

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
OXNARD SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CHRISTIAN DAVEY,
A Permanent Certificated Employee,

OAH No.: 2017050038

Respondent.

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence, Oxnard School District, County of Ventura, State of California (Commission), in Oxnard, California, on October 10, 11, 12, and 13, 2017. The Commission consists of the following members:

Samuel D. Reyes, Chairperson
Administrative Law Judge
Office of Administrative Hearings

Martha S. Romero, Ed.D., Member
Selected by the Governing Board

David W. Rodgers, Member
Selected by Respondent

Janet Ly and Nitasha K. Sawhney, Attorneys at Law, represented the Oxnard School District (District).

Robert A. Bartosh and Juan M. Higuera, Attorneys at Law, represented Christian Davey (Respondent), who was present throughout the proceedings.

The District seeks to dismiss Respondent on grounds of evident unfitness for service and persistent refusal to obey school laws. Respondent disputed some of the factual allegations and argued that grounds for dismissal do not exist.

Oral and documentary evidence was received at the hearing and the matter was submitted for decision on October 13, 2017.

FACTUAL FINDINGS

Jurisdictional Findings

1. Respondent is a permanent certificated employee of the District.

2. On March 15, 2017, Superintendent Cesar Morales (Morales), Ed.D., recommended to the Governing Board of the District (Governing Board) Respondent's dismissal pursuant to Education Code¹ sections 44932 and 44934. The Governing Board approved Superintendent Morales's recommendation, and on March 24, 2017, the District notified Respondent of the Governing Board's decision.

3. On March 24, 2017, the District filed a Statement of Charges and Recommendation for Dismissal (Accusation), seeking Respondent's dismissal. Respondent thereafter requested a hearing, and the instant proceedings followed.

4. All prehearing jurisdictional requirements have been met.

Respondent's Background and Employment with the District

5. Respondent holds a Bachelor of Science Degree in Molecular Biology from California State University, Channel Islands, and a Master of Arts Degree in Education from the University of Southern California, which he obtained in 2012. He holds a single subject (science) credential. He started teaching at the District in the 2013-2014 school year, and teaches science classes at Freemont Intermediate School (Freemont).

6. Respondent has received training from the District, primarily during staff meetings. As it pertains to the matters alleged in Accusation, during a staff meeting in late 2015 former District school principal Wayne Sadler (Sadler) provided training about dealing with students who were fighting, which included techniques to de-escalate conflict situations. During the presentation, Sadler stated that it was acceptable to touch a student's backpack as a way to redirect the student. Except for this training from Sadler, Respondent did not receive any training in dealing with disruptive students or in disciplining students.

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¹ All further statutory references are to the Education Code.

Pertinent School Rules

7. As established by the testimony of several witnesses, Respondent included, the District expects teachers not to touch students, except to prevent students from harming themselves, others, or District property.

8. Students are required to have a pass in order to walk on campus during class time. A teacher who learns that a student does not have a pass is expected to tell the student to return to class, and, if necessary, to report the matter to an administrator or to a campus supervisor.

February 11, 2016 Incidents²

9. The first two incidents on which the District relies to seek Respondent's discharge occurred on February 11, 2016. On that day, Respondent was standing outside his classroom during his preparation period, the period after lunch, when he observed an eighth grade student, J.V.³, walking across the courtyard. Respondent started walking toward the student, and said, in a raised, firm tone of voice, "J.V., you need to go to class; you've been skipping your Math class." J.V. did not respond and continued to walk in the direction of the nearby boys' restroom.

10. Respondent observed two to four campus supervisors outside the restroom, but they did not inquire about J.V.'s reason for not being in class or make any effort to try to stop the student from walking on campus during class time.

11. Respondent followed J.V., and repeated his request for the student to go to class. J.V. said he was going to the restroom. Respondent asked J.V. for his hall pass, and the student did not produce one. Respondent told J.V. he could not be outside the classroom without a pass, but J.V. continued to walk into the restroom.

12. Another student who was walking to the restroom from another direction, M.S., observed part of the exchange. M.S., who plays football with J.V., described Respondent's tone of voice when he first heard it as loud and angry. On cross-examination, he described Respondent's tone of voice as lower than the yelling tone used by the football coaches.

