3: Respondent admitted to being absent on October 12, 2006.

Charge 4: The District failed to prove that lesson plans were inadequate. The District provided no evidence that it has a standard for the content of lesson plans left by teachers in either routine or emergency situations. The testimony of the direct supervisor was that he could use the lesson plan if required to conduct instruction.

Charge 5: The District did not prove that Respondent was unprofessional when he discussed his absences with his high school students. Although all parties agreed that Respondent said “too much” in talking with his class about his absences, the District did not prove that he violated any established District standard or Board Policy. Respondent testified that he made his comments to his class in a hope to deal honestly with his students’ questions was very credible so as to maintain the unrefuted claim of good rapport with his students. The email chain indicates that his immediate supervisor was concerned about the class discussion but did not feel that discipline was warranted for this one instance of poor judgment.

Charge 6: The charge that Respondent attempted to abuse the sick leave program was frivolous and disputed by the evidence. Although he first sought to use a previously authorized duty-related absence to cover one of his sick days, he shortly thereafter cancelled the request. There was unrefuted evidence that he provided the service to the District that would have justified the release for district business, nevertheless, Respondent understood that taking the business leave day to cover absence due to illness would be inappropriate and withdrew his request.

Charge 7: Respondent admitted to being absent from May 17 through May 28, 2007 because of alcohol related symptoms and participation in a rehabilitation program. Most of this period of absence was due to attendance in a rehabilitation program. The District failed to provide adequate evidence that it had a standard for which to judge if lesson plans were inadequate. The testimony of the direct supervisor was that he could use the lesson plan if required to conduct instruction.

Charge 8: Respondent admitted that he was absent for at least sixteen days in school year 2006-2007 for alcohol related symptoms or rehabilitation. He attended a rehabilitation program for at least thirteen days during this time period.

Charge 9: Respondent admitted to being absent on July 31, 2007 for the effects of his alcohol use. The record indicates that he did not fail to provide “grades in a timely manner.” He emailed grades to the school at 10:38 am on July 31, 2007. Although the District expressed concern about his failure to include the final in the grades he provided, Respondent was not charged with providing inadequate grades. The District also wanted Respondent to provide “citizenship grades,” but provided no evidence that citizenship grades are required as part of the end-of-course grading program. Respondent testified credibly to the minimal weight that can be given to the Summer School final because of the requirement to turn in grades at the end of the session. The District did not dispute his assertions that there was insufficient time to grade a final and include the exam in the final summer school grades. The District also did not dispute Respondent’s testimony that his giving a “real” final was more than what many others do because of the problem of getting grades in on the very last day of summer school. He testified that because of the time problem in grading and using results from a final examination, he chose to give a final and use its results to make grade changes only when it was necessary. The delay in finalizing grades resulted more because of the dispute between the teacher and administration concerning what would be the final grades given to students and not from any delay in submitting grades on the final day of summer school.

Charges 10-11: Respondent admitted to being absent from September 17, 2007 through September 21, 2007 for alcohol related symptoms or rehabilitation. The District failed to provide sufficient evidence to conclude that Respondent failed to secure a guest teacher for the September 17, 2007 absence. In the Letter of Concern Respondent is only accused of failing “to secure a guest teacher *in a timely fashion . . .*” [Emphasis added.] Respondent did not admit to failing to advise the school of his absence on September 17, 2007. In his letter to his immediate supervisor, dated October 3, 2007, Respondent wrote “I did call sub-services on Monday, September 17, 2007, to state that I would be absent.” Although the charge is specific about not getting a substitute teacher, the Draft Letter of Warning gives partial credence to the possibility that Respondent may have tried but did not complete the process by getting a job number. His supervisor admits that they do not dispute his claim that he tried to get a substitute, only that “there is no record of one being ordered by you . . .” The Letter of Reprimand, dated October 15, 2007 written in part to cover this incident does not include the same accusation as the formal charge. The District based its charge on the fact that no substitute was ordered through the substitute finder system. In an exchange of emails contemporaneous to the events, Respondent stated “I did call Karen and leave plans.” This email states that he “was in the hospital from Thursday until Saturday.” In his testimony, Respondent stated that he believes he tried to use the guest teacher request system but was unable to complete the task. In his email he also refers to this time as “All in all, not a good time.” In his testimony for the District, the immediate supervisor tried to portray the guest teacher request system as nearly a flawless and simple task. Under cross examination he testified that it has been years since he used the system to get a substitute and never used the electronic version of the guest teacher request system. He testified that he

could not recall if other teachers had experienced difficulty with the guest teacher request system. He admitted that he could not recall disciplining anyone else for failing to acquire a substitute when absent for an illness. Furthermore, the District based this charge on Respondent's actions prior to October 15, 2007 when his supervisor gave Respondent a Letter of Concern advising him of his need to call for a guest teacher when absent.

