

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
LONG BEACH UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

PARAKRAMA KARUNATILEKA,

Respondent.

OAH Case No. 2012030693

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (Commission) at Long Beach, California, on August 27, 28, 29, and September 4, 5 and 6, 2012. The Commission consists of the following members: Charles Ritz, teacher, Fullerton Joint Unified High School District; Donald H. Rafter, Assistant Principal, Tustin Unified School District; and David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings.

The Long Beach Unified School District (District) was represented by Atkinson, Andelson, Loya, Ruud & Romo, by Anthony P. De Marco and Heather A. Dozier, Attorneys-at-Law. Respondent Parakrama Karunatileka was present and was represented by Reich, Adell & Cvitan, by Marianne Reinhold, Attorney-at-Law.

On the record during the hearing, a protective order was issued concerning Exhibit 22, an investigative report that contained the names of numerous students of the District. The students' names are confidential. Therefore, it was ordered that there would be two versions of the exhibit: Exhibit 22A has the names blacked out, and Exhibit 22B is an unedited version of the report. It was ordered that Exhibit 22B would be sealed.

Oral and documentary evidence was received, the parties submitted argument and the matter was submitted for decision on September 6, 2012. The Commission considered the matter in executive session. Thereafter, on November 2, 2012, the District filed a motion to amend the Accusation, marked for identification as Exhibit 28. On November 6, a telephonic status conference with counsel was convened to discuss the pending motion and impose a briefing schedule. A Status Conference Order was issued, marked for identification as Exhibit 29. As noted therein, the prior submission of the case for decision was vacated and the record reopened. On November 9, 2012, Respondent filed opposition to the motion, marked for identification as Exhibit L. On November 14, 2012, the District filed a reply to the opposition, marked for identification as Exhibit 30.

On November 30, 2012, the ALJ issued an Order on the motion, marked for identification as Exhibit 31. Among other things, the Order denied the motion and indicated that the matter was under submission for decision as of November 30, 2102.

After due consideration of the entire record herein the Commission makes the following factual findings, conclusions of law, and order:

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Ruth Perez Ashley in her official capacity as Assistant Superintendent, Human Resources Services, for the District.

2. Respondent Parakrama Karunatileka (Respondent) has been employed by the District since 1995. He is a permanent certificated employee. Since approximately 1998 he has been assigned to teach math at Cabrillo High School. At various times Respondent has been the chair of the math department at Cabrillo High School. He has also served as the co-sponsor of the International Club for students and wrote a grant proposal, received a grant, and implemented a program for tobacco education and use prevention.

3. The Statement of Charges is dated February 10, 2012, and recommends the dismissal of Respondent from the District for the following legal causes under Education Code¹ sections 44932 and 44939: (1) immoral conduct; (2) evident unfitness for service; and (3) 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 Respondent. On March 6, 2012, Ms. Ashley, on behalf of the Board of Education of the District, prepared a notice that the District intended to immediately suspend Respondent without pay and dismiss him from his teaching position. After being served with a copy of the Statement of Charges, Respondent submitted a Request for Hearing dated March 8, 2012. An Accusation was signed by Ms. Ashley and filed with the District on March 16, 2012. After being served with a copy of the Accusation, Respondent submitted a Notice of Defense dated March 20, 2012.

4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

5. The allegations in the Accusation relate to Respondent's actions as coach of the girls tennis team in 2011. The team had been coached by others in prior years and Respondent had been an active supporter of the team. Due to instability in the coaching position in 2010, Respondent asked the Athletic Director, Jennifer Brown, if he could coach

¹ All statutory references are to the Education Code, unless otherwise noted.

the boys team and if she would coach the girls team. Ultimately, Ms. Brown, who had been coaching the boys team, told Respondent that she would continue to coach the boys and that, if he wanted, Respondent could coach the girls team. Respondent expressed interest and was ultimately approved for the position. In May and June 2011, Respondent was preparing to start as the coach of the girls team and, among other things, he recruited an assistant coach (John Zeeman, also a math teacher at Cabrillo High School) and arranged for access to campus for practices in late August 2011, which was after summer school ended and before the beginning of the Fall semester.

