

BEFORE A
COMMISSION ON PROFESSIONAL COMPETENCE
MONTEREY PENINSULA UNIFIED SCHOOL DISTRICT
MONTEREY COUNTY
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CHRISTOPHER OLIVER

A Permanent Certificated Managerial
Employee

Respondent.

OAH No. 2013020985

DECISION

A Commission on Professional Competence, chaired by Administrative Law Judge Mary-Margaret Anderson, Office of Administrative Hearings, State of California, convened to hear this matter on August 26 through 29, 2013, in Monterey. Sandra Wade and Whitney Holton served as members.

Judd Jordan, Attorney at Law, Lozano Smith, represented Charging Party Leslie Codianne, Interim Superintendent, Monterey Peninsula Unified School District.

Kenneth J. Kroopf, Attorney at Law, represented Respondent Christopher Oliver, who was present.

The record was left open to allow the parties to file written closing argument. The briefs were timely received and marked for identification as follows: Charging Party Monterey Peninsula Unified School District's Post Hearing Opening Brief, Exhibit 29; Respondent's Closing Brief, Exhibit L; and Charging Party Monterey Peninsula Unified School District's Reply to Respondent Christopher Oliver's Closing Brief, Exhibit 30.

The record closed on October 4, 2013.

FACTUAL FINDINGS

1. The Monterey Peninsula Unified School District (District) has employed Christopher Oliver (Respondent) since 1990. Respondent is a permanent, certificated managerial employee of the District. He is an Early Childhood Education Site Supervisor.

2. On January 9, 2013, Superintendent Dr. Marilyn Shepherd signed a Statement of Charges and Notice of Recommendation for Dismissal of Respondent. On March 6, 2013, Interim Superintendent Leslie Codianne signed an Accusation/Statement of Charges (Accusation) recommending that Respondent be dismissed. Respondent was properly served and filed a timely notice of defense. This hearing followed.

Preliminary matters

3. The Accusation seeks Respondent's dismissal based upon dishonesty and persistent violation of or refusal to obey state laws or regulations, or school district rules. Eight descriptions of conduct are alleged as the basis. In this Decision, each of the eight charges is quoted verbatim in italics, followed by the facts that are found to be supported by the evidence.

4. The standard of proof applied in making the factual findings is preponderance of the evidence.

5. Respondent first worked for the District as a classroom pre-school teacher. In 2000, he took over as site supervisor at the Marina Vista location. In the beginning, he continued to teach half-time, then became a full-time administrator for the three programs that make up the early childhood education program administered by the District: federally-funded Head Start, a state-funded pre-school program, and special education services provided by the District. There were originally three locations, but in 2009 operations were consolidated to the Marina del Rey location, which is now known as Marina Children's Center (Marina). Respondent's office is at Marina. In the past, he supervised other locations as well. The record does not contain any information of prior discipline of Respondent by the District.

6. This case originated with an anonymous letter, received by the District in April 2011, that contains complaints about Respondent. At that time, Codianne was Associate Superintendent of Student Support Services, a position that included overseeing the early childhood programs. Codianne and Judy Durand, Executive Director of Human Resources and Risk Management, spoke with Respondent about the accusations contained in the letter, and were satisfied with his answers.

7. Sonja Velez was a preschool teacher for the District. During the 2010/2011 school year, financial problems led to a reduction in staffing, and Velez was laid off. She

became a substitute teacher at that time, although she usually worked full-time in that capacity. Respondent was her supervisor. Velez's last day working for the District was February 14, 2012; she failed to appear for work on that day. Subsequently, for reasons that are unclear, she asked to have an "exit interview." She was eligible to be re-employed because she had been laid off, and there was an opening she was eligible to apply for. On March 1, 2012, Velez met with Codianne and Durand. She told them that she would not be applying because she did not want to work for Respondent. She said that she had been harassed and was not treated the same as other employees, including not getting supplies in the same manner as other teachers. She also said that she was unable to have the basic needs of her students met. Velez said that she did not want to work under those conditions. She also reported that Respondent had referred to Hispanic people in a derogatory manner.