13. In order to redirect J.V., Respondent grabbed the loop at the top of the student's backpack. J.V. testified that Respondent pulled his backpack from behind, causing him to stumble

² The facts regarding the incidents that led to District action are essentially undisputed. Material differences in testimony are discussed in the findings as necessary. Respondent had specific recollection of the events, presented good demeanor, and his testimony has been generally credited.

³ Initials have been used to protect the privacy of the students, who are minors. The same designations were used in the Accusation.

and almost fall to the ground. J.V. was thereafter able to “wiggle” out of the backpack. M.S. similarly testified that Respondent pulled on the backpack, causing J.V. to lose his balance but not to fall. The students’ testimonies are mutually corroborative and are credited.

14. J.V. did not appreciate Respondent grabbing his backpack, and retorted, in a loud voice, “you can’t touch me.” Respondent replied, also in a loud voice, “you need to go back to class.” M.S. told Respondent he could not grab J.V.’s backpack. As M.S. credibly testified, Respondent then lowered his voice and said “let’s just go to the office.” Respondent, J.V., and M.S. walked to the office, where Respondent left the students and the backpack.

15. J.V. remained in the office for the rest of the day, and reported the incident to school administration. J.V. was not disciplined for not having a pass, and he retrieved his backpack before going home at the end of the day.

16. Respondent denied touching J.V., and testified that he only touched his backpack, which, based on the comments made by Sadler at a staff meeting, he thought was permitted. His testimony was not contradicted and is credited.

17. As he was walking back to his classroom, Respondent observed another student, J.W., walking in the courtyard toward him. In a loud, authoritative voice, Respondent inquired where she was going. J.W. replied she was going to the restroom and continued to walk in Respondent’s direction. Respondent asked to see her pass. J.W. did not react well, and raised her voice in response. Respondent also raised his voice, and the exchange continued in a loud manner for one or two minutes.

18. The exchange occurred outside Room 806, and it was loud enough for the teacher in the room, Roxanne Miranda (Miranda), to hear Respondent tell J.W. to go to class through the closed door. Miranda came outside and heard J.W., also in a loud voice, say she would not go to class, that she was going to the restroom. Miranda described Respondent’s tone of voice as “assertive,” and the volume of both as “escalating.” They were about one foot from each other. Miranda then pulled J.W. to the side and, in a calm voice, told her she needed to get a pass to go to the restroom.

19. Irma Lopez (Lopez), the teacher in Room 705, which is across the courtyard from Room 806, stepped outside her classroom when she heard loud voices outside. She saw Respondent talking in a loud voice to a disrespectful student. Lopez went back to her classroom to report the incident to the office.

20. Linda Stevens (Stevens), a teacher who teaches a class for students with behavior issues, also heard the loud exchange, and described both participants as “yelling and upset.” She helped de-escalate the situation by linking arms with J.W. and walking her to the office.

21. a. Campus supervisor Keith Ebbs (Ebbs) was walking in the courtyard when he heard Respondent “yell” at J.W. Ebbs has known J.W. since she was six years old, and knew

she could be difficult. He kept walking until he heard Respondent yell at him that he should take her to the office. Ebbs kept walking, and Respondent got closer to him, insisting in a loud voice that he (Ebbs) do his job. Respondent repeated for Ebbs to do his job, on one occasion telling Ebbs to do his “f----- job.” Ebbs told Respondent he was not a little kid for him to speak like that and challenged Respondent to “take it outside.” Respondent said he did not mean it like that, and left Ebbs.

b. Respondent explained that, in frustration about his belief that campus supervisors did not do enough to supervise the students, he did say, in Epps' direction, and that “I would not have to do this if you did your ‘f-----’ jobs.” His stress level had been high when he spoke to Epps. He went to Epps later in the day and said he did not mean the comment to be directed at him personally and said he was sorry. Respondent and Epps have maintained a cordial relationship following the incident.

22. Vice Principal Frank Guerrero (Guerrero), Ed.D., responded to the incident. Upon arrival, he heard Respondent “yelling and screaming” at Ebbs. He saw J.W. crying, and Miranda and Stevens trying to defuse the situation. Respondent was directing profanities at Ebbs, regarding the administration’s and the campus supervisors’ failure to handle the kids. Dr. Guerrero approached the two men, and directed Ebbs, who appeared calm, to leave the area.