Charge 12: The District failed to prove that Respondent failed to provide lesson plans on September 20, 2007. In the email chain related to the absences of September 21-25, 2007, Respondent wrote "I did call Karen and leave plans." In the September 20, 2007 email that prompted Respondent's assertion that he provided lesson plans, the immediate supervisor asked for lesson plans for September 21, 2007. He made no mention of the lack of lesson plans for September 20, 2007. Likewise, there is no mention of the failure to provide lesson plans during this period of absences in any of the discipline letters [the Draft Letter of Concern, the Letter of Warning or the October 15, 2007 Letter of Reprimand] written pursuant to the September 21-25, 2007 absences.

Charge 14: This charge expands Charge 10 to include any of the absences in September 2007. As mentioned above the District did not prove that Respondent willfully failed to order a guest teacher and the charge of failing to provide lesson plans is contradicted by the Letter of Warning. There is nothing in the Letter of Warning concerning the failure to leave or provide lesson plans for any of the absences in September 2007.

Charge 15: Respondent admitted that he was too sick from the symptoms of his alcohol use to come to work on November 26, 2007. In his email response on November 27, 2007, Respondent was too ill to do what needed to be done. He wrote, "I can't do anything right now."

Charge 16-19: Respondent admitted that he did not call for a substitute for November 27, 2007. He did notify the school by email at 2:22 am on November 27, 2007 that he would not be coming in and was "incapable . . . of calling for a sub." His supervisor admitted that such last minute notifications of employee absences are an inconvenience but that similar failures to order guest teachers does occur from time-to-time with other employees without disciplinary consequences. The October 15, 2007 Letter of Reprimand does not require the use of the substitute finder system when being absent from school. In the Letter of Reprimand, Respondent is granted authority to use an alternative method to secure a guest teacher. "Additionally, you have previously been provided alternative contact information for your administration and clerical support should you need to reach them in an emergency to secure a guest teacher for you."

Charge 22: Respondent admitted to being absent from work on March 24, 2008. The District agreed that he used the substitute finder system to order a guest teacher. The District failed to prove that the lesson plans were inadequate. The District provided no evidence that it has a standard for the content of lesson plans left by teachers in either routine or emergency situations. The testimony of the direct supervisor was that he could use the lesson plan if required to conduct instruction.

Charge 23: The District proved that the lesson plan provided for the economics class on March 24, 2008 was inadequate. The District provided no evidence that it has a standard for the content of lesson plans left by teachers in either routine or emergency situations. Furthermore, in its assertion that the lesson plan for economics was inadequate, the District did not prove that the conduct was willful or that it was part of persistent pattern of similar omissions.

Charge 25: Respondent admitted to being absent from work on March 25, 2008 because he was home “drunk.” He did not order a guest teacher and he did not provide lesson plans for substitute use.

Charge 26: Respondent admitted to being absent from work on March 26, 2008. A substitute showed up for part of the day. Respondent did not provide lesson plans for this date.

Charge 27: Respondent admitted to being absent from work on March 25, 2008. By at least March 27, 2007, the District knew that Respondent would be absent for the remainder of the year. They stated so in an email to other math teachers.

Charge 29: Respondent admitted to being absent from work from March 24 thru May 5, 2008 because of complications from the symptoms of alcohol use and participation in a rehabilitation program. Although there was a delay in getting into rehabilitation, Respondent was in rehabilitation for most of the thirty days that he was absent.

2. With respect to the charges of persistent violation of laws, regulations and policy:

The District did not prove that the charges were persistent violation of or refusal to obey school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board of education or by the governing board of the school district employing respondent.

