

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
FAIRFIELD-SUISUN UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

JON GALL, a Permanent Certificated  
Employee

Respondent.

OAH No. 2011060373

**DECISION**

On October 3, 4, 5, 11, 17, 18, 19 and 28, 2011, in Fairfield, California, Jonathan Lew, Administrative Law Judge, Office of Administrative Hearings, State of California, and Chairperson of the Commission on Professional Competence of the Fairfield-Suisun Unified School District, and Commission members Linda Ortega and Julie Tyler heard this matter.

Damara Moore, Attorney at Law, represented the Fairfield-Suisun Unified School District.

David Weintraub, Attorney at Law, represented Jon Gall.

Documentary and testimonial evidence was received, the record was closed, and after the Commission met in Executive Session, the matter was submitted on November 14, 2011.

**FACTUAL FINDINGS**

1. Jon Gall (respondent) is a permanent certificated employee of the Fairfield-Suisun Unified School District (District), assigned to teach fifth grade at Laurel Creek Elementary School (Laurel Creek).

2. On April 28, 2011, Jacki Cottingim-Dias, Ph.D., District Superintendent, filed Dismissal Charges with the Board of Trustees of the District against respondent in her official capacity. On April 28, 2011, the District notified respondent in writing of the Board's intention to dismiss him at the expiration of 30 days from the date of service of notice upon him of the charges presented to the Board, unless he demanded a hearing to determine if there is cause to dismiss him from employment with the District. On May 12,

2011, respondent demanded a hearing to determine if there is cause to dismiss him from the District.

On May 19, 2011, the District filed and served the Accusation in this matter. Respondent filed a timely Notice of Defense. The District Superintendent filed an Amended Accusation on June 15, 2011, and a Second Amended Accusation on September 28, 2011.

### *Summary of Allegations*

3. The District contends that respondent, during the 2008-2009, 2009-2010 and 2010-2011 school years, viewed explicit pornography on a District-issued computer in his classroom during instructional time, as well as before and after work. It believes that such action by an elementary school teacher constituted immoral conduct, evident unfitness and persistent and willful violations of the school laws or regulations governing his employment. The District seeks respondent's dismissal from his position as a permanent and certificated employee in the District.

Respondent acknowledges that he viewed inappropriate and sexual images on his district computer when he was at work. However, he believes that he is a highly regarded and excellent teacher who exercised poor judgment during a period of personal emotional distress. He contends that his actions did not cause harm to his students, that the District has not demonstrated that he is unfit to serve as a teacher, that he did not persistently and willfully violate laws or regulations, and that he deserves a second chance.

### *Respondent's Background*

4. Respondent received a single subject teaching credential in music on May 29, 1984. He also holds a multiple subject teaching credential in general subjects (examination) that was issued on May 18, 1992.

Respondent graduated with a Bachelor of Arts degree in music from San Francisco State University in 1983. He also received his teaching credential there.

For the 1984-1985 school year, respondent was a middle school teacher with the New Haven Unified School District. He taught there two years. He subsequently taught two years at the Kern Union High School District in Bakersfield, prior to returning to the Bay Area to teach at the Fairfield-Suisun Unified School District, where he has taught since 1988. Respondent was initially assigned to three different District schools: Amy Blanc, K.I. Jones and Crystal Elementary Schools. In 1990, he was assigned to teach music at Dan O. Root Elementary School, where he remained the next 20 years through the 2009-2010 school year. Respondent was reassigned to teach a fifth grade class at Laurel Creek Elementary School for the 2010-2011 school year.

5. While serving as music teacher at Dan O. Root Elementary School, respondent's record and evaluations as a teacher were superior to excellent. Robert Buoncristiani was respondent's principal and supervised him until his retirement in 1998. Mr. Buoncristiani submitted a declaration and also testified on respondent's behalf at hearing. He noted that respondent was a very hard worker who had great rapport and was always there for his students. Mr. Buoncristiani characterized respondent as "the epitome of an excellent teacher, always with a smile, always willing to help anyone in need. To this day, Jon is a very giving teacher, highly respected by his peers and considered a model 'team player.'" Between 1998 and 2006, Mr. Buoncristiani was the District's Director of Curriculum. Over this period he noted that respondent again demonstrated his leadership skills and caring attitude to help his fellow music teachers craft the District's standards-based curriculum in music instruction, kindergarten to grade 12.

While at Dan O. Root Elementary School, respondent received the Golden Bell Award presented by the California School Board Association. He received this award for taking first place in a fine arts competition. Respondent also received the 2003-2004 school site Teacher of the Year award, in addition to other commendations and awards for his work as a music teacher. Through November 2010, when respondent was placed on administrative leave, according to his past performance evaluations, the District had raised no significant concerns about his fitness to serve as a teacher. His work as a music teacher at Dan O. Root Elementary School was recognized as outstanding.

6. When respondent was assigned for the 2010-2011 school year to Laurel Creek Elementary School, he was no longer providing music instruction to multiple grades. He was responsible for a single fifth grade class. His work day began with his preparation period, which was 7:45 a.m. to 8:15 a.m. Classroom instruction began after 8:15 a.m. and continued to the lunch hour, which ran from 12:20 p.m. to 1:05 p.m. Classroom instruction then continued until 2:30 p.m. The period from 2:30 p.m. to 3:00 p.m. was administrative time for meeting with parents, engaging in collaborative work with peers and performing other assigned duties. William Stockman is the principal at Laurel Creek Elementary School. He was respondent's supervisor.