8. On April 18, 2012, Durand received an email from Velez. Velez wrote that she had been told by Veronica Ramirez, another employee, that Respondent was aware of the March 1st meeting, that he was good friends with both Durand and Codianne, and that they did not believe Velez. The email goes on to say that she was "forced out of my position by [Respondent and] bullied and harassed on a daily basis" Because of the accusations of favoritism, it was decided to employ an outside investigator. At the end of April 2012, Respondent was placed on administrative leave.

District investigation

9. Margaret Kotzebue, an attorney, was retained on April 30, 2012, to investigate the allegations of misconduct against Respondent, and also against Ramirez. Kotzebue interviewed numerous witnesses, and audiotaped most of the interviews. She prepared a written report that contains notes of conversations with witnesses that were not recorded, and testified at hearing. The written transcripts of the interviews reveal lengthy interviews that addressed many matters in great detail. As regards the matters crucial to this case, however, the interview technique was wanting, in that Kotzebue did not ask follow up questions after answers were given that suggested further questioning would be necessary to learn the full story. She also led witnesses, suggesting further information to add to the answers they gave. These defects negatively impacted the weight given the information elicited by Kotzebue.

Witness credibility

10. The credibility of three hearing witnesses was very poor, and this determination informed the factual findings.

11. Veronica Ramirez was first employed by the District in 2000. Her job title at the time in question was Project Ready Assistant, which is a classified position. The extent of her fluency in English is unclear. Ramirez was provided a Spanish-speaking interpreter for her investigative interview and at the hearing. But she spoke in English with Respondent when they worked together, with no reported difficulties.

Ramirez's statements in the record include a transcript of her interview by Kotzebue, notes by Kotzebue of a "parking lot" conversation post-interview (made without language assistance), an affidavit prepared by District counsel that she signed, and her hearing testimony. There are numerous contradictions in these statements, including as regards very serious allegations such as whether or not Respondent referred to another employee in racist and/or derogatory terms. In addition, other witnesses report that Ramirez talked to them about Respondent. Many of these reports form the basis for the other witnesses' testimony about key matters. Another important witness, Sonja Velez, who reports that Respondent acted against her in a direct manner, testified to numerous statements, discussed below. They added to the impression that Ramirez is prone to gossip.

The District did not call Ramirez as a witness, choosing to rely on her affidavit.¹ The veracity of the affidavit, however, is suspect. Ramirez told others that she was forced to sign it, and that parts were untrue. Ramirez was at the same time facing charges herself, so that her report to others that she feared for her job if she did not sign, has the ring of truth. Ramirez testified on cross-examination, and her testimony was contradictory of the declaration. Most important to her overall credibility, however, was Ramirez's admission that she had falsified a document by incorrectly identifying her daughter's birthday, so as to enroll her daughter in the Head Start program. She thereby admitted a dishonest act: falsifying a government form in order to receive a benefit she was not entitled to receive. For all of these reasons, and observations of her demeanor during her testimony, the evidence provided by Ramirez was accorded little weight.

12. Sonja Velez has known Respondent for many years, and they were close friends for several years. They saw each other outside of work, and for a period of time frequently spoke on the telephone in the evenings. In 2006, Velez invited Respondent to her wedding out of state. Respondent made reservations, but then was unable to come. Velez testified that she was not upset by this. She claims that Respondent's behavior changed after an incident that she reported to Community Care Licensing (the "needle incident," described below.)

Many of Velez's complaints and related feelings about Respondent appear to have been informed by what Ramirez told her. For example, Ramirez told Velez that Respondent did not like her and to be careful; that Respondent was upset with her after the "needle incident"; that she should watch out because Respondent was friendly with District managers and had dinner with them all the time; that Respondent was going to, or had, told each parent what a horrible person Velez was; that Respondent did not want her working in the program; that Respondent was upset with her for writing an anonymous letter; and that, regarding a

¹ The District introduced Ramirez's affidavit pursuant to Government Code section 11514, which provides that an affidavit be considered the same as testimony, if the opposing party is given the opportunity to cross-examine the affiant. The conditions were met here, and the affidavit was received as direct evidence.

payroll problem Velez was having, Respondent was probably doing it on purpose. These statements reflected poorly on the credibility of both Velez and Ramirez.