Letter of Reprimand

23. The incidents were brought to the attention of Jesus Vaca (Vaca), Ed.D., Assistant Superintendent, Human Resources, who issued a letter of reprimand. After describing the incidents of February 11, 2016, the letter stated:

“Your conduct on February 11, 2016, constitutes a ‘major infraction’ under Article XXI Section b.2 of the [Oxnard Employee Association (OEA)] contract, which includes, ‘Conduct which endangers the health and/or safety of the employee or other employees and/or students or members of the public.’ Board Policy 4119.21 states that, ‘The Board expects all employees to exercise good judgment and maintain professional standards and boundaries when interacting with students both on and off school property.’ This situation should have been addressed verbally or with the assistance of administrative staff.

“Your actions are not consistent with the school’s mission of ‘providing a safe and positive environment for students’ and could potentially lead to future conflicts or confrontations with this student. Using physical force on a student carries a risk of injury to both the student and the employee. Additionally, this type of interaction causes a disruption to the learning of other students in the class.

“The above-referenced acts and omissions are unprofessional and inappropriate and the District will not tolerate such treatment of its students or staff. The District hereby directs you to take the following actions to remediate your behavior:

“a) You are hereby directed to refrain from any form of harmful physical contact with students unless it is immediately necessary to prevent physical harm to another student, a staff member, or District property.

“b) You are hereby directed to treat all students with respect and dignity and to refrain from yelling at, belittling or humiliating students.

“c) You are hereby directed to address all concerns regarding the behavior of students in an appropriate manner, reporting all disciplinary incidents to the Principal or Assistant Principal as appropriate.” (Exh. 2, at pp. 66-67.)

24. Dr. Vaca discussed the contents of the letter with Respondent on March 15, 2016, emphasizing that students need to be treated with respect.

25. Respondent signed the letter on March 15, 2016, but did not receive a copy until a meeting on June 10, 2016.

April 28, 2016 Incident

26. On April 28, 2016, Respondent was preparing his students for an upcoming frog dissection exercise. He was teaching his students about laboratory safety procedures. One of the instructions is never to touch the scalpel unless wearing goggles. As he was discussing the safety procedures, Respondent saw one of the students, B.M., playing with a scalpel. Respondent reminded the student not to touch the scalpel yet. A few minutes later, B.M. was again playing with the instrument. Respondent told the student to stop, and sent him to the computer laboratory area in the back of the classroom.

27. A few minutes later, Respondent noticed another student, M.M., making stabbing motions in the air with his scalpel. Respondent said to M.M., using a firm tone of voice, “Are you kidding? Go outside.” Respondent went outside to speak to M.M. about his conduct, and B.M. followed. Raising his voice to M.M., Respondent told M.M.: what were you thinking? I can’t have you even accidentally stab another student. Why would you do that? Respondent grabbed a chair for M.M. to sit, and told the student that he was not going inside. Respondent was in close proximity, about two to three feet, to the students as he spoke, and made his statements in rapid succession, not waiting for the students to reply.

28. Respondent’s exchange with M.M. was loud enough to be heard by a group of educators who were approximately 35 yards away. District Project Director Deborah West (West) and Caryn Zimmerman, a District science teacher and special project coordinator, were showing the eco-friendly garden to three or four visitors from another district.

29. West reported the matter to Dr. Vaca, who directed school principal Greg Brisbine (Brisbine) to look into the matter. Brisbine spoke to the students and to Respondent about the

matter. On May 25, 2016, Brisbine counseled Respondent about yelling at students, and documented the counseling in a memorandum to Dr. Vaca.

30. On June 10, 2016, Dr. Vaca called Respondent into his office to discuss the incident. Respondent explained the context in which he had raised his voice to the students. Dr. Vaca explained that there are ways to correct student behavior that did not involve yelling at them, and again directed Respondent not to engage in similar behavior.

January 30, 2017 Incident

31. Prior to January 30, 2017, Respondent heard that another teacher, Karen Presburger (Presburger), had been accused by an eighth grade student of making racist comments. Respondent knew Presburger, and did not believe she would make racist statements. At the time, Respondent did not know who the involved student was.