#### *Respondent's Access to Pornography*

7. Tena Gore is the District's network administrator. She is responsible for monitoring and maintaining approximately 170 servers, and installing and monitoring internet filtering programs for District computers. She testified at hearing. The District uses two systems to control access by its employees to the Internet. One device authenticates and authorizes a District user to access the Internet, and records in real time all traffic and data that transpires over the period of Internet use. It is called Border Manager. A second device actually blocks access to particular internet sites and web addresses. This blocking device was installed and has been in operation with the District over the past four years. It is a

content filter. At a minimum, pornography sites, both adult and child, are blocked by this device for all District users. In addition, the District blocks online communities, chat websites and Internet radio. Blocking of pornography is based upon a list of porn websites that the vendor of the blocking device has identified. The list of blocked sites is updated by the vendor each evening. It is not exhaustive and users can access porn sites that have not been placed on the list.

Through the use of Border Manager, the District is able to retrace an individual's Internet activity over a specific period of time. It is specific to a user's name and login information.

8. When a District user first logs on to a District computer, there is a screen that reads as follows: "All employees who use district technology resources are required to follow the regulations set forth in BP 4040 and AR 4040, 'Employee Use of Technology.'" The user is then instructed to either read the policy by pressing a "Read Policy" button, or to "Continue." District Human Resources provides new employees with a copy of the "Employee Use of Technology" policy when they are hired. New employees are required to sign a new user policy form confirming that they have read the policy. The policy lists behaviors that are not permitted on district networks including "displaying inflammatory, offensive or unprofessional messages or pictures." The policy further prohibits transmission of material that is "obscene, disruptive or sexually explicit, ...." The policy advises District employees that computer files and communications over electronic networks are not private or confidential. District employees are also advised as follows:

Network administrators may review files and communications to maintain system integrity and to ensure that staff members are using the system responsibly. Users should not expect that files stored on district systems will be private. The district reserves the right to monitor any on-line communications for improper use and to limit the use of district resources.

9. At the end of October 2010, Ms. Gore checked on the District's content filter to determine what was being blocked. She determined that a lot of material was being blocked at the same address under the "adult porn" category, and that it correlated to the specific computer used by respondent. Ms. Gore determined to monitor this to see if it was an accident or repetitive. After reviewing a week's worth of data, and then a full month's file, Ms. Gore observed the same pattern of repeated attempts originating from respondent's computer to access adult porn. Ms. Gore went to the particular Internet addresses/locations (URLs) to confirm that adult porn was being accessed. She downloaded and printed several nude images of women from these sites and provided them to the District's Assistant Superintendent of Human Resources, Ronald Hawkins.

Mr. Hawkins telephoned William Stockman, respondent's principal, and then went to the school site and retrieved and secured respondent's District-issued laptop computer in early November 2010. An investigation followed. In addition to reviewing respondent's internet URL history, the District retained the services of computer specialists who retrieved images from the temporary internet files and unallocated files from the hard drive in respondent's laptop.

10. Ms. Gore reviewed all Internet activity by respondent over the period October 1 through November 5, 2010, using Border Manager. This program recorded in real time all URL addresses/locations that respondent had accessed over this period. A URL address does not correspond to a single web page. A single web page may contain multiple URL addresses depending upon how the web page is designed, its content and its links to other websites. Over this approximately one month period, Border Manager recorded respondent having accessed 92,000 URLs. This was a relatively high level of internet activity by respondent as the next highest number of URLs accessed by a District employee over this same period was 11,000 URLs. Some teachers had no Internet activity.

11. Ms. Gore explained that when a site is blocked by the District's content filter the user will see a message that advises the user that the site cannot be accessed because of the organizational policy of the District. Respondent was still able to access porn sites even with the District's blocking device in place and in operation. He apparently got around the blocking device by using search strings in Google, Bing and other search engines, by doing image searches and by employing words in the search strings that were relatively bland or neutral terms. By avoiding obscene words or more provocative terms, one can engage in a search for images or sites without triggering the District's blocking device.

#### *When, Where, Frequency and Type of Pornography Accessed*

12. Respondent admitted to viewing pornography on a District-issued computer while a music teacher at Dan O. Root Elementary School for the 2008-2009 and 2009-2010 school years. He did so as often as two times per week.

Respondent viewed explicit pornography in his fifth grade classroom during October and November of the 2010-2011 school year. He did this on a daily basis. Respondent estimates that he engaged in such activity between ten minutes to an hour per day. He did so during school time, as well as before and after work. Respondent acknowledged viewing pornographic images immediately prior to opening the door for children to enter his classroom. On occasion, he accessed sexual material right up to the point before he provided classroom instruction. Respondent's testimony is consistent with the documented pattern of use generated by the Border Manager program.

