

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
PALO VERDE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

**GEORGE DAGNINO, a Permanent Certificated Employee,
Respondent**

OAH No. 2019070869

DECISION

On November 18, 19, and 20, 2019, a Commission on Professional Competence (Commission) heard this matter in Blythe, California. The Commission consisted of the following members: Kimberly J. Belvedere, Administrative Law Judge, Office of Administrative Hearings; Jennifer Munoz, Redlands Unified School District; and William Briscoe, Moreno Valley Unified School District.

David E. Robinette and Mark W. Thompson, Attorneys at Law with the law firm of Atkinson, Andelson, Loya, Ruud & Romo, APC, represented complainant, Palo Verde Unified School District (PVUSD).

John Cadieux, Attorney at Law with the law firm of Smith Steiner Vanderpool, APC, represented respondent, George Dagnino.

Oral and documentary evidence was received. The record was held open to permit the committee to review exhibits, deliberate, and reach a decision. The record was closed and the matter submitted on December 9, 2019.

ISSUE

Did respondent's conduct on January 16, 2019, which involved an angry outburst directed at the principal of Appleby Elementary School, and February 7, 2019, which involved instigating an incident wherein a female student hid the jacket of a special needs student, warrant his dismissal based on unprofessional conduct, dishonesty, and evident unfitness for service?

SUMMARY

Respondent's conduct on January 16, 2019, and February 7, 2019, constituted unprofessional conduct and evident unfitness for service. Respondent's report to his superiors regarding his conduct on February 7, 2019, was also dishonest. Accordingly, in consideration of the factors set forth by the California Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, respondent's dismissal is warranted.

PROTECTIVE AND SEALING ORDER

The names of the minor students and two witnesses referred to in this matter are subject to a protective order. Any document received as evidence in this matter that contains the name of any minor student or the two witnesses identified below, shall be redacted before any disclosure to the public. No court reporter or

transcription service shall transcribe these names, but shall instead refer to the students by their first name and last initial: D [REDACTED] F., O [REDACTED] N., A [REDACTED] G., P [REDACTED] S., D [REDACTED] J., K [REDACTED] G., J.R., R [REDACTED] S., and L [REDACTED] E. The last names of these students were also redacted from Exhibits 7, and 18 through 21. The names of two of respondent's witnesses, K [REDACTED] S. and D [REDACTED] E., are also subject to this protective order to protect the identify of their minor children.

Exhibit 24, which is an Individualized Education Plan (IEP) for L [REDACTED] E., contains personal and psychological information of L [REDACTED] E. and is too lengthy to be redacted; accordingly, Exhibit 24 is subject to a protective order. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee, may review Exhibit 24 subject to this order, provided that the document is protected from release to the public.

FACTUAL FINDINGS

Background

1. Respondent is a permanent certificated employee of PVUSD. Respondent holds a physical education credential (K-12) and educational specialist credential (mild to moderate K-12). At all times relevant to these proceedings, both credentials were valid.

2. Prior to the 2018-2019 school year, respondent had been working as a physical education teacher at a high school within the district. He was also a football coach and athletic director. During the 2018-2019 school year, based on the needs of the district and because respondent was the only teacher who had a special education

credential that was not being used, respondent was assigned to Appleby Elementary School (Appleby) to a special education class containing three students.

3. Respondent was offered countless training opportunities for techniques in special education as well as computer programs used during Individualized Education Program (IEP) plan meetings, both prior to the beginning of the 2018-2019 school year and during the 2018-2019 school year. Respondent was provided with resources, such as other teachers, to assist him with any questions or concerns he might have had in developing curriculum, teaching the three special education students, and managing behaviors, among other things. Respondent did not avail himself of those many opportunities.

4. Beginning in September 2018, Appleby's Principal, Karina De La Peña, began documenting meetings and conversations she, and others, had with respondent concerning ongoing problems with respondent's conduct. The documentation began at the verbal warning level, and progressed to written confirmation of verbal warnings, to multiple written reprimands, and ultimately to a Notice of Unprofessional Conduct on January 22, 2019.

5. The Notice of Unprofessional Conduct detailed an angry outburst respondent directed at Principal De La Peña on January 16, 2019. The Notice of Unprofessional Conduct contained relevant statutes, regulations, and district policies, and also referenced prior disciplinary letters that had been served on November 16, 2018; October 15, 2018; September 18, 2018; and September 11, 2018. The letter warned that respondent's behavior and conduct had been previously documented as "deteriorating for several months" and provided a plan of assistance. The plan of assistance directed respondent to, among other things, conduct himself in an appropriate and professional manner at all times; maintain a courteous demeanor in

his performance as a teacher; follow all previous directives given to him; and follow all rules and regulations of the district.

6. On February 7, 2019, respondent instigated an incident between students. Specifically, respondent told several female elementary school students to hide the jacket of one of his special education students, L [REDACTED] E. According to L [REDACTED] E.'s IEP, he receives special education services under the category of emotional disturbance. L [REDACTED] E.'s IEP explained that L [REDACTED] relies on "preferred adults to mediate his interactions with others," and is prone to angry outbursts. L [REDACTED] can be verbally aggressive with other students and has also exhibited physical aggression towards other students in and out of the classroom. When L [REDACTED] E. saw that one of the female students had complied with respondent's directive to hide his jacket, he became very upset. L [REDACTED] E. chased after the female student who had taken his jacket, and threw a basketball at her. The altercation upset the female student. When questioned about the incident, respondent provided two written statements that were false and/or misleading.

7. On June 25, 2019, in closed session at the regularly scheduled meeting of PVUSD Board of Trustees (PVUSD Board), district administration recommended respondent's dismissal based on respondent's uncorrected pattern of unprofessional conduct, and the two above-referenced instances for unprofessional conduct (in violation of Education Code sections 44932, subdivision (a) and 44933); dishonesty (in violation of Education Code section 44932, subdivision (a)(4)); and evident unfitness

for service (in violation of Education Code section 44932, subdivision (a)(6)). A majority of the PVUSD board voted to dismiss respondent from his employment.¹

8. Respondent was given the opportunity to discuss the matter at a *Skelly* meeting on June 4, 2019, which he declined.²

¹ Respondent called Norman Guith as a witness. Dr. Guith is a member of the PVUSD Board. Dr. Guith was not present at the meeting when the PVUSD voted to terminate respondent's employment. Respondent purportedly called Dr. Guith to ask him how he might have voted if he had been present. However, there is no question that the PVUSD Board's official vote was to recommend termination; whether the PVUSD Board's vote would have been different had Dr. Guith been present is not a proper consideration and not relevant to these proceedings.