32. On January 27, 2016, school counselor Viridiana Rodriguez (Rodriguez) decided to reassign the student who had made the accusation, T.P., from Presburger's class to Respondent's science class. Neither Rodriguez nor Brisbine spoke to Respondent about the new student or about the situation that led to the reassignment. On Friday, January 27, 2017, at 4:16 p.m., Rodriguez notified Respondent via email that T.P. would be reassigned to his sixth period class, effective the following Monday, January 30, 2017. Respondent read the email at an unspecified time during the morning of January 30, 2017, before his sixth period class. He did not pay close attention to the identity of the student being transferred to his class.

33. The testimony is in conflict about whether Respondent knew the identity of the transfer student on or before 10:00 a.m. on January 30, 2017. T.P. testified that she told Respondent on January 30, 2017, during the 10:00 a.m. nutrition break that she was his new student. Respondent is said to have asked if she was the student Mrs. Presburger was talking about. After an affirmative response, Respondent said he did not think his class was right for her and that he would talk to the principal. Respondent denied talking to T.P. during the nutrition break, and testified that he uses this period to catch up on his work and to prepare for his other classes. T.P. did not report the earlier encounter in a statement she wrote on January 30, 2017. In light of this omission, and Respondent's contrary testimony, T.P. testimony is insufficient to establish that she spoke to Respondent at the nutrition break.

34. On January 30, 2017, at the start of class, T.P. and a friend, U.P., walked to the front of the class where Respondent was, and asked if T.P. could sit next to U.P. Respondent approved the request. Desks in Respondent's class were arranged as a three-sided rectangle, with space in the middle for Respondent to approach students as needed.

35. After T.P. went to her seat, Respondent realized that she may be the student who accused Presburger mentioned in the late January 27, 2017 email from Rodriguez. He walked over to the table and asked: are you the student who accused Mrs. Presburger of being racist? Respondent asked the question in part because he believed Presburger was innocent and in part

because he felt too many teachers were being unfairly accused and were not receiving support from the District. After receiving confirmation, Respondent went on to say that the accusations were not true and that he felt uncomfortable with her in his class until he could speak to her parents. T.P. was quiet during Respondent's statements.

36. Up to this point, Respondent had been talking to T.P. at her desk. His naturally loud voice was loud enough heard by other students, and according to another witness, a student sitting two seats away from T.P., V.L., about half the class was paying attention to the exchange. T.P. testified Respondent yelled at her, that he raised his voice, and that he was angry and loud. V.L. testified that Respondent was "kind of loud." When asked to describe Respondent's tone of voice as "yelling" versus "raising his voice," V.L. chose the latter. In light of V.L.'s testimony, Respondent's denial that he yelled at T.P., and Respondent's admitted loud tone of voice, it is concluded that Respondent raised his voice when addressing T.P. but did not yell at her. It is understandable that it may have appeared to T.P. that he was yelling, since he was close to her, she was the subject of his inquiry, which clearly upset her, and she was not accustomed to his voice.

37. While speaking to T.P., Respondent heard some chatter in the room, and turned around to address the students. He briefly spoke to the class about racism and about the seriousness of accusing somebody of being a racist.

38. Taken aback by Respondent's statements, and afraid of what might happen in the class, T.P. turned toward the wall and started crying. When Respondent noticed that T.P. was crying, he felt bad. He credibly testified that he wanted to make a point about the seriousness of making allegations of racism, but soon realized that he did not raise the point in an appropriate manner. He asked T.P. to go outside so they could talk. Once outside, Respondent told T.P. that he was sorry he had made her cry, and stated that he was loud. He also said he did not want to be dragged into a situation where he would be wrongly accused. He repeated his request to speak to her parents before returning to class. He offered to prepare some assignments for T.P. to work on in an area of the office known as "Falcon Center," and T.P. agreed to go there.

39. On January 30, 2017, Respondent was a representative of the certificated employees' collective bargaining representative, OEA. Not long after the incident, at 1:52 p.m., he wrote an email to Brisbine and Dr. Guerrero which stated, in part:

"FYI - I STRONGLY condemn your decision to place a student in my class who has falsely accused another teacher of racism. Especially without my prior knowledge. I explained to that student AND would like to remind you both what racism is. It is an extremely harsh and divisive accusation; doubly so for an educator. I don't believe the student took it well. She opted to go to the Falcon Center.