6. Respondent was an avid, longstanding tennis player and was a member of the United States Tennis Association. He looked forward to coaching the girls team. From the beginning of practices in August 2011, he stressed adherence to the rules of the game of tennis and to the District's rules relating to its athletic teams. Respondent also spoke to the girls about proper nutrition, proper attire for practices and games, and proper tennis etiquette. Many of the girls were new to the sport. To many, Respondent's approach to the game and to coaching was stricter than they had experienced before or were expecting.

7. In numerous respects, the Commission determined that the District did not present sufficient, credible evidence to support the substantive allegations of the Accusation.² The most efficient way to present the Commission's findings is to set forth each substantive paragraph alleging "inappropriate conduct" or "inappropriate behavior," followed by the Commission's factual finding with respect to that allegation. In each instance where a portion of an allegation is not included in the Commission's factual finding, there was insufficient, credible evidence to support that portion of the allegation.

8a. The District alleged (Statement of Charges, paragraph 9):

"In or about Summer 2011, you engaged in inappropriate conduct toward a student. Specifically, you asked student M.C. to come to your classroom to assist you in ordering tennis uniforms. While you were alone in your classroom with M.C., you requested specific information regarding M.C.'s bra and pant sizes and asked to see a picture of M.C.'s mother. You also touched the side of M.C.'s waist and the tag of her pants to confirm the size of her jeans."

8b. The Commission finds that, during two practices in August 2011, Respondent requested information from M.C. regarding her clothing sizes for purposes of ordering a uniform top and skirt.

² The Accusation refers to the Statement of Charges for the paragraphs containing the allegations of substantive misconduct, specifically found in paragraphs 9 through 19 of the Statement of Charges.

9a. The District alleged (Statement of Charges, paragraph 10):

“In or about Fall 2011, you engaged in inappropriate physical conduct with female students. Specifically, you sat too close to students M.C., B.S., and C.L. You also patted and/or rubbed the backs of female students on the tennis team.”

9b. The Commission finds that in the fall of 2011, Respondent sat close to student M.C. either to help her with homework or because there was limited space on the bench during tennis matches.

10a. The District alleged (Statement of Charges, paragraph 11):

“In or about September 2011, you engaged in inappropriate conduct toward a student. Specifically, you asked student D.H. her name and said, ‘I will remember you.’”

10b. The Commission finds that there was insufficient credible evidence to support this allegation.

11a. The District alleged (Statement of Charges, paragraph 12):

“In or about September 2011, you engaged in further inappropriate conduct toward student D.H. Specifically, you repeatedly referred to D.H. as your favorite student. On one occasion when you were upset with D.H., you said, ‘I still like you and you are my favorite.’ Additionally, you were always D.H.’s doubles partner during tennis practice and told D.H. that you would purchase food for the two of you if you won.”

11b. The Commission finds that Respondent referred to D.H. as a favorite student perhaps more than once, but not repeatedly. The context was that when D.H. would miss a ball and curse while on the court, Respondent would instruct her not to curse and, instead, to clap with her racquet or tell the other player it was a good shot. Respondent testified credibly that he would comment to D.H. that he would tolerate her behavior because she did not know proper tennis etiquette, but that he still liked her as a player, and that it was her language that he did not like. Further, Respondent purchased healthy snacks for the entire team. He did not tell D.H. he would purchase food specifically for her, and did not promise food as a reward for winning. As part of tennis practice, Respondent would be a doubles partner with various students, not just D.H.

12a. The District alleged (Statement of Charges, paragraph 13):

“In or about September 2011, you engaged in further inappropriate conduct toward student D.H. Specifically, during a team cheer, all of the students were standing in a circle, with their hands in the middle of the circle. You said, ‘Come on [D.H.], hold my hand.’”

12b. The Commission finds that the context of the behavior was a home game where the team customarily did a cheer while standing in a circle with their hands meeting in the middle. During one such cheer, D.H. was off to the side, and to Respondent she seemed distracted. He told D.H. to join the circle and put her hands with the others. He did not tell D.H. to hold his hands.

13a. The District alleged (Statement of Charges, paragraph 14):

“In or about September 2011, you engaged in further inappropriate conduct toward student D.H. Specifically, you walked up to D.H. while she was standing with a friend and asked her to come speak with you. You then whispered, ‘Why are you not wearing a sports bra?’”

13b. The Commission finds that there was insufficient credible evidence to support this allegation.