Respondent also entered into a stipulation with the district concerning the opinion of Sam Burton, another PVUSD Board member, who, voted against the dismissal. It was agreed that, had Mr. Burton testified, he would have testified that he voted against recommending termination because he did not feel the allegations warranted dismissal. Mr. Burton's opinion, however, is irrelevant for the same reason that the testimony of Dr. Guith was irrelevant.

² In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The

9. Respondent timely filed a notice of defense against the Statement of Charges approved at the June 25, 2019, board meeting; this hearing ensued.

Relevant History

10. Karina De la Peña has been the principal of Appleby for four years. Her testimony, and relevant exhibits utilized during her testimony, are summarized as follows: Respondent was assigned to teach the Bridges Special Education Program (Bridges Program) at Appleby for the 2018-2019 school year. The Bridges Program is a special education class for emotionally disturbed students. Students in the program have significant behavioral and academic challenges. At the beginning of the school year, respondent was only responsible for only three students. Throughout the school year two more students were added, for a total of five students.

This was not the first year that Appleby had the Bridges Program; prior to the 2018-2019 school year, Janelle Carpenter taught the program. Prior to that, Karen Martinez taught the Bridges Program. However, because Ms. Martinez had problems with her credential and Ms. Carpenter was needed for a special day program, respondent was the only teacher in the district who could teach the Bridges Program. That is the reason he was given the assignment.

Principal De La Peña did a variety of things prior to the commencement of the 2018-2019 school year to help respondent prepare. The Bridges Program was one of a kind; thus, she knew he might not be familiar with it. She sent respondent a welcome

Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

letter. She gave respondent an agenda for the first meeting of the year to familiarize himself with what would be discussed. Principal De La Peña also met individually with all teachers prior to the beginning of academic instruction.

Once respondent arrived on campus, De La Peña made sure he had supports in place. She discussed her expectations with him. She told respondent about the types of behaviors he might be dealing with as they related to each of his special education students. Principal De La Peña explained that respondent did not need to concern himself as much with academics as he did with controlling the behaviors, but that he was not to ignore academics.

Respondent told Principal De La Peña that he was not familiar with the Special Education Information System (SEIS), a computer program utilized during IEP meetings. Respondent also told Principal De La Peña that he did not know how to conduct IEPs. Principal De La Peña referred respondent to Ms. Carpenter as a resource since she had taught the Bridges Program immediately prior to respondent. Principal De La Peña urged respondent to use Ms. Carpenter as a resource, and even had Ms. Carpenter help respondent run the first IEP meeting he attended.

In August and September, respondent was provided with SEIS training. There were also many meetings to attend in order to receive instruction on what he needed; Principal De La Peña recalled that respondent did not attend the first meeting but attended some thereafter. Principal De La Peña wanted respondent to be set up for success.

Principal De La Peña gave respondent a seven-step lesson plan which is a basic lesson plan every teacher used and which has been in education for the last 30 years.

This example was in addition to having respondent work with Mrs. Solato, another teacher, on how to create lesson plans.

One of the requirements is that, when setting up an IEP for one's students, a special education teacher is supposed to coordinate the date with her secretary so that Principal De La Peña may attend. Respondent was having difficulty with scheduling IEPs. In fact, he was also having difficulty delivering instruction that was grade appropriate. Respondent was also having difficulty preparing for IEPs. He would not have copies ready for everyone, and was not following the proper procedure.

THE SEPTEMBER 11, 2018, MEETING

Because respondent was having difficulties, Principal De La Peña met with respondent on September 11, 2018. Following their meeting, she memorialized the content of their discussion in an e-mail. The points discussed in the meeting were that: respondent schedule an IEP meeting when a student is suspended; check with her secretary prior to scheduling an IEP meeting so that Principal De La Peña could attend; schedule an IEP meeting within 30 days of a parent requesting one; notify her any time he and a student leaves campus³; schedule several specific IEP meetings; and attend SEIS training when it becomes available.

³ This issue was discussed because respondent had let students leave campus unattended on several occasions and she felt it was a liability.

Respondent was further directed specifically not to leave campus with any students during instructional time, leave his classroom or students unattended⁴, set up an IEP without checking with her first, and miss further deadlines.

Respondent was further directed specifically to ask for support when needed, ask if he was not sure about what he was doing, always supervise students, and always be proactive.

SEPTEMBER 18, 2018, VERBAL REPRIMAND

On September 18, 2018, Principal De La Peña prepared a verbal reprimand for respondent because, after having been warned not to do so, respondent scheduled an IEP meeting on September 17, 2018, without checking with her first and without discussing the content of it with her. In that IEP meeting, respondent had offered to transport one of his special education students to and from school, which was not appropriate. Respondent also recommended “mainstreaming” the student; however, such a recommendation is not appropriate without supporting data to show that would be an appropriate change in the student’s program. Had respondent discussed that with her prior to the IEP, she could have informed him that transporting a student or mainstreaming a student without supporting data should not have been addressed.

The bigger problem in the IEP meeting was that respondent said in the meeting that Principal De La Peña was “outvoted” and IEPs do not function by a majority vote.

⁴ This issue arose because respondent had been letting his special education students leave the classroom during instructional time to play basketball, which was not part of academic instruction and was not in close proximity to respondent’s classroom.

The parent was becoming upset because Principal De La Peña was not supportive of the ideas, and Principal De La Peña felt “ambushed.” Principal De La Peña believed it was not a productive way to conduct an IEP.

Principal De La Peña directed respondent as follows: not to transport any students, communicate any proposed changes in a student’s IEP to her prior to the IEP meeting, and present data that respondent collected to support any of his proposals for an IEP. Respondent was also warned that further disciplinary action could be taken if respondent did not comply with the directives.

E-MAIL EXCHANGE SEPTEMBER 19 AND 20, 2018

A series of e-mail communications between respondent and Principal De La Peña, supplemented by her testimony, were demonstrative of the difficulties respondent had working at Appleby. On September 19, 2018, just prior to 2:11 p.m., Principal De La Peña went to respondent’s classroom and neither respondent nor his paraeducator were present. Principal De La Peña e-mailed respondent asking where he and his class had been. Rather than respond to the question, respondent’s terse e-mail in response read:

At the beginning of the year I was asked about staff meetings, plcs⁵, and short Wednesdays. You specifically said I need not worry about that in order to control behaviors.

⁵ It was never explained in testimony or any exhibits what type of meeting a “plc” is or what the acronym “plc” stands for.