Respondent did not regularly and willfully and persistently fail to prepare lesson plans for substitutes. The incidents of omission in behavior were intermittent and random. He failed to obtain a substitute only a limited number of times. Likewise, he failed to provide lesson plans only a limited number of times. Most of the incidents occurred only when Respondent was either overwhelmed by the alcohol withdrawal symptoms or he was in a rehabilitation facility where he had limited or no access to communications equipment. The District did not prove that Respondent acted willfully and with an attitude of insubordination. In each case, his failure occurred because of his suffering from the ill effects of alcohol use or the complications brought on by attempting to withdraw from alcohol use.

In *Manto v. Simi Valley Unified School District*, the Commission on Professional Competence specifically considered whether the failure to provide substitute lesson plans warranted dismissal of a teacher. It concluded that it did when the teacher had persistently failed to provide substitute lesson plans because “Respondent’s refusals were willful, stubborn and continuing.” The Commission based their use of this standard by citing two

cases, Bourland and Seaman. In reversing the judgment against a teacher in San Dieguito Union High School Dist. V. Commission on Professional Competence (1982) 135 Cal.App.3d 278, 185 Cal.Rptr 203, the Supreme Court wrote that it is a matter of law a charge of failure to submit lesson plans for substitute teachers must “demonstrate willfulness.” In that case, the Court justified its finding that the teacher did not willfully fail to order a substitute by pointing out that the teacher “offered lengthy explanations about the difficulty of submitting lesson plans when suddenly her illness or that of her family prevented notification in advance or preparation for such contingencies.” The Court pointed out that a persistent refusal to prepare lesson plans for substitute teacher might lead to a different conclusion.

Similarly, in *Jacob v. Fairfield-Suisun Unified School District*, the Commission on Professional Competence did not sustain the efforts of the District to dismiss a teacher who “on a least a few occasions” violated school and Board rules because the District did not prove that respondent “had an attitude of insubordination.”

3. With respect to unfitness to serve:

First, Respondent was not charged with any allegation that would indicate that it would be inappropriate to allow him to continue to associate with children. To the contrary, the testimony of a former student, an email placed in evidence by the District from a parent, the testimony of the immediate supervisor, and an evaluation written by that supervisor a year before Notice of Unprofessional Conduct attest to Respondent’s excellent performance when he is in the classroom instructing students. The former student praised the Respondent for his dedication to his craft and expressed the hope that her younger sister could have him as a teacher when she is in high school. In one of the four email chain placed in evidence ostensive to document parent concerns about the Respondent’s extended absence in 2007, the parent wrote, “[P]lease be aware that my daughter, [name redacted] has struggled this last semester and Mr. Westover had been very helpful and was working with her in order to pass the class.” The immediate supervisor acknowledged Respondent’s success in the classroom and commented about the high pass rate of Respondent’s AP Economics class. He testified that approximately 90% of the AP Economics students scored a “4” or better qualifying them for college credit for their efforts. In the evaluation written in April 2007 three years after Respondent’s battle with alcohol first surfaced, the supervisor rated Respondent as “meets or exceeds District standards” in all six areas of the Standards of the Teaching Profession. He recommended that Respondent remain eligible for the Option B type of evaluation, reserved for successful teachers. The supervisor wrote, “Mr. Westover has worked to provide his students a quality experience in the areas of math and economics.” When he comes to school, Respondent is a good teacher who has the respect of his students and provided them with a quality education.

Likewise, at no time did Respondent come to work unable to complete his teaching duties. The 2004 charge was not proven and he was never again charged with being drunk, being under the influence, or having the smell of beer on his breathe. In fact, Respondent testified that he stayed home sick when he was suffering from the effects of alcohol or the effects of detoxing.

The District failed to prove that the lesson plans were inadequate because it had no standard for adequacy and there was testimony that the lesson plans were usable. The key issues in the case against Respondent concern his “evident unfitness” because he does not come to work and had failed, on a limited number of times, to order a guest teacher or provide lesson plans.

Respondent was absent for approximately 92 days due to alcohol use or alcohol rehabilitation. During the four year period covered by the charges, Respondent missed approximately 36 days as a direct consequence of the ill-effects of his drinking or while he was attempting to gain admission to a rehabilitation program. He used about 56 sick leave days to receive rehabilitation treatment. During this time he had more than enough sick leave days to cover his absences. Teachers in the district receive 10 days of sick leave annually and Board Policy allows the carryover of sick leave from year to year. On February 15, 2008 he still had more than 57 days of sick leave accrued. The District never challenged the appropriateness of Respondent’s use of sick leave or personal necessity leave for any of these absences. The District spent considerable time trying to prove that many of the absences occurred because of alcohol use, time spent detoxing from alcohol use, or time in spent in rehabilitation. The record shows that despite missing work 92 days for his illness and four days for other illnesses over the three year period, Respondent has a positive sick leave balance.