"Per Webster - 'Racism - prejudice, discrimination or antagonism directed against someone of a different race based on the belief that one's own race is superior.'

"You need to start defending your employees from this sort of nonsense. Back us up! This practice of removal of students upon their request from certain classes has to stop and stop now. If they don't get their way, they will make things up or embellish facts to serve their own purposes because there are absolutely no consequences for lying and false accusations. The teachers here are constantly looking over their shoulders and I for one am done with it. I will be conferring with my co-representatives and the OEA board on this matter." (Exh. 3; emphasis in original.)

Respondent's Teaching Performance and Evaluations

40. Respondent's teaching performance has not been called into question. In each of his performance evaluations submitted into evidence, a Non-Permanent Teacher Final Evaluation, Cycle I, dated May 27, 2014, and Non-Permanent Teacher Final Evaluation, Cycle 2, dated May 12, 2015, Respondent's performance was found to meet or exceed standards.

41. a. His supervisors have provided recent letters of recommendation. In a letter dated May 10, 2014, Dr. Guerrero wrote: "It is [a] great pleasure to write this letter of recommendation on behalf of [Respondent]. [Respondent] is a new science teacher at our school. He shows up to work early and usually is the first teacher to arrive on campus. I have observed his students actively engaged in his lessons during administrative walkthroughs. The majority of [Respondent]'s lessons have been project based experiments which have captivated his students' imagination and curiosity. It appears that [Respondent]'s lessons are carefully thought out. As a result, he rarely refers students to the office. I have also noted that students that were behavior problems last year have behaved in his class. He undoubtedly has good classroom management." (Exh. C.)

b. On May 22, 2016, Brisbine wrote: "[Respondent] delivers engaging instruction to his students in both 7th grade science classes and his 6th grade environmental science elective. He provides students with hands-on, project-based learning opportunities that incorporate collaboration and critical thinking. His instructional style is energetic and this leads to student engagement. [Respondent] routinely incorporates technology into his lessons and his students regularly utilize their iPads for a variety of activities." (Exh. D.)

42. During the 2015-2016 school years, respondent received the "Fabulous Falcon Award," "in recognition for going the extra mile for Freemont Students." (Exh. H.)

Additional Evidence Offered in Mitigation and Rehabilitation

43. Respondent has learned from the incidents and plans to make additional changes if retained. He stopped using profanity after the first incident. He has not touched students or their property to redirect them after February 11, 2016. He plans to be more reliant on campus supervisors and administrators. He will be more cognizant of the volume of his voice, and try to take steps to minimize its effect, such as speaking to students from farther away. Respondent acknowledges that he handled the T.P. transfer poorly, and agrees that his concerns should have

been addressed to District administration. He is open to further training to improve his interaction with students.

44. Respondent has volunteered to work as a “buddy teacher” for Lopez and Stevens. A buddy teacher is used to help calm disruptive students by temporarily placing them in a different environment with another teacher.

Respondent's Fitness to Teach

45. Respondent's conduct is related to his fitness to teach, but is insufficient to constitute unfitness to teach.⁴ As set forth in factual finding numbers 9 through 39, Respondent touched the backpack of one student, raised his voice to five students in four separate incidents, raised his voice to a staff member in an inappropriate manner, and made a student cry in his class. In terms of the pertinent *Morrison* factors, this conduct was likely to adversely affect the students and staff, and in fact did. J.V. nearly fell as Respondent redirected him. J.V. and J.W. became irate and replied in similarly loud tone. Epps took exception to Respondent's comments and challenged him to fight. T.P. became afraid and cried. The incidents occurred in the recent past. In aggravation, Respondent's conduct was public, witnessed by others, and set a bad example for students. On the other hand, Respondent did not receive any training after any of the incidents to prevent recurrence of additional incidents. Respondent was well-intentioned, as his conduct was motivated by upholding school rules and ensuring student safety, and by teaching students not to lightly accuse anyone of being a racist. In light of Respondent's changes in behavior after the letter of reprimand, his plans for additional changes, his acknowledgment that he mishandled the T.P. situation, his apologies to T.P. and to Epps, and the lessons he has learned through the disciplinary process, the questionable conduct is not likely to be repeated.