After yesterday's meeting, it was made pretty clear that this program is in the most restrictive environment. We had a rough day given the restrictions upon us. It also did not help that after we had a nice game of football by ourselves that it was announced that we can't play football anymore. This put us in a very difficult situation in class to work through, but we did. After school was out, we made sure the boys got onto the bus. I went to the restroom after having to hold it all day, given the restrictions upon us. We went to the classroom. Mrs. Rymer asked if I could go sign some checks. I did.

Since we had not eaten all day, given the restrictions upon us, I offered to take Mr. Carmago to lunch. We did and returned. If there is a set schedule that I need to follow on Wednesday please advice [sic]. This is starting to turn into a harassing work environment.

As I stated in the meeting yesterday, I am going to do what you asked. Control behavior with restricted bathroom usage, and restricted breaks. I will wait to the end of the day to use the bathroom as I cannot leave my students at any given time. I will never go to lunch on Wednesday off campus again and will wait until the end of the work day to eat. . .

After reading respondent's e-mail, Principal De La Peña felt she needed to respond in writing because respondent's allegations were inaccurate and harassing

towards her. Respondent was never told he could miss staff meetings because those occur after school so having students in class is not an issue. They are mandatory. She also never told respondent they could not play football; football is permitted as instruction, but not during recess because of problems that had been occurring on the playground. Nobody else had any problems with that except for respondent. Similarly, respondent was never told he could not use the bathroom; he was simply told he needed to cover his classroom. Thus, as long as the paraeducator or another teacher was monitoring his students, he could tend to his needs. Principal De La Peña also never told respondent he could not eat. Per contract, all teachers are permitted to have a lunch period. Principal De La Peña was upset because respondent's accusations in the e-mail were "ridiculous." She was simply asking him about his job and his response was not appropriate.

In a September 20, 2018, e-mail to respondent, Principal De La Peña clarified to respondent that staff meetings occur every Tuesday at a specified time and that he is not required to attend those meetings. However, PLC meetings occurred every Wednesday from 12:40 p.m. to 1:40 p.m. and those meetings were required. Principal De La Peña also explained that the three special education students respondent had were permitted to attend recess, assemblies, snack breaks, lunch breaks, and any other activity as long as they were supervised because of their behaviors. This was not a restriction; it is because of the intensive support services the students required. Principal De La Peña also explained that respondent was always permitted to have a lunch and breaks, but they needed to be staggered with his paraeducator so the students would not be unsupervised. Principal De La Peña finally explained that there had been many problems on the playground with football so the playing of football was suspended for everyone during recess; but if respondent wanted to take his

students out for a structured football lesson, that was permitted. Principal De La Peña also agreed to attempt to provide some items respondent requested for his classroom.

SEPTEMBER 24, 2018⁶ LETTER IN RESPONSE TO RESPONDENT'S E-MAILS

Principal De La Peña had asked respondent for a schedule of when he would be teaching various subjects so she could observe. Respondent had told her it is "impossible to have a set schedule." Principal De La Peña was frustrated because that is what teachers do: set schedules. She gave respondent a sample of the schedule used by prior Bridges Program teachers. She also told respondent she did not expect anything different of him than she did not expect of anyone else – all teachers had to provide their instructional schedule. Respondent then insisted that Principal De La Peña specifically told him he did not have to worry about academics. Principal De La Peña said this assertion was absurd. She never told him he could ignore academics. Finally, respondent requested someone "fully trained in IEPs handle his caseload." Principal De La Peña explained that this is impossible; respondent is a special education teacher and has been a teacher for a long time. Requesting someone else to do his work was "outrageous." It was like he simply wanted another teacher to do his job. Respondent was also spending inordinate amounts of time playing basketball with the students. At this point, Principal De La Peña felt respondent was just trying to create problems.

⁶ Principal De La Peña pointed out that the letter is dated September 18, 2018, which was not the correct date. The correct date is September 24, 2018.

Principal De La Peña wrote a letter to respondent on September 24, 2018, addressing his statements in the above-referenced e-mails, and also addressing new statements he had made to her in the interim. That letter read:

[I]nsofar as you have any questions arising from any of our previous communications, you are always welcome to follow up with questions if you require further information or clarification.

Most recently, you responded on Friday afternoon that "it is impossible to have a set schedule." I can assure you that it is not. For your reference, I have attached a schedule prepared by last year's teachers in your position

With regard to your request in your September 21, 2018, e-mail that: [I] am requesting that someone that is fully trained in IEP meetings, SEIS, facilitate the meetings scheduled on my caseload.

You hold an Education Specialist credential, which ostensibly qualifies you to provide special education instruction and support commensurate with your training and experience. Thus, you are "fully trained" to participate in IEP meetings and the other duties as specified in your job description. There are always opportunities for additional training and professional development when needed to update and improve the knowledge and skills of our teaching staff, but the directives you have been given thus

far with regard to your duties are consistent with knowledge and skills possessed by any Education Specialist instruction credential with similar training and experience. Additionally, at your request, on August 21, 2018, you attended an IEP meeting to observe how staff at Appleby Elementary typically conduct their IEP meetings. At the conclusion of this observation, you did not indicate that there were any concepts or protocols that you did not understand or think that you would have difficulty following. As noted in Board Policy No. 4119.3, all employees "shall fulfill the duties and responsibilities set forth in their job description and shall comply with Board policies, administrative regulations, applicable employee agreements, and local, state, and federal laws," and my expectation of you is the same.

Further, you have already been afforded professional development opportunities with regard to SEIS. . . . Shortly thereafter, on August 14, 2018, I told you that you could contact Regina Gonzalez, our district trainer for SEIS, to set up the training that you needed. You have already had one or more meetings with Ms. Gonzalez at some point . . . and it is my understanding that you have two more meetings scheduled this week [according to your September 21, 2018, e-mail]

In terms of some of your more peculiar assertions, for example, stating that "my position is irrelevant to the IEP process," stating that I said your students could never "interact with regular education students," and describing yourself as "having to hold it all day" because you are forbidden from using the bathroom . . . it seems as though these are exaggerations made in anger or frustration, so I will not dignify them with a response and simply remind you that you are a professional teacher with 18 years of experience, and it should be beneath you to resort to such behavior simply because you disagree with a directive or are still adjusting to some of the differences in your new site or assignment. . . . I have attached a copy of Board Policy No. 4119.21 to this letter for your reference; however, these are reasonable expectations of *any* professional adult in *any* workplace and so I trust you will conduct yourself accordingly in the future. . . . [emphasis in original].