The record included an excel spreadsheet (Exhibit G) for all URL sites accessed by respondent over the period October 1 through November 5, 2010. This summary of respondent's real time Internet activity was retrieved from the District's Border Manager program. The amount of time respondent spent on the Internet for *only the first and last weeks* of this period are summarized below for illustrative purposes. The information was derived from a review of the electronic form of Exhibit G. The total time is divided between inappropriate (e.g. porn and female celebrity images) and other (e.g. news, email, etc.) sites. The period column indicates the periods during the school day over which respondent was on the Internet as provided in respondent's Exhibit 30. There were some variances between the total minutes of usage calculated from Exhibit G and in Exhibit 30, but they were not significant. The total time set forth below is derived from Exhibit G:

<u>DATE</u>	<u>Total Time</u>	<u>Inappropriate</u>	<u>Other</u>	<u>Period</u>
October 1	0:20:52	0:18:15	0:02:37	Post-Prep Period
October 4	0:26:50	0:26:33	0:00:16	Pre-Prep, Lunch, PM Prep and Post-Prep
October 5	1:32:07	1:09:02	0:23:05	Pre-Prep, AM Prep, Lunch and Post-Prep
October 6	0:00:05	0:00:00	0:00:05	AM Prep, Lunch, Post-Prep
October 7	1:46:55	1:17:20	0:29:35	Pre-Prep, PM and Post-Prep
October 8	1:26:45	0:03:01	1:23:44	Pre-Prep, AM Prep, AM-Instruction, Lunch, Post-Prep
November 1	0:22:34	0:14:44	0:07:50	Post-Prep
November 2	0:53:56	0:30:00	0:23:56	Pre-Prep, AM Prep, Post-Prep
November 3	0:31:10	0:14:39	0:16:31	Prep-Prep, AM Prep, Post-Prep
November 4	2:54:02	2:14:00	0:40:02	Pre-Prep, AM Prep,

				Instruction Time, Lunch and Post-Prep
November 5	1:06:03	0:44:06	0:21:57	Pre-Prep, AM Prep, Lunch and Post-Prep

13. Respondent went into his classroom and logged on to his computer before scheduled hours, and stayed active on his computer after his workday was over. His computer activity began some days as early as 6:30 a.m., and extended some days until 5:10 p.m. Over the period October 1 through November 5, 2010, he accessed the Internet on 21 different days. He accessed inappropriate sites on 19 days over this period. He accessed inappropriate sites for a period in excess of two hours on November 4, 2010. He accessed inappropriate sites for periods in excess of one hour on four other occasions on October 5, 7, 11 and 21, 2010. Over the last week that respondent's computer was monitored, he accessed inappropriate sites daily. The total time he spent during the first week of November 2010, just before his laptop was confiscated, accessing inappropriate sites during the work day was three hours, 57 minutes.

14. Respondent accessed pornography in his classroom during school hours and through the use of a District-issued computer. He started this practice during the 2008-2009 school year when he was at Dan O. Root Elementary School. He used a District-issued laptop computer at Laurel Creek. He only viewed pornographic images when no students were in the classroom. Respondent's laptop faced diagonally towards the single door entering the classroom. Students entering the classroom would only see the back of the laptop, never the screen. Respondent believes that he always closed and locked the classroom door before he accessed inappropriate websites. He is certain that no students were ever exposed to pornographic images. There was no evidence that any students or coworkers were ever exposed to images accessed by respondent.

After respondent viewed pornographic images, he would use a feature in the search engine (e.g. Yahoo or Google) that allowed him to delete his recent search history. He also had his laptop settings configured to delete the temporary internet files after a period of days.

15. Respondent used work and instructional time to view multiple non-work related websites. These ranged from personal email, sports, stock market, social networking and dating sites, to soft and hardcore pornography. Respondent viewed photos of celebrities and images of women in lingerie and in various stages of undress. He also viewed sexually explicit images of completely nude women. He viewed images depicting women's and men's genitalia. He viewed porn sites depicting women engaged in acts of oral sex and penetration.

Respondent used search engines that required him to type in search terms, either directly or through an "AutoFill" feature that supplied search terms related to the words respondent first entered. A review of the URL sites accessed by respondent over the October

1 through November 5, 2010 period indicated that he made searches using terms such as “hot Asians,” “love Asian women,” “Asian girl,” “Asian women,” “Asian beauty,” “exotic Asian

Models,” “pinay,”<sup>1</sup> “pinays in bed,” “pinay nipples” and “Japanese Girls.” Through the use of such search terms, respondent accessed hundreds of images of nearly or completely naked women, some engaged in explicit sexual acts.

That respondent accessed hardcore porn sites was further confirmed by reference to web addresses of the sites he accessed. For example, two of the sites accessed by respondent included such hardcore references as [rapidsharetalk.com/adult-videos](http://rapidsharetalk.com/adult-videos) and [www.squirtingpussygirls.com](http://www.squirtingpussygirls.com).

16. Respondent also made specific searches for “used Asian women” and “abused Asian women.” Respondent had several Asian girls in his fifth grade classroom. The District is concerned that respondent’s focused search for images which sexually objectified Asian women, including “used Asian women” or “abused Asian women,” were indicia of racist attitudes which are incompatible, and cannot be reconciled with teaching. This is in addition to District concerns that had a child, particularly an Asian girl, come up to respondent’s desk and viewed the material, she may have been emotionally harmed. The District suggests that had this occurred it would have subjected the District to a lawsuit for sexual harassment, negligence or infliction of emotional distress.