The number of absences alone does not prove “evident unfitness. In *Governing Board of the Oakdale Union School Dist. V. Seaman* (1972) 28 Cal.App.3d 77 [104 Cal.Rptr. 64, 104 Cal.Rptr. 527], the appellate court found that an absence for one month did not constitute a persistent violation of school rules and regulations even when the teacher took the absence without the approval of the school board. In *Stewart v. Board of Ed. Of Ritenour, etc* (Mo. 1978) 574 S.W.2d 471, the court pointed out that numbers of absences alone do not establish that absences are excessive. The court wrote “This is true in spite the fact that substitute teachers had to be hired to take [the teacher’s] place, a condition which was certainly foreseeable when the board adopted its liberal, open-ended policy.” Although instruction by a regular teacher is generally preferable to instruction by a substitute, each teacher is allowed paid leave for illness or personal necessity by Ed. Code 44978 and 44981. [135 Cal.App.3d 286] Ritenour considers whether absences are reasonable or unreasonable when defining excessive. The Supreme Court ruled in *Rankins v. Commission on Professional Competence* (1979) 24 Cal.3d 167 [154 Cal.Rptr. 907, 593 P.2d 852] ruled that a finding of hardship must turn on evidence that the absences and replacement by substitutes had a “substantial detrimental effect on the educational program of the district”

In *San Dieguito Union High School Dist. V. Commission on Professional competence* (1982) 135 Cal.App.3d 278, 185 Cal.Rptr. 203, the Court of Appeals ruled that the frequency and duration of legitimate absences does not prove “evident unfitness.” The court ruled that 78 A.L.R.3d 117 can be used to support conclusions of unfitness when the absences are “unauthorized absences which usually involve willfulness and defiance of school rules and policies.” When absences are “legitimate under District policy” the absences “could not therefore be willful [sic], defiant or unauthorized.” Respondent’s absences were not unauthorized.

Morrison Considerations:

Evident unfitness must also be examined in light of the Morrison standards. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 the Supreme Court delineated the factors to be considered in determining whether charges rise to the level of “evident unfitness.” The factors include (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in the time of the conduct; (4) the type of teaching certificate held by the party involved; (5) the extenuating or aggravating circumstances, if any surrounding the conduct, (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the questioned conduct; and (8) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

With respect Morrison 1: Likelihood that the conduct may have adversely affected students or fellow teachers

Even though much was made about the impact and inconvenience caused by Respondent’s behavior on his supervisor and other administrators, the first Morrison standard concerns affect on students and teachers. Although the District proved that Respondent could not “maintain his sobriety sufficiently to be fit to report to work on a regular basis,” it did not prove that his absences harmed his students or peers any more so than would a similar number of absences caused by teachers receiving chemotherapy treatment, or teachers meeting with a psychiatrist or therapist for depression, or teachers who had to leave work or could not report to work for symptoms of angina.

The District could find only one teacher who had expressed a negative opinion about Respondent because of his battle with alcohol. A female AVID teacher, clearly hostile to Respondent because of a failed personal relationship, expressed concern that some students they had in common might have been harmed by his absence from the classroom. She provided no evidence of any actual harm and focused more on the problems that the absence of any regular teacher might cause when being replaced by a substitute. The District used emails from four parents to try to establish an “unfitness to teach” link to the concerns of parents about the impact of the Respondent’s length absence at the end of the 2006-2007 school year. A careful reading of each email shows that the real concern was that a substitute might use a different grading system. In one of the emails the parent actually praised Respondent for his work with her daughter.

In its 2010 *Bronley* decision, provides guidance on what may indicate adverse affect. *Bronley v. California Com. On Teacher Credentialing* (2010) 184 Cal.App.4th 462, Cal. Rptr 3d. In affirming the judgment against the teacher, the Court in *Bronley* found that the wearing of an ankle bracelet provides strong evidence that the convictions for drunken driving “‘may’ have adversely affected students and other teachers.” In its decision the Court made a direct connection between the convictions, wearing the ankle bracelet to school and the potential for an adverse impact on “plaintiff’s ability to earn the respect of her students.”