OCTOBER 15, 2018, WRITTEN REPRIMAND

Respondent scheduled an IEP meeting for one of his students to take place on September 21, 2018. All persons expected to be present for the IEP meeting were present (the parent, site administration, ERMHS staff, and district administration). Respondent was not present. The IEP meeting was supposed to be for a student that was going to be mainstreamed. When respondent was called because he was not present, respondent said the meeting was cancelled. Respondent told Principal De La Peña that he sent her an e-mail, but the e-mail had been sent after the meeting had

already started. Principal De La Peña felt horrible because the parent had taken the day off of work, and everyone had been inconvenienced to be there. Respondent's conduct also embarrassed her, as a school leader. Respondent was written up for his unprofessional conduct. The written reprimand made it clear that respondent was not taking responsibility for the IEP process in relation to his students, not consulting with staff regarding implementation of the IEPs at the school, and not collaborating as required with parents, teachers, administration, and others. The written reprimand directed respondent to do all the above going forward, or it could lead to further disciplinary action. Respondent signed and acknowledged the written reprimand. Respondent did not file a rebuttal explaining his conduct.

NOVEMBER 16, 2018, WRITTEN REPRIMAND

On November 15, 2018, respondent's paraeducator sent a test message to Principal De La Peña and asked for additional time for he and respondent to go to lunch. Principal De La Peña responded that she could not approve that. Principal De La Peña shortly thereafter saw respondent and told him, at 12:08 p.m., that he could take his 40-minute lunch and must be back by 12:50 p.m. so he could report to Room 22 and cover for another teacher. Principal De La Peña then informed the teacher in Room 22 that respondent would cover her at 12:50 p.m. Rather than abide by the directive, respondent did not return from lunch until 1:20 p.m. When questioned why he was late, respondent said he thought he was supposed to report to the classroom at 1:00 p.m., which made no sense, since he was already late. Respondent said he was giving his paraeducator a ride home. Principal De La Peña issued a written reprimand for respondent's conduct, noting it was insubordination, and informing respondent that this was yet another instance of a continuing pattern of misconduct. The written reprimand directed respondent to report to work on time, and remain at work every

day, as well as take his 40-minute lunch as per contract. The written reprimand also notified respondent that it was not permitted to exceed that 40-minute lunch period except with express authorization by a supervisor. The written reprimand warned that failure to adhere to board policies could lead to further disciplinary action. Respondent signed and acknowledged the written reprimand. Respondent did not file a rebuttal explaining his conduct.

NOVEMBER/DECEMBER CPI TRAINING

Early in the school year, a calendar request was sent to respondent regarding Crisis Prevention Intervention (CPI) training that was to occur in November or December 2018. This class covered how to do CPI, which included classroom and "hands on" instruction. Respondent did not attend the training.

The "Angry Outburst" Incident

11. An IEP meeting for one of respondent's students had been scheduled on January 16, 2019. Respondent was made aware of the meeting, the purpose of which was to determine whether a student at another school should be placed in the special education program at Appleby. The meeting commenced at 8:00 a.m. Respondent was not present; all other interested parties were present. Principal De La Peña made a total of three calls on the intercom. By 8:20, respondent still had not shown up and the bell for classes had rung. At some point, respondent came to the location where the meeting was being held and started yelling at Principal De La Peña in front of students and others present. Principal De La Peña said she was "shocked." She felt threatened. Principal De La Peña used a lower tone with her voice to try and calm him down. However, respondent was "extremely aggressive" and "slamming his hat on his hands" as he yelled at her. Respondent also made "aggressive gestures" with his hands.

Although respondent did not physically or verbally threaten Principal De La Peña, she noted that "his body language said otherwise." Principal De La Peña was concerned for her own safety and the safety of her students. After respondent verbally confronted her, he continued to yell at her as they entered the IEP meeting. Principal De La Peña said "it was one of the worst moments [she] had as a principal." However, despite her fear, she finished her job at the IEP. After it concluded, Principal De La Peña had to go around to the classrooms and reassure students that everything was fine because the students appeared "shocked." Teachers asked her if she was all right. Principal De La Peña also said there was at least one parent present during respondent's verbal outburst that told her they did not want respondent as a teacher.

After this incident, respondent was presented with a Notice of Unprofessional Conduct, which cited this incident and all applicable board policies, and warning respondent to correct his deficiencies within 45 days.

12. Mary Roberson was most recently employed by the district as the Dean of students. She retired in June 2019. Ms. Roberson's testimony is summarized as follows: She spent 26 years teaching 4th and 5th grade before spending her last five years as Dean of Students. Ms. Roberson also spent 12 years as the president of the PVUSD teacher's union. Ms. Roberson was familiar with respondent as a teacher and because respondent served as vice president of the union the same year that she served her last year with the union.

Ms. Roberson recalled the January 16, 2019, incident wherein respondent verbally accosted Principal De La Peña. She recalled there was a "very important" IEP meeting happening that day.

Ms. Roberson recalled Principal De La Peña being concerned because respondent was not present at the IEP meeting. Ms. Roberson initially was not outside and did not see how respondent's verbal confrontation began. Another teacher (Carol Wade, who teaches third grade), came in and told her about the interaction and that it was serious. When Ms. Roberson walked outside, she saw respondent facing Principal De La Peña with his chest out, fists clenched, and yelling at her. Respondent was very "intimidating" and it "frightened" her because she did not know what respondent was going to do next. During respondent's outburst, there were children present that ranged from first to third grade. They were "wide eyed and mouth agape" as respondent yelled. Ms. Roberson noted that students should never see a school employee "not being professional" and school should always be a safe place. In her opinion, based on respondent's conduct, "that hallway was not a safe place at that time."

The Jacket Incident

13. D [REDACTED] J. is currently in eighth grade at Appleby and was at the school during the 2018-2019 school year when respondent was teaching special education. Her testimony is summarized as follows: On February 7, 2019, she and other students (O [REDACTED] N., P [REDACTED] S, D [REDACTED] F., and A [REDACTED] G.) were outside on the playground area. They were "just talking" and L [REDACTED] E. was playing basketball. L [REDACTED] E.'s jacket was hanging on a nearby rail. Respondent was watching L [REDACTED] E. play. Respondent came up to the group and told them to hide L [REDACTED] E.'s jacket. O [REDACTED] N. took the jacket and ran off with it. After L [REDACTED] E. saw O [REDACTED] N. run off with his jacket, he chased her and threw the basketball at her. O [REDACTED] N. grabbed the basketball and "they started going back and forth." L [REDACTED] E. appeared to be throwing the basketball in anger, and O [REDACTED] N. was just playing. L [REDACTED] E. eventually got his jacket back after O [REDACTED] dropped it. The

altercation occurred when "Ms. Liz" told the children to stop. Respondent never said anything to anybody. The incident occurred right before the bell rang. When pressed on cross-examination regarding what respondent told them to do, D [REDACTED] J. was adamant that respondent told them to hide the jacket. D [REDACTED] J. also submitted a written statement to the district during its investigation of the incident, that was consistent with her testimony.