Much of Velez's testimony regarding her treatment by Respondent was based upon her feelings that she was mistreated or retaliated against. There was little substance to these statements, and they were not substantiated by the evidence. Further, other credible witnesses contradicted some of Velez's statements. These included her representation that she left the District, and did not apply for a permanent position that she was qualified for, because of Respondent's treatment of her. First, there was no mistreatment proven. Second, the record contains evidence that she stopped working for the District because she was able to make more money in her family's restaurant business. The reasons behind Velez's anger towards Respondent and her motivation for complaining about him are unclear. But it is not necessary to establish her motives. For all of the stated reasons, and based upon her demeanor and observations made of her testimony, the evidence provided by Velez was accorded little weight.

13. Carmen Gonzalez began working for the District in 2004. She worked at Marina, under Respondent's supervision, between approximately 2008 and October 2010. She was subject to layoff, but had bumping rights, and moved from Marina to work in the District offices. Her present title is Program Secretary. At Marina, she was a Child Development Secretary. Her job duties included entering data regarding enrollment, attendance, registration and training. She would also assist the teachers, for example, if they needed copies made. Gonzalez worked with Ramirez, and their desks were next to each other.

Evidence provided by Gonzalez in the record includes a transcript of her interview by Kotzebue and hearing testimony. There were important inconsistencies between the two. For example, in the interview, she said that Ramirez overheard Respondent call her (Gonzalez) an "ignorant Mexican bitch," while she was out of his sight in the office storage area. Ramirez, however, testified that she had never heard Respondent say that about Gonzalez, or make racist remarks about anyone. At hearing, Gonzalez testified that Respondent was talking to a staff person, whose voice she did not recognize, when he made the statement.

In addition, Gonzalez has claimed that Respondent was a mean boss, that she was very frightened of him, and that he retaliated against her. She also claimed that he did not properly report vacations and account for his time, but Gonzalez's duties did not include keeping account of Respondent's leave time. None of her feelings or suppositions are substantiated by the evidence. Gonzalez cried when she testified, and reportedly "lost her composure" during her interview with the investigator. Her very emotional behavior appeared out of proportion to the facts she was relating, and negatively affected her credibility.

For all of the stated reasons, and based upon her demeanor and observations made of her testimony, the evidence provided by Gonzalez was accorded little weight.

Allegations of dishonesty and persistent violation of school laws or regulations

CHARGE NO. 1

[Respondent] and Veronica Ramirez had an agreement or arrangement to cover for each other in taking leave time or vacation without properly noting it in District records. Ms. Ramirez took at least two maternity leaves since she started working with the District, one in connection with the birth of her second child on January 2, 2008, and the second in connection with the birth of her third child on April 4, 2010. Before her second child was born, Ms. Ramirez and [Respondent] agreed that Ms. Ramirez would work through breaks in October and December without extra pay and then take time off when she had her baby in January, keeping track of her own time and letting [Respondent] know when she would take time off after the baby was born. After the birth of her third child, a computer printout of Ms. Ramirez's reported absences . . . shows that Ms. Ramirez claimed 15 days of maternity leave, 15 days of "Sub Deduct" leave and 10 days leave without pay. In return, Ms. Ramirez apparently covered for [Respondent] by forwarding calls to him during vacations which he did not properly report until Ercilia Donnelly began to supervise him in April 2011.

14. Ramirez told Kotzebue that there was an arrangement with Respondent by which she was able to work during school breaks in the fall of 2007, and make up for it by taking time off after her baby was born the following January. In her testimony, she confirmed that this occurred when she was pregnant with her second child, but she also elaborated, stating that she was not paid for her work because the District did not have the funds. She asked Respondent if she could use those days to have more of a pregnancy leave. Ramirez testified that this extra work was approved by the District, which would send a form to be filled out. Sometimes she would get paid, but if not, she could use the days she worked as sick days. There is no documentation, however, to confirm these statements, or any other corroborating evidence. The District submitted payroll forms entitled "Leave Account Balances with Details," but it is unclear what light the documents are meant to shine on the allegations or what rule or procedure was violated even if there was such an arrangement. Respondent denied any such agreement or arrangement existed with Ramirez, and denied not properly reporting vacations.