17. Respondent accessed images of very young Asian women, possibly teens. He accessed images of adults dressed up like little girls, teens or school girls. One image retrieved from the unallocated files depicts an Asian woman dressed in a schoolgirl outfit on a pink bicycle. She is exposing her genitalia. One photo retrieved from the temporary internet file appeared to be a teen with a lollipop. Another photo retrieved from respondent’s unallocated files is clearly an Asian child. Neither of these latter two photos involves nudity. A number of other photos depict rather young Asian women.

#### *Respondent’s Testimony*

18. Respondent acknowledged engaging in the above described activities. He expressed regret and remorse for his actions, noting that he feels horrible and guilty on so many different levels. He added that such conduct was neither consistent with his Christian faith nor his commitment to personal integrity. He expressed sorrow for what he did and he does not blame others for his actions. He is adamant that he never viewed child porn and insisted that he has no interest in such material. To the extent that he used search terms such as “girl,” he averred that such related only to gender, and not to underage girls. He explained that the images of younger Asian women and the child referenced in Finding 17 were

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<sup>1</sup> “Pinay” is a colloquial term for Filipina, the feminine form of “Pinoy.”



incidental to more generic searches for Asian women. Respondent testified that he would not have dwelled or “clicked” on such images. With regard to the searches related to “used” and “abused” Asian women, respondent suggested only that he was looking for more nudity. He characterized all his above actions as “incredibly stupid.”

19. Respondent explained that he initially viewed pornography on the Internet out of curiosity. He discovered that he could access pornography on his District-issued computer through image searches that bypassed the District’s blocking program. He engaged in this activity for two years when he was the music instructor at Dan O. Root Elementary School. He noted that he had become increasingly distraught over his marriage and as matters at home became stressful, accessing Internet porn became a “diversion from my real life.” Approximately three years ago, respondent’s wife caught him viewing pornography at home. He promised her that he would cease such practices at that time. Respondent stopped accessing pornography at home, but he continued to do so at school. Ironically, he averred at hearing that he felt more safe viewing pornography at school because he believed the “District’s filter were pretty strong.” This is not credible given what he was actually able to access. And as a part of a psychological evaluation which will be discussed later, respondent reported to Paul Berg, Ph.D., that he felt safer in a very different sense – he was less likely to be discovered and he had a greater ability to control his environment at school than at home. This version is a more plausible explanation of why he accessed Internet porn at school.

Respondent described his marriage and home life as very tense for the approximately five years prior to their separation in January 2011. By the time that his Internet activities were being monitored in 2010, respondent suggested that he accessed porn at school as a means of escape and that it served as a very good diversion mentally to distract him from his home life. He found fulfillment in teaching, but when the students exited his classroom he avers that “the reality of my home life hit me like a ton of bricks, and I sought diversion, whether it was sports stories or emailing a couple of friends or reading email or inappropriate images.”

20. Respondent acknowledged that he did have control over when and where he accessed Internet pornography. For example, he chose not to view it at home and ceased doing so there. He explained that he continued to view it at school because the computer was there, he was alone and it served as a means of escape. He denied being sexually aroused physically after he viewed pornographic images in his classroom. He averred that he was able to view pornography before instruction time, and then immediately revert back to “teacher mode” and focus upon his students and their classroom instruction.

Respondent has two daughters, ages five and seven. Respondent was asked at hearing whether he would want his daughters in a classroom where he knew the teacher was viewing pornography immediately before teaching them. Respondent answered: “Interesting question. Probably not.” That respondent’s response was somewhat equivocal raised questions about whether he fully appreciated the seriousness of such conduct in a classroom

setting.

21. Respondent has been attending a men's support group since the end of January 2011 called Avenue Resource. This is a group comprised of individuals with a variety of sexual problems including people having affairs, accessing Internet porn, and engaging in other inappropriate behaviors such as prostitution. Respondent attends meetings once a week for two hours. These meetings include some lectures, primarily group discussions, and working on exercises in the group's handbook. The group emphasizes transparency and accountability. Complete honesty and forthrightness is required of its members. Participation is voluntary. It is similar to Alcoholics Anonymous in that the group has sponsors, leaders and teachers.

Josh Buessing oversees the group in which respondent participates. Mr. Buessing confirmed that respondent has been regularly attending meetings over the past year, and has completed his homework assignments and is very committed to the program. Respondent has completed the first of the program's four tiers. It typically takes group members up to 17 weeks to complete the first tier. Respondent took considerably longer. There are 25 individuals participating in Mr. Buessing's program. Mr. Buessing estimates that approximately 20 percent of group members suffer relapse.

22. Respondent also sees Elizabeth Casas, Ph.D., a psychologist through Kaiser for issues relating to anxiety, depression and stress. He sees her every three weeks, depending upon her schedule, for cognitive behavioral therapy. He described some of the techniques he learned from these sessions at hearing and noted that he has found them to be helpful.

Respondent also attends a weekly Bible study through his home church in Walnut Creek. He has attended this church regularly over the past 13 years.

#### *District's Decision to Terminate Employment*

23. The District did not use progressive discipline in this case. Ronald Hawkins is the District's Assistant Superintendent over Human Resources. He determined that respondent's use of the District's computer to access Internet porn was serious, and so severe and pervasive as to not warrant giving him a second chance. He believed respondent's activity had gone on long enough, that it represented a risk to students and that there was no guarantee that respondent's conduct would not recur.