14a. The District alleged (Statement of Charges, paragraph 15):

“In or about October 2011, you engaged in inappropriate conduct toward student M.C. Specifically, you lifted M.C.’s bra strap and told her she should wear a sports bra.”

14b. The Commission finds that Respondent instructed all of the members of the girls tennis team that they should wear sports bras.

15a. The District alleged (Statement of Charges, paragraph 16):

“In or about October 2011, you engaged in inappropriate conduct toward student M.R. Specifically, you informed M.R. that you pulled her elementary and middle school records and discovered her parents were divorced.”

15b. The Commission finds that there was insufficient credible evidence to support this allegation. Further, Respondent learned from M.R. that her parents were divorced.

16a. The District alleged (Statement of Charges, paragraph 17):

“In or about October 2011, you engaged in additional inappropriate conduct toward student M.R. Specifically, you asked M.R. several times if you could adopt her and on approximately ten occasions during tennis practice said, ‘I love you and I miss you,’ in Tagalog, which is M.R.’s first language. You also frequently asked M.R. to come speak with you in private, and when she walked away, you said, ‘[M.R.], please come back.’ Additionally, while M.R. was absent from school for three days in November 2011, you told student J.E. each day that you missed M.R.”

16b. The Commission finds that there was insufficient credible evidence to support the allegations concerning adopting M.R. or that Respondent told M.R., in Tagalog, that he loved her or missed her. Although Respondent may have asked M.R. to come speak with him while they were in study hall (after the tennis season was over), it was not proven that this happened frequently or that the meetings were in private. One time, when M.R. walked away, Respondent asked her to come back. Concerning the absence of student M.R. for several days, Respondent was unaware that she and another student/team member had been suspended from school. Although teachers normally received a timely email with such information, Respondent did not see an email until several days later. Respondent testified credibly that he commented that it was too bad that these girls would miss tennis. He made this comment, in part, because the team had few members and the absence of two team members was noticeable.

17a. The District alleged (Statement of Charges, paragraph 18):

“On or about November 29, 2011, you engaged in further inappropriate conduct toward student M.R. Specifically, you asked M.R. to sit next to you at your desk to correct student examinations. While M.R. sat next to you, you whispered to her that you were going to order her a new tennis uniform. You then asked M.R. specific questions regarding her bra and waist size. You also asked about M.R.’s mother’s body type and indicated you wanted to see a picture of M.R.’s mother. During this conversation, you told M.R. to be quiet, because you did not want the rest of the class to hear your conversation. You ended the conversation by asking M.R. to promise to remain a virgin until she was married. You also rubbed M.R.’s bare, upper arm and patted M.R.’s bare, upper thigh. M.R. was extremely uncomfortable by your inappropriate comments and touching.”

17b. The Commission finds that during a study hall period after tennis season was over Respondent approached M.R. and asked her to enter grades for student examinations into his computer, which was on a table adjacent to his desk in the classroom. As she sat nearby his chair, Respondent spoke to M.R. about ordering uniforms for the next year, as encouragement for her to participate the next year. M.R.’s participation with the team had been limited because she had not completed the requirements to have insurance coverage for the athletic activity. Therefore, M.R. could only participate fully in team activities during the sixth period physical education portion of the school day, but not in all team activities after the school day was over. The Commission finds that there was insufficient credible evidence to support the remaining allegations.

18a. The District alleged (Statement of Charges, paragraph 19):

“On or about November 30, 2011, you engaged in additional inappropriate behavior toward student M.R. Specifically, while M.R. was running track, you asked to speak to M.R. and asked whether she was wearing a bra, despite the fact that her bra strap was visible. M.R. indicated she was wearing a bra, and you said, ‘Are you sure. It doesn’t look like you’re wearing a bra.’ M.R. became upset and began to cry, and you asked M.R. whether she wanted you to purchase her a sports bra. You had previously given M.R. a used

pair of tennis shoes and a tennis bag. You then asked M.R. to take a walk with you, and she said, 'No. I don't want to.' However, you insisted that M.R. walk with you and said, 'Let's go.'"

18b. The Commission finds that Respondent had given M.R. a pair of his wife's used tennis shoes when M.R. did not have proper shoes to play tennis. The Commission finds that there was insufficient credible evidence to support the remaining allegations.