14. Ariel G. is currently in eighth grade at Appleby and was at the school during the 2018-2019 school year when respondent was teaching special education. Her testimony is summarized as follows: On February 7, 2019, she was outside with a few of her female friends and they were just "chilling." Respondent told one of them to take L [REDACTED] E.'s jacket and "hide it." A [REDACTED] G. said she was "right there" when respondent specifically said to "hide" the jacket. O [REDACTED] N. took L [REDACTED] E.'s jacket and started running with it. L [REDACTED] E. had a basketball and threw it at O [REDACTED] N.'s back. O [REDACTED] N. became upset so she threw L [REDACTED] E.'s jacket down and ran after him. O [REDACTED] N. grabbed the ball and tried to hit L [REDACTED] with it. The incident lasted a few minutes until "Ms. Liz" stopped it. After lunch, O [REDACTED] N. was crying about the incident.

15. P [REDACTED] S. is currently in eighth grade at Appleby and was at the school during the 2018-2019 school year when respondent was teaching special education. Her testimony is summarized as follows: On February 7, 2019, L [REDACTED] E. was playing basketball. Respondent "came and told us to hide L [REDACTED] E.'s jacket." O [REDACTED] N. took L [REDACTED] E.'s jacket and L [REDACTED] E. started chasing her. O [REDACTED] N. did not want to give L [REDACTED] E. his jacket back. L [REDACTED] E. "got irritated." P [REDACTED] n S. did not remember anyone telling either L [REDACTED] E. or O [REDACTED] N. to stop. Respondent, who was present, did not say anything during the incident.

16. Principal De La Peña received a call following the incident that O█ N. was in the office. She could not believe it when she was told what occurred because what respondent did was, essentially, playing a prank on a student with special needs. Principal De La Peña spoke with the above students and had them write statements regarding what occurred.

17. When respondent was confronted about the interaction, respondent lied about it to Principal De La Peña. Respondent's initial written statement merely said "students horseplaying: the students were horseplaying initially and threw the basketball at each other." Principal De La Peña told respondent she had spoken with all five students and then respondent essentially admitted what occurred but said he was joking around. But then, his written statement was different – it did not admit what occurred. Respondent's second written statement again said that students were "horseplaying" and, rather than admit that he told the girls to hide L█ E.'s jacket, respondent wrote that he was merely joking with L█ E. "what if we hide your jacket." Respondent wrote nothing about O█ N. hiding L█ E.'s jacket and the throwing of the basketball at O█ N. Respondent's written statement feigned ignorance in that respondent wrote he was later informed by Ms. Roberson that his students were no longer allowed on the playground; that respondent asked why; that Ms. Roberson told him because of the "basketball incident"; and respondent asked what basketball incident.

18. Based on the long pattern of unprofessional conduct; the January 16, 2019, incident; the February 7, 2019, incident; and respondent's dishonest statement regarding the February 7, 2019, incident, respondent was placed on administrative leave on February 13, 2019.

19. Principal De La Peña testified that she would not feel safe if respondent were returned to the district; respondent's conduct was just "not OK." Appleby is an elementary school. Some of the children are no taller than his knee. Respondent just wanted to do whatever he wanted to do and not do what was expected of everyone else. Respondent's conduct was absolutely uncalled for.

Evidence Presented by Respondent

RESPONDENT'S TESTIMONY

20. Respondent's testimony is summarized as follows: respondent holds an education specialist credential (mild to moderate) and physical education credential. His credentials were cleared in 2003 or 2004.

Respondent was hired by PVUSD in 2001 (when he had a preliminary credential) to teach at Palo Verde High School. There, he was a resource specialist. The majority of students on respondent's caseload were mainstreamed into regular education classes. The students were typically pulled out of their regular classes for study skills to get 1:1 help with their core classes. Respondent's prior position as a resource specialist was different than his assignment as a special education teacher at Appleby. The Bridges Program has much younger students and did not allow mainstreaming.⁷ As a resource specialist, respondent's "classroom" was more like a learning center. There was a small group of students. The study skills classes he taught were only two periods per day. The students did not present any behavioral problems. Respondent did have to run IEP

⁷ This statement was contradicted by prior testimony, wherein Principal De La Peña specifically testified that one of the IEPs respondent was responsible for was specifically being held to discuss mainstreaming a student.

meetings and prepare IEP reports.⁸ However, they were not using SEIS in the district when respondent was a resource specialist. Respondent claimed he did not have any issues with administrators and felt that his resource specialist position was fun and rewarding.

In 2007 or 2008, respondent began teaching physical education at the same high school. Between 2001 and 2017, respondent coached multiple sports at various times, including basketball, swimming, and baseball. Respondent was also the head football coach. In 2010, respondent became the athletic director. In that capacity, respondent was responsible for all sports, student eligibility, scheduling games, supervision, divisional meetings, league meetings, transportation, and travel. Respondent's classroom was the gym. Respondent loved teaching physical education, working with student athletes, and being able to "get out and move." Respondent did have some special education students in his physical education classes.

Respondent was a member of the teacher's union as a site representative for a few years, and served as the vice president from 2016 to 2019.

In May of 2018, respondent received a letter notifying him that he was being transferred to Appleby. Respondent agreed that the district had the right to assign its employees to any position they are credentialed to teach. However, respondent said he had not taken classes in special education instruction since 2006 and had no idea how

⁸ When asked to estimate how many IEPs he had conducted over the years, respondent eventually agreed that it was more than 10. Respondent later said that as a general education teacher he was "involved in a few" but then would not estimate how many.

to set up a classroom. He did not feel competent to teach the Bridges Program. Respondent knew he would have to teach cores subjects and he did not hold credentials in those subjects.⁹

Respondent received a new teacher orientation at Appleby about a week before school started. Other than that, respondent did not do anything on his own during the summer to prepare to teach special education, other than to look at "some behavior stuff . . . but nothing heavy." Respondent met with Principal De La Peña about a week before school started. She told him he did not have to worry about attending any meetings and did not need to worry about academics; he only needed to focus on controlling behaviors. Respondent was very surprised at this.