Mr. Hawkins explained that parents send their children to school to learn and expect that the schools will provide a safe environment, protecting their children from physical and

emotional harm. Mr. Hawkins cannot conceive how a teacher might view pornography in a classroom, and then turn it off and focus completely on school work and teaching when students arrive. Mr. Hawkins believes it would be very hard to do this with all the sexual thoughts, feelings and arousal such practices would generate.

Mr. Hawkins noted that teachers hold positions of responsibility. They are role models and if teachers expect students to follow their instructions they must also abide by the District's rules and procedures. Mr. Hawkins found it offensive that respondent felt it was safe to view pornography in his classroom, but not anywhere else. Mr. Hawkins believes respondent's action showed a total lack of judgment. Mr. Hawkins believes that if parents learned that respondent accessed pornography during his duty day, they would have great concern about the morality of the teacher and lose confidence in his ability to instruct their children, or not want him to be their children's teacher.

24. The District contends that respondent's conduct violated rules and laws barring sexual and racial harassment, and the District's Employee Use of Technology policies and regulations. As to the former, Mr. Hawkins believes that the District has an affirmative obligation to prevent, investigate and correct behaviors that might lead to a sexual harassment complaint. He noted that graphic pornographic pictures depicting women in demeaning situations may be viewed as offensive and constitute a hostile work environment if another District employee walked in on respondent. Mr. Hawkins raised similar concerns regarding racial discrimination/harassment were students exposed to pornography related to women of a specific race. An Asian student could find certain of the images accessed by respondent to be demeaning and degrading, and it is District policy to protect students from having this occur.

As to the rules and laws relating to Employee Use of Technology policies and regulations, it was established that respondent's conduct violated District policy, and that he did so repeatedly over the course of three years.

Mr. Hawkins found respondent's actions to be very troubling. He did not believe that this case was appropriate for progressive discipline because the activity had occurred over a period of three years, respondent admitted to accessing hard core pornography, he used a District laptop, he did so in his classroom during and outside of the duty day, and respondent's actions appeared to be pervasive.

25. William Stockton is the Laurel Creek Elementary School Principal. He supervised respondent in Fall 2010 for approximately three months. As a fifth grade teacher, respondent's work hours included teacher prep time between 7:45 a.m. and 8:15 a.m., and administrative time from 2:30 p.m. to 3:00 p.m. The latter period was to provide time for him to meet with parents, collaborate with peers and to perform other duties assigned by Mr.

Stockman. Because there were student support programs after school was out, students were still around the school past 3:00 p.m., sometimes until 5:00 p.m.

Mr. Stockman was made aware of respondent's activities after the fact. Mr. Stockman believes very strongly that no educator should be accessing pornography at school. He views respondent's conduct as a severe violation of the trust that is given to educators. Mr. Stockman explained that fifth grade children are very vulnerable and susceptible to the kind of media respondent was accessing. He noted that there were Asian female students in respondent's classroom at that time.

As a principal, Mr. Stockman expects that teachers come to school to plan and prepare for class and to focus their efforts entirely on supporting their students. He believes that if a teacher is not focused on students' academic, social, behavioral, emotional and other needs, then they tend not to be a very good educator. He believes that if parents within his community were aware that a teacher was accessing pornography in a classroom, they would no longer believe that their children were going to school to a safe place, that they would be extremely upset and that they would demand Mr. Stockman's position.

26. Mr. Stockman does not believe that a teacher can access pornography and then immediately shift and instruct students to state standards. He believes that such a teacher's focus would be on himself, and not on the students. Mr. Stockman noted that many fifth grade girls are reaching puberty and are particularly vulnerable to pornography.

Mr. Stockman believes respondent totally lacked judgment in accessing pornography at school. He expects teachers to work a full day on the school site. Mr. Stockman does not have the same concerns about teachers accessing porn at home. Mr. Stockman draws a distinction between the two situations because he views it essential that a teacher be able to focus on students when at school.

Mr. Stockman feels so strongly about this that were respondent to return to Laurel Creek under his supervision, Mr. Stockman would resign or ask to be transferred to a different site. Mr. Stockman was shocked and dismayed by respondent's actions and sees no place for him in the teaching profession. Mr. Stockman was personally upset that he did not discover that respondent was doing this earlier, and that children were at risk while he was their principal and primarily responsible for their safety. He believes respondent "violated that trust severely."

#### *Respondent's References*

27. Respondent presented substantial evidence to show he was an excellent and dedicated teacher.

Donna Wix was the former Assistant Principal and Principal at Dan O. Root Elementary School. She worked with respondent from August 1997 through June 2004. She described him as a talented and knowledgeable musician who engaged students in learning opportunities and whose passion for the topics he taught “was unlike any music teacher I had previously encountered.” She believes he is a gentleman with a kind heart and empathetic soul. She observed no conduct suggesting that he was unfit to teach. Ms. Wix was not aware of the specific allegations in this case. However, she believes that if respondent were using the District laptop to access porn that progressive discipline would be appropriate.