15. The evidence did not establish that Ramirez and Respondent had an arrangement to cover for each other in any respect or that Respondent did not properly report his vacations.

CHARGE NO. 2

In years including 2009, [Respondent] asked Carmen Gonzalez to fraudulently alter Head Start Parent Committee agendas and minutes to mislead the regulatory agency that meetings occurred when they had not. Head Start requires monthly parent meetings and [Respondent] was in charge of arranging the meetings. [Respondent] told Ms. Gonzalez to “white out” the previous dates and put in new dates, and asked Ms. Ramirez to sign in a parent’s name if they did not show up for a meeting, although Ms. Ramirez did not feel comfortable doing this, and would make sure the parents would come in and sign themselves.

16. This charge arises from the need to document meetings concerning the Head Start program. One of Gonzalez’s duties was to prepare agendas and minutes for these meetings. There were also sign-in sheets for the parents and participants. Although the record is not entirely clear, there was apparently an audit of the Head Start program in 2009, and an effort made to assemble documentation of the meetings to show they occurred.

Respondent denied telling Gonzalez to “white out” information and change dates, or to fraudulently alter any documents. He did have her correct mistakes that she had made in typing documents, and other witnesses confirmed that Gonzalez made many such errors. Ramirez testified that she never heard Respondent tell Gonzalez to alter documents. There was no other evidence supporting this charge.

17. As to the second portion of the charge, both Ramirez and Respondent denied that she was asked to, or did, sign a parent’s name when a parent did not attend a meeting. On one occasion, Respondent asked Ramirez to sign in for parents who attended, but did not sign the sheet. Sometimes parents who forgot to sign in at the meeting would sign the sheet when they were in the office another time.

18. The evidence did not establish that Respondent asked Gonzalez to fraudulently alter documents or asked Ramirez to sign the names of parents on sign-in sheets when the parents had not attended the meetings.

CHARGE NO. 3

In April of 2009, in connection with a loan application, [Respondent] also asked Ms. Ramirez to sign a partially blank verification of employment form as "Director", although she was not a "Director", and after Ms. Ramirez signed the partially blank form, [Respondent] altered the contents of the form Ms. Ramirez had signed.

19. Ramirez did sign a verification of employment form, and identified herself as "Director." The circumstances surrounding her actions, however, are not clear. Ramirez declared and testified that Respondent asked her to do it as a favor. She did not want to do it, but did not want Respondent to be upset with her. Although her interview answers and testimony are fairly consistent, her testimony was confusing. She said both that the document was faxed to her and that Respondent telephoned her about it, and that he handed it to her in person and said "put your name as director." All of the handwriting on the form appears to be written by the same person.

20. Respondent testified that while he was on a vacation, Ramirez telephoned him and told him that she had signed a document. She told him that a woman who identified herself as "Shirley" had called, and that in order to help him, Shirley had coached her through filling out the form, and that she had then faxed the document to the lender. When Respondent returned and saw the form and what she had done, he cancelled the loan application. He knew the form should have "gone downtown" to be completed, and he wanted to stop it. As regards what might have appeared to be admissions in his interview with Kotzebue, and statements in a follow-up email, Respondent explained that he initially attempted to take responsibility for the form in order to protect Ramirez.

21. The evidence did not establish that Respondent asked Ramirez to sign the employment verification form.

CHARGE NO. 4

In October of 2011, [Respondent] also forged Ms. Donnelly's signature on a loan request in connection with his retirement account

22. Respondent signed the name of his then-supervisor, Ercilia Donnelly, on a document. The circumstances, however, are unclear. The document is a form that Respondent thought at the time was necessary for him to obtain a loan from a "section 4403(b) tax sheltered annuity" held by ReliaStar Life Insurance Company. It was later revealed that such form was not necessary, and it was not utilized.

Donnelly found the loan document during a clean-up of Respondent's office after he was placed on leave. She also found the verification form at that time. Donnelly testified that she noticed right away that the loan document contained her signature, but that she had not signed it. Also, her first name is misspelled. She asked her supervisor what to do with the documents, and was directed to "take them to HR."