Other cases provide guidance as to what may be evidence of adverse affect. Although expressing concern about two incident of drinking in the presence of students while on a field trip and the potential for placing students' welfare in jeopardy, a majority of the Commission on Professional Competence in *Hafner v. Lake Elsinore Unified School District* OAH Case No. L2004100066 did not find sufficient cause to justify dismissal of the teacher. In *Delprete v. Commission on Professional Competence Baker Valley Unified School District* OAH Case No. L2001070082 the Commission on Professional Competence found that drinking alcoholic beverages with students at a teacher's house, bringing wine to school and drinking on school grounds is likely to adversely affect students or teachers and demonstrates unfitness to teach. The finding of the panel went directly to the concept of a teacher as a role model or exemplar See *Palo Verde etc. Sch. Dist. V. Hensley* (1970) 9 Cal. App.3d 967, 970. The panel wrote "The example of a teacher bring a bottle of wine into a third grade classroom and drinking wine with another teacher is clearly not an example the District can afford its teachers to set."

Respondent was never convicted of an unlawful act, nor did his illness generate negative comments from students or teachers. The District failed to prove that students or teachers were adversely impacted with respect to the absences in 2007-2008.

With respect to Morrison 3: Type of teaching certificate held by the party involved

In *Bronley*, the Appellate Court found that an elementary school teacher can be found "unfit to teach" because of "the impressionable nature of children at that age" Unlike the *Bronley* facts, Respondent is a high school teacher. In *Hafner v. Commission on Profession Competence Lake Elsinore Unified School District*, OAH Case No. L200410066 (2004), the Commission ruled that dismissal was not warranted even though the Commissioners found that the teacher consumed alcoholic beverages on successive days in the presence of students while on supervising students on a trip to Las Vegas.

With respect to Morrison 5: Extenuating or aggravating circumstances

Respondent's conduct is that he suffers from chronic alcoholism. The district recognizes that alcoholism is an illness. A Certified Addiction Specialist and former program director at one of rehabilitation programs attended by Respondent's testified about the nature of alcoholism as an illness. He reported that it has been so recognized by the American Medical Association since 1955, with recognition upgraded to alcoholism as a "full blown disease" in 1966. He testified that alcoholism is a compulsive disorder and once an alcoholic takes a drink the alcoholic has lost any control over his ability to stop drinking. He also testified that during periods of withdrawal, some patients can be so sick as to be unable to complete required tasks. He said that some people die during period of detox if they do not receive medical attention. The incidences when Respondent failed to request a guest teacher or failed to provide a lesson plan were in large part caused by his inability to function properly when he was attempting to detox or out of the communication's loop.

With respect to Morrison 6: Praiseworthiness or blameworthiness of the motives resulting in the conduct

The sixth factor under Morrison focuses less on the praiseworthiness or blameworthiness of the conduct than on the praiseworthiness or blameworthiness of the **motives** resulting in the conduct. Respondent deserves no praise for allowing his life to be dominated by alcohol use. Nevertheless, by staying home instead of coming to work when under the influence or when suffering from the effects of alcoholism kept the problem outside the school environment. As previously mentioned the District never claimed that Respondent acted willfully when he failed to call for a guest teacher or failed to provide lesson plans. There was no motive to be willful in doing what he did or did not do; there was no intent to be insubordinate in what he did or did not do.

With respect to Morrison 7: Likelihood of the recurrence

In testifying for the Respondent, the Certified Addiction Specialist expressed hope that Respondent could remain sober but acknowledged that it is very difficult to do so. There was much evidence to show that Respondent is not yet in true remission from his alcoholism.