Jeffrey Kranz worked with respondent at Dan O. Root Elementary School for 19 years. Mr. Kranz described respondent as a trusted friend and colleague. He found respondent’s interactions with other staff to be positive and “[b]esides being a superior musician and music teacher, Jon is also a most professional educator.” Respondent disclosed to Mr. Kranz that he had violated District policy by looking at “inappropriate images.” Mr. Kranz is aware that respondent viewed porn. He believes that respondent has owned up to his mistake and that this situation warrants “forgiveness and redemption.”

Julia Luckey has known respondent as a co-worker, parent and friend since 1996. She described him as an excellent teacher who combines his vast knowledge of music curriculum with an enthusiasm that is contagious for both students and colleagues. She believes that viewing pornography is an individual’s choice and she does not care about the content or frequency with which respondent viewed pornography. She believes respondent should be given a second chance.

Laura Rodriguez taught with respondent as part of the fifth grade team at Laurel Creek. She noted that respondent worked well beyond his contracted time, carefully mastering the fifth grade curriculum after many years as a music teacher. He worked well with the rest of the Laurel Creek staff at every grade level. She was aware that respondent accessed inappropriate web content during the school day. Ms. Rodriguez was not aware of specifics beyond this.

Jeffrey Lee has known respondent as a friend, coworker and parent since 1991. They worked together at Dan O. Root Elementary School for 19 years. They also relate socially outside of school. Mr. Lee noted that respondent’s students learned to read and write music along with experiencing “wonderful, creative, and melodic teaching.” He described respondent as the best musician he has ever known. Mr. Lee was aware of allegations that respondent was accessing pornography. He believes that respondent made a mistake, has apologized and that it is essentially a private matter.

28. Respondent introduced additional letters and evaluations corroborating the testimony of him being an excellent teacher. Other letters include teacher references from April Hostler, Michael D. O'Neal, Mike Mulvihill, Christine Magee, Marilyn Foreman, Lory Carranza and James Bastian. Additional personal references attesting to respondent's good character were provided by Joe Eason, Gary D. Ellis, David Menegus and Christopher Murrell.

### *Morrison Criteria*

29. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District's choice. It has broad discretion in disciplinary matters. Its role is not limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct, measured against the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30 demonstrates unfitness to teach. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 219-22.) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

30. Before a decision can be made as to whether respondent's conduct was immoral (Ed. Code, § 44932, subd. (a)(1)) or constituted evident unfitness for service (Ed. Code, § 44932, subd. (a)(5)), it must be determined first whether respondent's conduct demonstrated he was unfit to teach using the *Morrison* criteria. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696.) Those criteria are: (1) the likelihood the conduct may have adversely affected students or fellow teachers, (2) the degree of such adversity anticipated, (3) the proximity or remoteness in time of the conduct, (4) the type of teaching certificate held by the party involved, (5) the extenuating or aggravating circumstances, if any, surrounding the conduct, (6) the likelihood of the recurrence of the questioned conduct, and (7) 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. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at p. 229.)

31. Likelihood the conduct may have adversely affected students or fellow teachers. The likelihood that students or teachers who saw the sexually suggestive or explicit materials respondent viewed on his classroom computer during class periods would be adversely affected is self-evident. Mr. Stockman's testimony, particularly his comments that such materials could influence and damage a student, and had no place in a classroom, was particularly persuasive. Mr. Stockman explained that fifth graders are very vulnerable and susceptible to pornography. They are entering puberty with all the physical changes and

emotional insecurity associated with this period of development. Respondent's students included Asian girls, and had they been aware or seen the type of searches or images of young Asian women he accessed they would undoubtedly have been adversely affected, and their trust in and ability to relate to respondent as a teacher irreparably damaged.

A teacher is often described as "...an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection." (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.) Mr. Hawkins testified teachers hold positions of responsibility. They are role models and if teachers expect students to follow their instructions they must also abide by the District's rules and procedures. Students look up to and admire teachers. As Mr. Hawkins and Mr. Stockman correctly noted, respondent violated the trust the school, the students, parents, and the District placed in him. Fitness to teach must be viewed in a context broader than one's ability to engage in classroom instruction when students are physically present in class:

"[T]he calling [of a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment.... His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention." [citations]

There are certain professions which impose upon persons attracted to them, responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as judges, policemen and school teachers fall into such a category....

(*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

Respondent's conduct could have adversely affected other teachers had they been aware of his actions or been exposed to the pornography he had accessed. Although there were many teachers who strongly supported respondent and viewed him as an excellent teacher, most were disappointed by his conduct. They did not seek to justify his conduct.

Mr. Stockman was adversely impacted by respondent's conduct. He took great offense at what respondent was doing on school time and he assumed personal responsibility for the fact that respondent's actions occurred on his watch. Mr. Stockman indicated that he would resign as principal at Laurel Creek Elementary School should respondent return to teach there.

There was no evidence that any student observed any of the materials respondent viewed on his classroom computer. What is clear is that respondent's actions were pervasive and so extensive that during the week before his computer was confiscated he had accessed porn for nearly four hours. His practice was to lock the door, but as his use increased so did the risk that a student could have inadvertently viewed images, perhaps by approaching respondent while he was absorbed in viewing a website, and seen what was on the screen before respondent realized the student was there. Had respondent not deleted his search histories, there was also the risk that students using his laptop would discover what websites he had frequented. Search histories are readily accessible if they are not deleted by the user after use. Any failure by respondent to lock his classroom door or to delete his search history could have lead to the above adverse consequences.