Respondent wanted to have the freedom to send the students to an English or math teacher, and then bring the students back to his classroom rather than teach the core subjects. Respondent wanted to run the Bridges Program like he ran his resource specialist program years prior. Respondent alleged that nobody gave him lesson plans or a sample curriculum. Respondent admitted that he never spoke with the math or English teachers regarding pointers or lesson plans regarding how to teach those subjects.

When respondent saw the classroom where he would be teaching, he felt it was not aesthetically pleasing. It did have tables and whiteboards but he wanted more supplies so he made a list. Respondent also wanted a mini fridge because he wanted to have drinks and food available for students. Respondent said that it was made clear

⁹ An Education Specialist Credential, however, is sufficient to teach core subjects to special education students.

to him that he was not to have the special education students near the “regular kids” and that “way back when” he taught as a resource specialist, he would put out snacks and drinks to calm students down.

Respondent asked how he could be trained in SEIS and he was told to contact Mrs. Gonzalez. He got together with her “once or twice.” Respondent felt it was “overwhelming” but that Mrs. Gonzalez was a “good trainer.” Nonetheless, he felt he needed more training. Respondent did not follow up with Mrs. Gonzales for additional training and did not state what steps he took to obtain additional training he felt he needed.

Respondent observed Mrs. Carpenter conduct an IEP meeting for one of the students on his caseload. Respondent admitted he knew how to schedule IEPs, but he didn’t like the scheduling and the way it was done at Appleby. He did not like having to run the schedule by the principal and have to get times to schedule IEPs and then call the parents afterwards. He explained, “that is not how I did business 15 years ago.”

Respondent admitted that he “played basketball most of the day to control behavior” because he was told not to worry about academics. Respondent felt he “had been done dirty” but was going to do the “best job” he could.

Respondent said that when Principal De La Peña told him not to worry about meetings, he felt it meant all meetings – PLC and staff meetings. Respondent also claimed that his paraeducator, who did not testify, also told him he did not have to worry about meetings.

Respondent recalled discussing the CPI training that was offered in 2018 or 2019, but said he didn’t “want some rinky dink CPI training.” Respondent said he looked into doing training on his own because “they kept putting it off.”

Regarding his conduct concerning the September 18, 2018, IEP meeting that resulted in a verbal warning (that was memorialized in writing), respondent said that he did try to contact Principal De La Peña prior to the meeting to discuss what he planned on proposing, but he did not produce evidence of this. Respondent also said that his understanding was that he did not need to put notes in SEIS regarding IEPs or take notes.

Regarding the September 21, 2018, IEP meeting that respondent did not appear for, which resulted in the October 15, 2018, written reprimand, respondent said he "actually made a mistake and thought the IEP was at 9:00 a.m. instead of 8:00 a.m. Respondent did not explain why, if that was the case, he told Principal De La Peña that the IEP had been cancelled.

Regarding the September 24, 2018, letter Principal De La Peña gave him referencing a number of issues, respondent admitted he did tell Principal De La Peña that it was impossible to have a set schedule. Respondent said when dealing with behaviors it just won't work, or they might want to something like math at another time than what is on the schedule. In other words, they might need a break – "just like with coaching."

Regarding respondent disobeying Principal De La Peña's direct order on November 16, 2018, to return to Room 22 at 12:50 p.m. to relieve another teacher, respondent described it as an "honest mistake." Respondent said he thought he had only been gone 40 minutes and that he and his paraeducator had eaten on the other side of town. Respondent said it took them longer too because the power was out. As he provided different reasons why he did not follow the directive, respondent continuously said "it was a blur." Respondent said he e-mailed Principal De La Peña an apology, but did not produce evidence of that apology.

Regarding the January 16, 2019, incident wherein he was not at the scheduled IEP meeting necessitating him having to be called on the PA system, respondent admitted only raising his voice "a little bit." He felt that calling him over the PA several times was excessive, and he was only late because the van with his students was late. Respondent denied clenching his fists or sticking his chest out, as Ms. Roberson witnessed. Respondent said he probably should have just "ignored it," "made a complaint," or walked into the IEP and not said anything.

Regarding the February 7, 2019, incident, respondent denied knowing any of the female students who wrote statements concerning his conduct and denied telling anyone to hide L [REDACTED] E.'s jacket. Respondent said he did not recall talking to any of the students and did not recall "all that jazz" they brought up concerning the altercation. Respondent said after the students were all inside, Ms. Roberson told him his students could not go outside because of the "incident with the basketball." Respondent said that he told his students "see there we go again now we can't go to PE." Respondent said he "might" have seen L [REDACTED] E. and O [REDACTED] N. playing, but it was just horseplay to him. On cross-examination, respondent said that L [REDACTED] E. has a tendency to hide basketballs. So, he was "kind of coaching and correcting" and said to L [REDACTED] E., "what if we hide your jacket?" Respondent said it might have been better in retrospect "coaching" L [REDACTED] E. in the classroom instead. When pressed about the incident further, respondent said "it was a blur."

Respondent concluded by saying he feels it is a "problem" that he is being blamed for all the things he was alleged to have done and he was being set up to fail. Nonetheless, he likes his job; he could have done things better; and if returned to his position, he will perform as required.

RESPONDENT'S PRIOR EVALUATIONS

21. Respondent submitted several prior employment evaluations for the 2015-2016, 2016-2017, and 2017-2018, school years. These evaluations were all while respondent worked in the capacity of a physical education teacher and athletic director, and not in the context of a special education teacher. The evaluations all showed that respondent met standards.

CHARACTER AND OTHER WITNESSES

22. The testimony of D [REDACTED] E., the father of L [REDACTED] E., is summarized as follows: L [REDACTED] E. has "always had a lot of problems and suffers from an emotional disorder. L [REDACTED] E. likes to test new teachers, but respondent worked well with him. As a father he was "really blown away" by how well respondent worked with his son. D [REDACTED] E. participated in IEP meetings and always felt that there was tension in the room during the meetings. He felt that, other than respondent, nobody wanted to listen to what was best for his son. Following respondent's removal from Appleby, L [REDACTED] E. was expelled.

23. The testimony of K [REDACTED] S., the mother of R [REDACTED] S., is summarized as follows. Her son was in respondent's classroom during the 2018-2019 school year. R [REDACTED] S. had problems with other teachers in the past but with respondent he did fine. Her son's academics and behaviors improved in respondent's class. Respondent really seemed to care about her son. After respondent's removal from Appleby, she put her son on independent study. K [REDACTED] S. accused Ms. De La Peña of being dishonest. K [REDACTED] S. presented as a very angry and hostile woman who did not like the district or district officials.