19. No attempt will be made to address the nature of the evidence submitted related to each allegation or to other relevant matters. However, certain matters are discussed below to provide insight into some of the factors supporting the Commission's findings and conclusions.

20. Generally the versions of events testified to by many of the students involved in, or witness to, the alleged incidents were often lacking in credibility, were contradictory, and/or were inconsistent. More specifically, there were often contradictions, inconsistencies and simple failures to include some events in students' written complaints, discussions with others, interviews with investigators, depositions, and hearing testimony. There was evidence that some of the students had a bad reputation for truthfulness and credibility. For example, M.C. testified that M.R. is a liar. Three team members told Mr. Zeeman that M.R. had lied about some significant events. Mr. Zeeman was aware that M.C. had lied to her parents about being at a tennis event when she was actually seeing her boyfriend. When asked about his opinion of D.H.'s veracity, Mr. Zeeman, in an exercise in discretion, referred to her as "a confused young lady." The athletic director, Denise Sarno, testified that she would not believe anything D.H. had to say. Ms. Sarno also stated that the girls on the team were very manipulative, which was echoed or intimated by other witnesses, and that they would go to great lengths to have Respondent removed as their coach.

21. The demeanor of D.H. while testifying is noteworthy. At times she slouched in her chair, rotating it lazily from side to side, while testifying in an offhand manner about serious subjects and events, displaying an attitude that conveyed she did not seem very interested or concerned. Yet, she seemed to bask in the attention given to her position/role as a primary accuser against Respondent. D.H. and Respondent had been involved in two incidents not included as an allegation, but which were the subject of much testimony and which appeared to affect her relationship with him and affected her credibility. One day, while running the track during sixth period, D.H. was the subject of particularly rude and sexist remarks from a football player practicing in the vicinity. When she reported this to Respondent, Respondent was extremely offended and he took action, ultimately unsuccessful, to try to discover who the player was and to have the football coach address the issue. D.H.'s response was that she had heard those types of comments all of her life and it was of no concern to her. She appeared to resent the attention Respondent gave to the event and the earnestness with which he pursued it. In another instance, D.H. did not have her uniform for a match and there were heated words between her and Respondent. D.H. directed profane words towards Respondent and he told her to leave. D.H. said she would quit the team, and repeated this on Facebook. D.H. then submitted a written complaint

against Respondent, dated September 23, 2011 (Exhibit 15). Respondent had her schedule changed, as only team members had sixth period physical education class on their schedules for team practice. D.H. was upset by the change and indicated to Ms. Sarno that she did not wish to pursue the complaint. Although D.H. stated she wanted to come back to the team, Respondent did not agree. D.H. was upset about Respondent's actions.

22. D.H.'s counselor asked her to write her complaint after she told the counselor that Respondent was a "perve," a reference to pervert. The written complaint included allegations of favoritism towards her by Respondent, that he paid special attention to her and other Asian girls, offered to buy her snacks, and said to hold his hand during the team cheer. After D.H. submitted her complaint, it was investigated by Dr. Elio Mendoza, a co-principal at Cabrillo High School. The investigation included a conference between Dr. Mendoza and Respondent. Dr. Mendoza authored a memo (Exhibit 19) which stated that the student had retracted the complaint letter, that Respondent should be aware that his attention to students could be misperceived, and that he should maintain neutrality with students. The memo also mentioned that Respondent bought healthy food in bulk for the team due to his concern for their nutrition. Dr. Mendoza concluded the memo by stating, after his investigation, he found that Respondent was "acting in fairness and goodness to all of your athletes and found no wrongdoing on your part." Due weight was given to this memo, as it followed a contemporaneous investigation and included relevant information.

23. Coaching the girls tennis team was a tough job, and many in the athletic department hierarchy and school administration hierarchy expressed the opinion that it would be difficult and could lead to trouble. Respondent respected the chain of command and asked many of them for help at various times. He asked several people for help numerous times. He received much help from some, and little help from others. In some instances he did not follow advice he was given. He did not seek to coach the girls team, but took the assignment when Ms. Brown decided to stay on as coach of the boys team, citing in part the greater discipline exhibited by the members of the boys team. Some witnesses, particularly Ms. Sarno and Mr. Zeeman, expressed that Respondent, by nature of his personality and approach to students and the game of tennis, was not likely to meet with success in coaching the team. For example, Respondent's math students were highly accomplished, disciplined and motivated, and he did not have much experience dealing with students who did not fit this mold, such as most of the members of the girls team. He was a highly skilled player and tennis enthusiast, yet many of the students had never played before and were lacking in even the most basic skills and knowledge of the game and the rules. He did not establish a good rapport with them. Respondent was anxious to offer his support, and the athletic department was eager to have someone with enthusiasm fill the coach's spot. In retrospect, almost all acknowledged that it was a bad fit.