23. Donnelly testified that she did not give Respondent her permission to sign her name, and that she would never do so. Respondent told Kotzebue that he signed Donnelly's name, because he "was like rushing trying to get it . . ." And she interrupted him and said "You were rushing to try to get it done." He answered "Yeah." Kotzebue asked no more questions about the form. Respondent testified that he quickly needed money in September of 2011, and had never borrowed from his plan before. He was sent the form, and believed at the time he needed it to be filled out and sent in right away. Respondent called Donnelly about the form, and another matter. Both were in a rush, on their way to meetings. He told her about the form, and he believes she said "go ahead," which he thought meant he could sign her name. Respondent did not intend to do anything dishonest, and would never sign the name of another on a document again.

24. It was not proven that Respondent forged Donnelly's signature, in that it was not proven that he signed the document without her consent.

Allegations of persistent violation of school laws or regulations:

CHARGE NO. 5

During the last four years, [Respondent] has also referred to Hispanic females including Ms. Gonzalez as "bitches." About two years ago, when Ms. Gonzalez found out she was being transferred to the District office, she was in an office storage area and overheard [Respondent] say that he "finally got rid of the stupid ignorant Mexican bitch." Similarly, when Ms. Velez noticed that Ms. Gonzalez was no longer in [Respondent's] office, he told Ms. Velez "don't worry about that stupid Mexican bitch."

25. Respondent denied ever referring to Gonzalez as a bitch, or making the other statements reported by Gonzalez and Velez. Ramirez was cited by both witnesses as overhearing the statements. She was questioned extensively on this topic, and asked suggestive questions by Kotzebue. She denied hearing Respondent ever make any such statements. Kotzebue reported that Ramirez approached her in the parking lot after the interview, and told her that she had lied in the interview, and that Respondent made "statements about Hispanics," just that he "may not have said it exactly as I [Kotzebue] said." This one hearsay statement by Ramirez, a witness with poor credibility, is the only corroboration of Gonzalez's and Velez's statements.

Donnelly, who was Respondent's supervisor for over one year, never heard Respondent make derogatory statements about others, or that he had made such statements. Martha Ratliff, Bobbie Elliott, and Maricar Osorio all worked with Respondent in some capacity. Ratliff is a District enrollment clerk, and she worked at Marina when Gonzalez, Velez and Ramirez were working in the office. She testified that she has never known Respondent to show prejudice or make any derogatory statements. Bobbie Elliott is Donnelly's secretary and first met Respondent in 1996. She has never seen him demonstrate prejudice towards Mexicans, or heard him make derogatory remarks. She also described him as patient and respectful, a "real people person," easygoing and funny. Osorio a teacher and Respondent was her supervisor at Marina. She described Respondent as fair and patient. There are 11 letters in evidence, and the authors are complimentary of Respondent's good character.

26. The evidence did not establish that Respondent referred to Gonzalez as an ignorant, or stupid, Mexican bitch, or that he referred to Hispanic females as "bitches."

CHARGE NO. 6

In 2009, while [Respondent] was on a vacation trip to Montreal, Sonja Velez, who at that time was a full-time permanent classroom teacher, observed a child pick up a hypodermic needle and hand it to another teacher in the classroom. Ms. Velez went to the office and reported the incident to Veronica Ramirez, who initially told Ms. Velez that the incident did not need to be reported to the licensing authorities. The incident was reported to the licensing authorities only after Carmen Gonzalez, who had a desk next to Ms. Ramirez in the office, said "no, we need to do this by the book", or words to that effect, and Ms. Gonzalez and Ms. Velez then called the licensing authorities. [Respondent] found out about the incident, and that Ms. Gonzalez and Ms. Velez had notified the licensing authorities, when he got a call when he got off the place in Montreal. Ms. Ramirez said she thought she was the one who had called [Respondent], who thought that it was not necessary to report the event to licensing. When [Respondent] returned from vacation, [Respondent] called a meeting of the staff including Ms. Velez, who saw [Respondent] look around and then look at her and say "I'm here to clean up the mess that happened while I was gone". [Respondent] then told staff emphatically "if I'm not here, you talk to Veronica. If Veronica isn't here, you talk to Tia Robinson", or words to that effect. After the incident, Ms. Velez perceived that [Respondent's] behavior toward her changed, including making it harder for