24. Edward Singh is the Director of Special Services at the PVUSD. He has worked for the PVUSD for 23 years. Mr. Singh's testimony is summarized as follows: Mr. Singh recalled respondent complaining about what he felt were restrictions in the special education program (i.e. not having as much playground access, drinking fountain rules, and other miscellaneous items not relevant to these proceedings). Respondent also complained about wanting to be at the high school rather than an elementary/middle school. However, the special education students that respondent taught were elementary and/or middle school students in a special program for severe behavioral problems. Respondent alluded to the fact that he did not feel he was trained for the position, but he held a special education credential and had some experience in special education. Many training opportunities were made available to respondent, but he either failed to attend or came in late (i.e. Crisis Prevention Intervention (CPI) training which covers how to deal with problem behaviors and the special education boot camp¹⁰ at the beginning of the 2018-2019 school year which covered SEIS, behavior control strategies, IEP writing, and compliance monitoring). There was also a paraprofessional in respondent's classroom that he could learn from.

At some point, despite not attending the numerous trainings, respondent told Mr. Singh he felt he was being set up to fail. Mr. Singh believed it was around January 2019. Mr. Singh discussed a "laundry list" of professional development opportunities with respondent, but respondent kept saying he wanted to go back to the high school.

¹⁰ A flyer presented as an exhibit showed the special education boot camp was offered August 1 and 2, 2018, before the beginning of the school year. It covered every aspect of special education.

Every time Mr. Singh tried to discuss training opportunities with respondent, respondent would just "circle back" to wanting to go to the high school.

Regarding the history of interactions between Principal De La Peña and respondent, Mr. Singh did not feel Principal De La Peña was the problem. She gave respondent clear directives and communicated with him by presenting specific guidelines. Respondent would not follow them. In Mr. Singh's opinion, respondent's communication failures were one-sided.

Regarding the January 16, 2019, incident, he just recalled respondent coming by the location where the IEP meeting was to be held and yelling at them that he was busy. The parent who was in the IEP meeting became concerned that the "teacher who was yelling" was going to be the teacher. After that, respondent left. Mr. Singh said he never told respondent to leave; respondent was supposed to be at the meeting. Once respondent returned and the IEP meeting was held, Principal De La Peña was "trembling." After the IEP meeting, Mr. Singh was concerned about Principal De La Peña so he checked on her. He thought he might need to send her home for the day. However, she assured him she was all right.

25. Wendy Lockhart is employed by the California Teacher's Association. Ms. Lockheart's testimony is summarized as follows: respondent had talked to the union about filing a grievance regarding his transfer to special education after his old position at the high school was re-posted. However, she looked at respondent's credentials and the credentials of other employees, and because respondent was the only employee who had a special education credential that was not being utilized, the grievance likely would not have been resolved in his favor. Ms. Lockheart said she was concerned about respondent's transfer to special education because he had not taught special education in 10 years and "it did not sound like" he was getting

"appropriate training before getting the assignment." After respondent began amassing verbal and written reprimands for his conduct, he received a plan of assistance. Ms. Lockheart said she did not feel the plan of assistance was adequate, but acknowledged the directives regarding his conduct were proper. On cross-examination, Ms. Lockheart acknowledged that the plan of correction did provide a proper explanation of the PVUSD's expectations.

LEGAL CONCLUSIONS

Standard and Burden of Proof

1. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) The burden of proof is on the district. (Evid. Code §§ 115, 500.)

2. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]" (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italics emphasis in original.)

Applicable Law

3. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)

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

DISHONESTY

5. A permanent certificated teacher may be dismissed for dishonesty. (Ed. Code, § 44932, subd. (a)(4).)

UNPROFESSIONAL CONDUCT

6. A permanent certificated teacher may be dismissed for unprofessional conduct. (Ed. Code, § 44932, subd. (a)(2) & 44933.)

7. "Unprofessional conduct" has been defined as "that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." (*Shea v. Bd. of Medical Examiners* (1978) 81 Cal. App.3d 564, at 575; *Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553.) Unprofessional conduct must also be considered in conjunction with the unique position of public school teachers, upon whom are imposed responsibilities and limitations on freedom of action which do not exist in regard to other callings. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.) The determinative test of a charge of immoral or unprofessional conduct is fitness to teach, which is a question of ultimate fact. (*Bd. of Education v. Jack M.* (1977) 19 Cal.3d 691.)

EVIDENT UNFITNESS FOR SERVICE

8. A permanent certificated teacher may be dismissed for evident unfitness for service. (Ed. Code, § 44932, subd. (a)(6.)

9. Unfitness for service means "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound." (*Palo Verde etc. School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972.) "Unprofessional conduct" and "evident unfitness for service" do not mean precisely the same thing. Although conduct constituting "evident unfitness for service" will often constitute "unprofessional conduct," the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in a California Supreme Court opinion, in which the court concluded "unprofessional conduct" meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. If the 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. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.)

The District Established the Factual Allegations by a Preponderance of the Evidence

10. The district established by a preponderance of the evidence that respondent initiated an angry outburst against Principal De La Peña on January 16, 2019, as alleged in paragraph one of the Statement of Charges. Respondent's hostile

expression of anger towards Principal De La Peña was witnessed by other school officials and occurred in the presence of elementary school children. Respondent's conduct on this occasion was extremely unprofessional.

11. The district established by a preponderance of the evidence that, on February 7, 2019, respondent told a group of girls, D [REDACTED] J., P [REDACTED] S., A [REDACTED] G., O [REDACTED] N., and D [REDACTED] F., to hide L [REDACTED] E.'s jacket. Respondent knew L [REDACTED] S., who was in his special education class, received special education services for emotional disturbance. When L [REDACTED] E. saw O [REDACTED] N. running with his jacket, he became angry and started chasing her. L [REDACTED] E. threw a basketball at O [REDACTED] N. Ultimately, O [REDACTED] N. threw the ball back at L [REDACTED] E. It is noted that, even if L [REDACTED] E. had not been a special education student, there is absolutely no excuse or any condition under which a teacher pitting a group of students against one student would be acceptable. Several of the girls testified, and all of the girls involved wrote statements concerning the incident. The testimony and written statements were consistent that respondent instigated the incident; thus, the testimony of the girls is deemed credible over respondent's claim that he did not act as alleged.