24. All other allegations and contentions raised by both parties were not established by the evidence or legal authority.

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CONCLUSIONS OF LAW AND DISCUSSION

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1 through 4.

2. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. The Accusation and Statement of Charges does not set forth specifically which of the District's factual allegations relate to each of the alleged bases for dismissal (that is, immoral conduct, evident unfitness for service, or refusal to obey the school laws or reasonable regulations). Rather, the District alleges that each of these statutory bases for discipline "is supported by at least the following instances, whether considered individually and separately or cumulatively." (Statement of Charges, page 6, bottom.) The Commission has examined each alleged instance of conduct to determine whether it was proven, and for those which were proven, the Commission has determined, as set forth below, whether such charges were a violation of one or more of the statutory bases for dismissal as alleged.

4. The statutory bases for dismissal alleged in the Accusation and Statement of Charges are: (a) immoral conduct, pursuant to sections 44932, subdivision (a)(1), and 44939; evident unfitness for service, pursuant to section 44932, subdivision (a)(5); and 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, pursuant to section 44932, subdivision (a)(7).

5. "Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

6. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445 (*Woodland*).) Evident unfitness for services requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444.)

7. Under section 44932, subdivision (a)(7), the violation of school rules must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

8. Even where immoral conduct or evident unfitness for service are established, it must also be established that such immoral conduct or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at 1444-1445.)

In general, the determination of fitness requires an analysis based on the criteria set forth in *Morrison*, to determine whether, as a threshold matter, the questioned conduct indicates unfitness for service. In the *Morrison* case, the Supreme Court of California held that the determination whether a person is fit to teach must be based on an objective and analytical approach. Under the facts of that case, the Court reviewed the teacher’s conduct and determined that a school board may consider such specific criteria as: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal.3d at 220.)

9. In its review of the allegations and the evidence, the Commission determined that many allegations were not proven (see, *e.g.*, Factual Findings 10b, 13b and 15b). Other facts, although proven, did not amount to cause for dismissal (see, *e.g.*, Factual Findings 9b, 11b, 12b, 14b, 16b, 17b and 18b).

10. Further, in its review of Respondent’s actions, the Commission looked at the proven conduct in the aggregate. This applied also to its determination of whether Respondent’s conduct showed unfitness for service. This approach was approved in *Woodland*, where the court found that it was not necessary to determine if each and every act demonstrated unfitness for service. Rather, it was proper to examine the totality of the

offensive conduct. “When the camel’s back is broken we need not weigh each straw in its load to see which one could have done the deed.” (*Woodland, supra*, 2 Cal.App.4th at 1457.)

11. The acts which were proven do not demonstrate that Respondent is not fit to teach. The acts that were proven do not amount to cause for dismissal of Respondent under any of the legal bases charged by the District.

12. Cause does not exist to dismiss Respondent for immoral conduct, pursuant to sections 44932, subdivision (a)(1), and 44939, for the reasons set forth in Factual Findings 8 through 18.

13. Cause does not exist to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 8 through 18.

14. Cause does not exist to dismiss Respondent 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, pursuant to section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 8 through 18.

15. In reaching these Conclusions, the determinations that there is no cause to dismiss Respondent from his employment with the District were made by unanimous vote of the Commission.

ORDER

WHEREFORE, IT IS HEREBY ORDERED that:

The Accusation against Respondent Parakrama Karunatileka is dismissed and he shall be retained as a permanent certificated employee of the Long Beach Unified School District.

DATED: February ___, 2013.

CHARLES RITZ, Member
Commission on Professional Competence

DATED: February ___, 2013.

DONALD H. RAFTER, Member
Commission on Professional Competence

DATED: February ___, 2013.

DAVID B. ROSENMAN
Administrative Law Judge, Member,
Commission on Professional Competence