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⁴ Courts require evaluation of a teacher's alleged misconduct in terms of its impact on fitness for service utilizing the following criteria first enunciated by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and 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. Not all factors may apply in each case and only the pertinent ones need to be examined. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384 (*Haar*).) The determination of fitness for service required by *Morrison* is a factual one. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 698, fn. 3 (*Jack M.*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220-221 (*Fontana*); *Haar* (1994), *supra*, 28 Cal.App.4th at p. 384).

CONCLUSIONS OF LAW

1. Section 44932, subdivision (a)(5), permits dismissal of a permanent employee for “evident unfitness for service.” Evident unfitness for service under this provision is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. “If the *Morrison* criteria are satisfied, the next step is to determine whether the ‘unfitness’ is ‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (*Id.* at p. 1445.)

2. As set forth in factual finding numbers 3 through 39 and 45, Respondent’s conduct, while related to his fitness to teach is insufficient to constitute unfitness to teach. Respondent’s conduct, while of concern, does not demonstrate that he is “clearly not fit,” “adapted,” or “suitable” for teaching or that any existing deficiencies are the result of “temperamental defects or inadequacies.” The teacher in *Woodland*, *supra*, for instance, engaged in repeated acts of contempt for fellow teachers and school administrators over an extended period. Respondent, on the other hand, engaged in far fewer incidents over a relatively short period, none of the incidents demonstrated evident contempt for students or staff, and he made changes to his behavior that indicate the absence of a temperamental defect or inadequacy. Accordingly, cause for dismissal has not been established pursuant to section 44932, subdivision (a)(5).

3. Section 44932, subdivision (a)(7), permits dismissal of a permanent employee for “persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.” A violation of section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that Respondent’s refusal to follow the laws or regulations was “persistent,” i.e., “stubborn and continuing.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183; *Governing Board of the Oakdale Union High School District v. Seaman* (1972) 28 Cal.App.3d 77, 82 (*Seaman*).) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered “persistent.” (See, e.g., *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317; *Seaman*, *supra*.)

4. Except as quoted in the March 15, 2016 letter of reprimand, the District did not introduce into evidence the “school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board” that were allegedly violated. In closing argument, the District argued that Respondent did not follow its directive not to yell at students found in the letter of reprimand and the policy cited in the letter. Assuming the letter is sufficient to meet the statutory requirement of “school laws” or “reasonable regulations,” cause for discipline still has not been established pursuant to section 44932, subdivision (a)(7). As set forth in factual finding numbers 3 through 39 and 45, Respondent’s

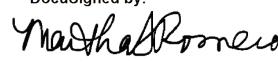
conduct, while related to his fitness to teach is insufficient to constitute unfitness to teach. In addition, the District did not establish that Respondent engaged in any stubborn or continuing disregard of its directive. The evidence establishes that after receiving the letter of reprimand Respondent raised his voice in two additional instances, but the evidence does not establish that he “yelled” at any of the students. Even if it were concluded that these two incidents violated the directive in the letter of reprimand, this limited sample involving qualitatively different events is insufficient to establish a “persistent” violation of the directive.

5. The Commission has discretion, even in cases in which cause for dismissal has been established, to conclude that dismissal is not warranted. (*Fontana, supra*, 45 Cal.3d at p. 220). In *Fontana*, a commission on professional competence declined to uphold the dismissal of a school principal despite its finding that grounds for the dismissal existed on the basis of dishonest conduct, concluding that the principal’s misconduct was isolated and unlikely to be repeated. The Supreme Court upheld the exercise of discretion by the commission. In this case, Respondent has discharged his teaching duties in a competent manner and the conduct that led to the charges is unlikely to be repeated. Retention is therefore appropriate even if cause for dismissal had been established.

ORDER

Respondent Christian Davey shall be retained as a permanent certificated employee of the Oxnard School District.

DATED: December 26, 2017

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MARTHA S. ROMERO, Ed.D.
Commission Member

DATED: December 19, 2017

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DAVID W. RODGERS
Commission Member

DATED: December 20, 2017

DocuSigned by:

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SAMUEL D. REYES
Administrative Law Judge
Office of Administrative Hearings