12. The district also established by a preponderance of the evidence that respondent, when asked about the February 7, 2019, incident, was dishonest. When asked to write a statement regarding what occurred, respondent's first written statement was one sentence and merely stated that "students were horseplaying . . ." When told that was not adequate, the second written statement he was asked to provide elaborated somewhat. However, respondent wrote that he "joked" with L [REDACTED] E. regarding the possibility of someone taking his jacket – which makes no sense – and saw nothing. Later, after recess was over, he learned from another teacher that there was a "basketball" incident and asked what happened. At hearing,

respondent denied telling anyone to hide L█████ E.'s jacket. Respondent's version of events is simply not credible.

A district, or any employer for that matter, relies on its employees to be honest and truthful regarding any and all incidents that occur during the course of their employment. Being dishonest, whether by intentional lying or intentional omission, is unprofessional under any circumstances and contrary to the standards expected of a teacher.

Evaluation

13. When factual allegations have been established, a teacher may nonetheless only be removed from employment if the facts established show that he or she is unfit to teach. In order to make that determination, a Commission must consider the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.

14. In *Morrison, supra*, 1 Cal.3d 214 at p. 235, the 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 delineated the following criteria to determine 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 teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the

recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

15. In *Board of Education v. Jack M., supra*, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the *Morrison* factors, the court provided additional factors that may be considered to determine if there is a nexus between the conduct and a teacher's fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at fn. 5.)

16. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, only the pertinent *Morrison* factors need be examined. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) In this sense, the purpose of examining the *Morrison* criteria is to establish a nexus between the proven conduct and fitness to teach. However, even if the *Morrison* analysis shows a nexus between the conduct and fitness to teach, it must also be determined that the alleged conduct shows evident unfitness for service. (*Morrison, supra*, at p. 1445 [emphasis added].) "Evident unfitness for service" means clearly not fit for teaching, ordinarily by reason of temperamental defects or inadequacies; it connotes fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at p. 1444 [emphasis added].)

17. In considering the relevant *Morrison* factors in conjunction with the sustained allegations, the following conclusions are reached.

Adverse effect. There was ample evidence that respondent's conduct concerning the angry outburst and incident involving instigating students to hide L [REDACTED] E.'s jacket had an adverse effect on other individuals. There were elementary school student's present during respondent's angry outburst, and even other instructors were upset. Principal De La Peña was definitely affected; she became emotional at hearing when recounting what occurred. At least one parent did not want respondent to be his or her child's teacher. Ms. Roberson felt the hallway where respondent confronted Principal De La Peña was not a safe place at that time. Regarding the jacket incident, O [REDACTED] N. was very upset being chased by L [REDACTED] E. and having a basketball thrown at her, and certainly, L [REDACTED] E. was upset by having his property taken by another student. Respondent's dishonesty about the jacket incident also had an adverse effect on this district by not properly transmitting facts regarding what occurred so the district could get to the bottom of the incident.

Type of behavior. Respondent's conduct, as alleged in the two incidents and in being dishonest, are not only incompatible with duties of a teacher, but are also incompatible with what would be expected of a responsible adult.

Degree of adversity. Respondent consistently showed disrespect and disregard for Principal De La Peña's authority, culminating in the angry outburst against her in front of elementary school students and school employees. Respondent also intentionally instigated what ended up being a physical altercation between students.

Proximity or remoteness in time. All of respondent's misconduct occurred in the past year and the charges were brought in a timely manner.

Extenuating and aggravating circumstances. Respondent's testimony centered around everyone but himself. Oftentimes, on material issues, his answers were "I didn't do that" or "it was all a blur" or he did not get proper training. Respondent complained about the condition of the classroom. He complained about not being able to be at the high school. He complained about not being able to have other teachers teach cores subjects to his students when, as a special education teacher, that was his job. Respondent was provided a multitude of training opportunities and had resources made available to him if he did not feel comfortable with SEIS or any other aspect of teaching special education. He failed, however, to avail himself of those opportunities and then used his own failure as an excuse to justify not doing his job properly. Finally, as stated previously, there is never an excuse to verbally accost anyone in the workplace, let alone your supervisor. Respondent's excuses all serve as factors in aggravation; there were no mitigating circumstances noted.

Likelihood of recurrence. Respondent's misconduct escalated throughout the entire school year. Beginning almost immediately when he came to the Appleby, there were problems. Respondent was verbally warned, written up, counseled, and eventually provided a plan for improvement. Yet, he continued to engage in unprofessional conduct. How or why his misconduct escalated is irrelevant; respondent never availed himself of any opportunity to improve his behavior and, as of the date of the hearing, fails to admit any wrongdoing. Consequently, the likelihood of recurrence is very high.

Conclusion

18. Respondent, no doubt, was less than thrilled when he was transferred to Appleby to teach special education, and removed from his position at the high school as physical education teacher and athletic director. That is not an excuse, however, for

the two incidents that formed the basis for the Statement of Charges. The district's transfer of respondent to Appleby was proper and consistent with the credential he held, and even if it were not, there are proper methods by which one may challenge those decisions. Continually engaging in unprofessional conduct, disregarding verbal and written reprimands, verbally accosting one's supervisor, and instigating what ended up becoming a physical confrontation between students are actions wholly inconsistent with the concept of fitness to teach. The continued pattern of misconduct also showed that respondent's actions were not isolated or out of character; rather, they constituted the temperamental defects or inadequacies contemplated in *Woodland, supra*, that were clearly not remediable upon receipt of notice that respondent's conduct failed to meet expectations of the PVUSD.

19. A preponderance of the evidence established that respondent violated Education Code sections 44932, subdivisions (a)(2), (a)(4), and (a)(6); and 44933.

20. Based on the analysis of the *Morrison* factors, as noted above, respondent is evidently unfit for service and his appeal is denied.¹¹

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¹¹ It is noted that, even if unprofessional conduct had not been alleged and instead, the only charges had been dishonesty and evident unfitness for service, the Commission would have reached the same result.

ORDER

Respondent George Dagnino's appeal from his dismissal of employment by the Palo Verde Unified School District is denied. The district's request to dismiss respondent is upheld.

DATE: January 8, 2020

-- DocuSigned by:

0007D1561B3A4F1
JENNIFER MUNOZ

Coordinator Special Services
Redlands Unified School District

DATE: January 8, 2020

-- DocuSigned by:

879598644DBD4FF
WILLIAM BRISCOE

Special Education Teacher
(Moderate/Severe, Retired)
Moreno Valley Unified School District

DATE: January 8, 2020

-- DocuSigned by:

D566BE70E0E24D3
KIMBERLY J. BELVEDERE

Administrative Law Judge
Office of Administrative Hearings