her to get supplies for her classroom, dismissing her requests to change playgrounds when she thought the assigned playground was designed for children older than the children in her class, and making remarks to Ms. Ramirez which [Respondent] expected Ms. Ramirez might or would pass along (and which Ms. Ramirez did pass along) to Ms. Velez, including that “[Respondent] doesn’t like you”, and (after Ms. Velez became a substitute “next on the list” for a permanent position opening at the beginning of the 2011/2012 school year, but heard nothing from [Respondent], and asked Ms. Ramirez if Ms. Velez should ask someone else in the District office about the position) that “you don’t want to go over his head or he won’t use you as a substitute” and that [Respondent] did not want her to have the permanent job.

27. This lengthy charge refers to an occasion when a used needle was found in a classroom. The law requires that such incidents be reported to the Department of Social Services, Community Care Licensing. While Respondent was away, a dispute arose about the proper procedure to follow. Codianne went to Marina because she thought she needed to address the situation. She made sure that the teachers and parents were made aware of the situation and the potential for danger. She investigated and told staff that the incident should have first been reported to the site supervisor, and if he was not on campus, then the next person in the chain of command.

When Respondent returned, he called Codianne and apologized. She told him to call a staff meeting, reinforce the chain of command, and have the nurse come in. Respondent therefore spoke to the staff and told them the protocols to follow if he was away. Respondent did not tell the group that they were not to report such incidents. He said that he was disappointed that they did not follow the protocol, which included reporting it to head teacher Tia Robinson. Other witnesses confirmed Respondent’s testimony that he was upset, but not angry when he met with staff, and that he did not single anyone out for criticism.

28. There is no competent evidence that Respondent treated Velez differently or poorly after the “needle incident,” let alone that he intimidated or retaliated against her in any way. Velez’s belief that she was treated differently by Respondent after the incident is insufficient to prove retaliation or intimidation. Further, it was not shown that Respondent expected Ramirez “might or would pass along” remarks made about her to Ramirez. It was not even proven that such remarks were made.

CHARGE NO. 7

By June of 2011, the District had received an anonymous complaint letter and an e-mail from the California Department of Education about [Respondent] . . . [Respondent] suspected

that Ms. Velez had written the anonymous complaint letter, and thought that Carmen Gonzalez was involved too, and made further remarks to Ms. Ramirez which he expected Ms. Ramirez might pass along (and which Ms. Ramirez did pass along) to Ms. Velez, including words to the effect that he really was out to “get” Ms. Velez that year because he believed she and Ms. Gonzalez were the ones who wrote a complaint letter to the District about how “we always come in late and how we don’t open the doors and parents are waiting in the rain sometimes.”

29. This allegation appears to charge Respondent with attempting to intimidate Velez by proxy. There was no evidence to support the charge that Respondent “expected Ms. Ramirez might pass along” any remarks to Velez. The fact that Respondent suspected Velez of writing the anonymous complaint letter is not evidence that he attempted to, let alone did, intimidate or bully Velez.

CHARGE NO. 8

On or about March 1, 2012, Ms. Velez met with Judy Durand and Leslie Codianne in the District personnel office to discuss her reasons for leaving the District rather than accepting a permanent position, during which Ms. Velez complained about [Respondent’s] conduct. [Respondent] found out about the meeting and talked with Ms. Ramirez about it, expecting Ms. Ramirez might pass along what he said to Ms. Velez, which Ms. Ramirez did. Late at night on March 29, 2012, Ms. Ramirez called Ms. Velez and told her that [Respondent] knew that Ms. Velez had met with the District, but he had said that he “was good friends with Judy and Leslie and that they go to dinner all the time and they don’t believe you.” [Respondent] made similar statements to other employees to the effect that any complaint to District management about his behavior would not be believed because of his relationship with District management, and cultivated that impression by making a show of being friendly toward District management, including unsolicited hugs. After being placed on administrative leave pending the investigation of these charges against him, [Respondent] admitted to contacting other District employees including witness Ercilia Donnelly, whom he called and texted a number of times and wanted to know “what’s going on.”