With respect to Morrison 8: Extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

The disciplinary action initiated by the District while it encouraged Respondent to seek assistance for his alcoholism had a chilling effect upon the constitutional rights of the teacher involved and sends a chilling message to others. The claim of the Respondent that alcoholism is an illness was unchallenged and unrefuted. San Juan Board Policy 5131.6, written specifically with respect to student behavior, expresses the intent of the Board “to keep district schools free of alcohol” The same policy “*encourages* staff to . . . [be] . . . positive role models for students with regard to alcohol” [Emphasis added] Board Policy 4020 requires employees “to report to work in a fit condition for duty.” The same section of the policy expands on the requirement to report fit for duty by prohibiting employees from “[b]eing under the influence.” The reference must be related to when the employee is at work or in the presence of students since Board Policy 5131.6 requires “instruction and related materials shall stress the concept of ‘no unlawful use’ of alcohol” The consumption of alcohol at other times may be lawful and outside the right of the San Juan District to control. Board Policy 4020 authorization of discipline and dismissal of employees related directly to violations of the “alcohol-free school and not to problems ensuing from the private abuse of alcohol. The Collective Bargaining Agreement permits the imposition of discipline for the use of alcoholic beverages when it “makes the bargaining unit member unfit to instruct or associate with children.” The District Employee Assistance Plan recognizes alcohol dependency as a mental health issue. Board Policy 4020 encourages employees to seek help when confronting problems of addiction.

At the very time when Respondent was most ready to seek help for his alcohol problem the District was working to build a case for dismissal. None of the District leaders could testify when the actual decision to dismiss was made or by whom it was made. They each seemed to be highly evasive when asked about who made the decision, to whom they talked to about the decision and when the decision was made. It appears that from the time the Human Resources Director went to Respondent's home, the District was intent on pursuing dismissal, even while it encouraged Respondent to enter rehabilitation. Respondent did not know that he would face dismissal if he missed further work until after he had completed rehabilitation more than a month after the March 2008 absences.

On March 25, 2008, the Respondent asked the Human Resources Director, "[w]ould an employee who thought it might be necessary to go in to rehab still have the option?" While the Humans Relations Director apparently had already decided to seek dismissal, he emailed back an encouraging message. "If you need rehab, I suggest that you get the help needed – regardless of what action the district takes." The Human Resources Director embellished his encouragement to Respondent to take the time to enter a rehabilitation program by adding "I can say that I will work with you as best that I can because I am concerned about your wellbeing." Respondent did what most reasonable people would do in similar circumstances; he went into rehab.

At the time of his request to go into rehabilitation, Respondent still had not exhausted his accrued sick leave balance. Like anyone with a serious chronic illness, Respondent desired to use his sick leave to address his problems professionally. To seek dismissal when encouraging medical treatment sends a very chilling message to all employees battling addiction, "you miss work at the peril of your employment."

Conclusion

The sick leave program balances the needs of an ill employee with the obligations of the employer to provide teachers for the classroom. Since all Respondent's absences were authorized and the use of absences did not violate statute or Board Policy, the number of absences is not evidence of unprofessional conduct. Likewise the alleged unprofessional acts or omissions of the Respondent were neither willful nor persistent.

The District has an alternative method for dealing with Respondent's being absent. The Commission in *San Dieguito Union High School Dist. V. Commission on Professional Competence* (1982) 135 Cal.App.3d 278, 185 Cal.Rptr 203 offered a solution to the dilemma caused by teachers who miss work because of unpredictable frequent illness. "The Commission recommended the District hire a stand-in substitute in case of further absences by Harris. . . ."

Finally, the issue of available lesson plans could be easily rectified. Respondent should provide a month's worth of quality lessons to cover any future unexpected absences. The lesson plans should be tied directly to a pacing guide that is updated by Respondent

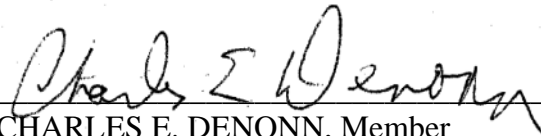
weekly. Each lesson plan should include sufficient information to allow a substitute teacher to provide instruction with a minimal impact on continuity.

When taken together, the District did not prove that Respondent's behavior was willful or insubordinate. Although there is a likelihood of recurrence, Respondent's conduct to date did not pass the Morrison standards to reach the level of unprofessional conduct such that Respondent would be "unfit to teach." To dismiss an employee when they are seeking rehabilitation in conformance with District policy sends a chilling message to other addicted employees.

DISSENT

I dissent. I believe Daniel Westover should not be dismissed from his employment with the San Juan Unified School District.

DATED: December 8, 2010


CHARLES E. DENONN, Member
Commission on Professional Competence