30. Similarly to Charge No. 7, the District alleges that Respondent utilized Ramirez in an effort to intimidate Velez. This allegation was not proven.

31. After being placed on administrative leave, Respondent was admonished not to contact District personnel involved in the case. Donnelly was in this group, because Respondent was charged with forging her signature. And Donnelly knew this, because she was the one who found the loan form and the employment verification form and turned them in to the District office. When she testified, she appeared to be outraged that Respondent signed her name on the form. But Donnelly asked that Respondent be brought back to work on licensing applications. It was stressed that he would be working essentially alone in this effort, but he was under Donnelly's supervision, so that it would be natural to have contact with her. Donnelly testified that Respondent was also involved in training someone to work at Marina in June 2102. It is noted that the most serious charges in this action are of dishonest conduct. Nonetheless, the District chose to have Respondent, who was under investigation at the time and placed on leave for dishonesty in connection with the filling out of forms and documents, do just that in connection with licensing applications. The evidence contains a written authorization, signed by then-Superintendent Shepard and Codianne, that Respondent may sign forms on behalf of the District.

32. Respondent and Donnelly exchanged many text messages after he was placed on leave. The messages include friendly exchanges of concern and encouragement. It is not understood how texting his supervisor and asking her "what's going on," in this context, could constitute intimidating and threatening conduct in violation of state laws and district rules.

LEGAL CONCLUSIONS

1. Education Code section 44932 provides that permanent employees, including certificated management employees, may not be dismissed from employment unless one or more of the causes listed in its subdivisions are proven. In addition, in order to be legally sufficient to support dismissal, the proven causes must be linked to the teaching profession so that unfitness to teach is demonstrated. In other words, there must be a nexus between the conduct and teaching. In *Morrison v. State Board of Education*,² the court listed examples of relevant factors to consider in determining whether conduct demonstrates unfitness. Not all of the factors need be considered in every case; only those most pertinent.³

The causes alleged in this matter are: dishonesty and persistent violation of or refusal to obey school laws or regulations.

² *Morrison v. State Board of Education* (1969) 1 Cal.3d. 214.

³ *West Valley-Mission Community College District v. Consepcion* (1993) 16 Cal.App.4th 1766, 1777.

Dishonesty

2. A permanent employee may be dismissed for dishonesty. (Ed. Code, § 44932, subd. (a)(3).) As the allegations against Respondent for dishonesty were not proven, cause for dismissal pursuant to this section was not established.

Persistent violations of school laws or regulations

3. A permanent employee may be dismissed for “[p]ersistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed by the government of the public schools by the State Board of Education or by the governing board of the school district employing . . . him.” (Ed. Code, § 44932, subd. (a)(7).) As the allegations against Respondent for persistent violations or refusal to obey applicable laws and rules was not proven, cause for dismissal pursuant to this section was not established.

Conclusion

4. Dishonesty and “persistent violations” rooted in racist remarks, bullying and retaliation, are serious charges that should be reserved for equally serious and verifiable incidents capable of proof without reliance on gossip and innuendo. The evidence showed that Respondent made errors of judgment, was sloppy in some respects in his position, and may have had “boundary issues” in his relationships with people he supervised. The allegations that he engaged in conduct prohibited by the Education Code, however, were not proven. Given this conclusion, a *Morrison* analysis was not undertaken.

5. According to the provisions of Education Code section 44944, subdivision (c) (1), the decision of a Commission on Professional Competence shall be made by majority vote, and a disposition made from one of the following three choices:

- (A) That the employee should be dismissed.
- (B) That the employee should be suspended for a specific period of time without pay.
- (C) That the employee should not be dismissed or suspended.

This Commission voted and reached the unanimous conclusion that Respondent should not be dismissed or suspended, and that will be the Order.

ORDER

Respondent Christopher Oliver is not dismissed or suspended from his position with the Monterey Peninsula Unified School District.

DATED: November 27, 2013

_____/_____
MARY-MARGARET ANDERSON
Chair, Commission on Professional Competence
Administrative Law Judge

DATED: _____

SANDRA WADE
Commission Member

DATED: _____

WHITNEY HOLTON
Commission Member