32. The degree of the adverse affect. Again, this is self-evident. The damage respondent's actions could have caused to students who saw the pornographic materials he viewed in the classroom is incalculable. In addition to the emotional harm caused to students, the District believes it may have been subjected to a lawsuit for sexual harassment, negligence or infliction of emotional distress. The District also noted that had an employee viewed the material, the District may have been subjected to legal action for creating a hostile work environment.

33. Proximity or remoteness in time of the conduct. The conduct forming the basis of the District's decision to dismiss respondent occurred in November 2010. The conduct involved use of a District computer in a District classroom on District time. The District's decision to dismiss respondent came within six months (May 2, 2011) of its discovery of his conduct. Part of the delay was occasioned by an investigation by law enforcement to determine whether respondent had been accessing child pornography. No such evidence was found. Respondent's conduct is particularly disturbing because of its proximity (location, manner of access and time) to the District. The District would not have anywhere near the same degree of concern had respondent accessed pornography offsite and on his own time.

34. Type of teaching certificate. Respondent in the 2010-2011 school year was fifth grade teacher. He was an elementary school music teacher for the two school years before. He held a single subject teaching credential in music as well as a multiple subject teaching credential in general subjects (examination).

35. Extenuating and Aggravating Circumstances. There was no evidence any student or teacher observed anything respondent viewed on his classroom computer. He was careful to close and lock his classroom door. He was not accessing child porn. He began to access Internet porn in response to stress, specifically his failing marriage. He is currently participating in individual counseling and support programs that emphasize accountability and transparency as a means of guarding against any recurrence. Respondent avers he no longer accesses porn. He is remorseful and apologetic for his conduct. He takes personal responsibility for his actions. Respondent focused largely on his past history and fitness as a



teacher. The witnesses who testified on his behalf uniformly opined that he was an excellent teacher, particularly in music, with much to offer the District. His written evaluations were likewise good to excellent. Respondent has been a certificated teacher for 27 years.

36. Likelihood of Recurrence. The question of recurrence is always a difficult one to predict. The evidence in this case is mixed. The psychological and psychiatric testimony will be discussed more extensively later in context of whether respondent's actions constituted evident unfitness. But in terms of the likelihood of recurrence, Dr. Berg opined that it is extremely unlikely that respondent will ever engage in any behaviors as a teacher "that would impact his performance or endanger his charges." Dr. Berg does not believe respondent will access pornography or obscene images on his District-issued computers, or

represent any measurable level of danger to children. In contrast, James R. Missett, M.D., a psychiatrist retained by the District, suggested that the best predictor of future behavior is past behavior. Dr. Missett opined that respondent does pose a risk of harm to his students and will continue to do so in the future.

In considering the likelihood of recurrence, the following was considered. Respondent knew the rules regarding use of District computers. He knew he was not permitted to use the classroom computer to view soft and hard core porn. He regularly did so from the 2008-2009 school year. He purposefully employed means of bypassing the District's filter. (See Finding 11.) He attempted to cover his tracks by deleting his search history and temporary internet files. He engaged in these activities in secret over three different school years. Although this had the incidental benefit of preventing students from viewing porn, his intent was to avoid being caught. The amount of time spent accessing Internet porn escalated over time. Had he not been caught there is no indication that it would have stopped. His conduct demonstrated a high level of recklessness and an extreme lack of judgment. He was caught accessing Internet porn at home and he promised to cease doing it. He determined instead to continue this activity in his classroom. He must have been aware that he could have been caught again. He knew he should not be doing this, yet he did it anyway.

Respondent's explanation for viewing the porn websites is not entirely convincing. He testified he was depressed about his failing marriage. The implication he asks the Commission to draw is that he was not thinking as clearly as he should have or normally would have been because of the emotional toll the stress caused him. He described the unhappy nature of his personal life cascading upon him when his students exited his classroom, and how Internet porn became a good diversion from these feelings. It may be inferred that one's level of unhappiness or emotional stress is situational and transient. And that respondent's Internet activities would correlate to such periods of stress. However, what appears in this case is a far more extensive, compulsive and obsessive manner of accessing Internet porn. The stress described and experienced by respondent was perhaps a triggering

event. But his daily accessing of porn for hours at a time suggests that his conduct took on a life of its own, more akin to an addiction. The fact that respondent admits to viewing porn right up to the moment students arrived back in class strongly suggests that his behavior involved far more than simply seeking a diversion from stress associated with an unhappy marriage.

Respondent's belief that his actions were largely associated with stress evidences a lack of insight into the powerful hold pornography has had over him, and the compulsive nature of his behavior in accessing porn. There is a degree of denial. He suggested that porn stimulated him mentally and "brought a smile" but he denied being sexually aroused. He routinely disregarded the reminder on his screen about the District's use of technology policy, he routinely employed means to bypass the District's blocking program, and he routinely covered his tracks by deleting his internet search history. Respondent knew his conduct was wrong and that he should have been focusing his attention on his students and his work as a teacher. But to respondent, spending time on his computer during class became a high priority and obsession for him, and he placed his personal life and gratification ahead of the interests of his students.

All this suggests that respondent may continue to use the classroom computer for personal reasons regardless of the rules prohibiting such use were he confident that he could do so without being detected.

37. Adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. This factor is not applicable to this proceeding. According to the court in *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384, only the pertinent *Morrison* factors need to be examined.

When all these factors are weighed, it is determined that respondent's conduct demonstrated his unfitness to teach.

#### *Immoral Conduct/Evident Unfitness*

38. Having determined that respondent's conduct demonstrates that he is unfit to teach, the next question becomes whether his conduct is immoral and/or demonstrates evident unfitness for service.

In *Board of Education v. Weiland* (1960) 179 Cal.App.808, 811, the court explained:

The term "immoral" has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful,

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.

Respondent's actions in viewing the sites described in Findings 15 through 17 was immoral, particularly in context of his doing so in a fifth grade classroom using a District-issued computer during working hours over an extended period of time. Respondent offered no evidence to suggest it was not. Some of the hard core porn sites he frequented showed sexually suggestive and explicit photographs of women. Respondent's conduct – given the time, setting and manner in which it occurred – meets the definition of immorality.

39. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-45, the court held Education Code section 44932, subdivision (a)(5), “‘evident unfitness for service’ connotes a fixed character trait, presumably not remedial merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” It further interpreted “evident unfitness for service” to require that “unfitness for service be attributable to a defect in temperament--a requirement not necessary for a finding of ‘unprofessional conduct.’” The court recognized, however, that a line of cases did not require a defect in temperament in order to establish evident unfitness for service. (*Id.* at p. 1441.)

Assuming the term evident unfitness for service requires a defect in temperament, the evidence disclosed such defects, specifically respondent's recklessness and lack of judgment. Despite knowing his viewing of inappropriate websites during school hours was improper, despite knowing he was in a public place in a fifth grade classroom, and despite knowing he had no justification for viewing these sites, respondent viewed them countless times during three different school years. He must have appreciated the consequences if someone were to see the sites he was viewing or read his search history. He took pains to access sites in secret, to cover his search trail, and to delete the temporary Internet files. His explanation that he was so stressed and distraught over his failing marriage that he was seeking a diversion is not persuasive. A more reasonable explanation is that he simply did not believe he would be caught. He was caught at home and then determined to continue such activities in his fifth grade classroom where he felt “safe” in the sense that he was less likely to be discovered and he had a greater ability to control his classroom environment than his home. He had taken a few precautions – turning the monitor away from the students, accessing sites when students were not present, locking the classroom door, and deleting his search history and temporary Internet files – and assumed he was safe. His lack of judgment and recklessness in bringing and continuing such activities from home to his fifth grade classroom is astounding.

40. Also considered were the reports and testimony of Dr. Missett and Dr. Berg.

Dr. Missett presented with impressive credentials and qualifications as an expert witness. However, the testimony and opinions he offered on behalf of the District as an expert were discredited by the several conclusions he reached that had no basis in fact, or any reasonable or common understanding of Axis I diagnostic criteria relating to Pedophilia or Voyeurism. For example, Dr. Missett's opinion that respondent suffers from Pedophilia were based upon respondent's use of the term "girl" in search engines when he accessed porn, and the fact that Dr. Missett believes respondent was sexually aroused at the time students entered his fifth grade classroom. Dr. Missett suggested that respondent "would experience recurrent and/or intense sexually arousing fantasies or sexual urges involving sexual activity with a prepubescent child or children who would generally be aged thirteen years or younger with his pursuit of these fantasies or sexual urges causing him clinically significant distress or impairment in his social and occupational areas of functioning." There was absolutely no evidence to support these or any other assumptions underlying Dr. Missett's opinion.

Similarly, Dr. Missett's opinion that respondent has an Axis I diagnosis of Voyeurism had no evidentiary support. Diagnostic criteria for Voyeurism include: "Over a period of at least 6 months, recurrent, intense sexually arousing fantasies, sexual urges, or behaviors *involving the act of observing an unsuspecting person* who is naked, in the process of disrobing, or engaging in sexual activity." (Italics added. Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, Text Revision [DSM-IV-TR], section 302.82, p. 575.) Dr. Missett persisted in opining that respondent engaged in voyeurism and completely disregarded the DSM-IV-R criteria relating to "observing an unsuspecting person." Dr. Missett's strict adherence to certain of his opinions and diagnostic impressions, even after underlying factual support was shown to be non-existent, was troubling. It undermined his credibility and testimony on other matters. It was therefore determined that Dr. Missett's assessment of respondent is flawed. There was a strong suggestion of bias. Dr. Missett's testimony fell short of being a credible independent evaluation of respondent's psychiatric profile or condition. For these reasons his expert testimony and opinion were largely disregarded by the Commission.

41. Dr. Berg's expert opinion and evaluation were well supported by the psychological tests administered, his interview/observations of respondent and his understanding of respondent's general history and background. Dr. Berg found no signs of any mental disorder. He found no evidence of any current Axis I disorder requiring treatment, or any personality disorder along Axis II, clinically or test-wise. During his clinical examination, Dr. Berg determined that respondent was forthright, thoughtful and non-evasive. The validity measures for the different psychological tests administered were normal. Dr. Berg described respondent as one with a history completely devoid of any illicit behavior, problems with impulse control, antisocial attitudes, substance problems or aberrant thinking. Dr. Berg opined that respondent's Internet access behavior "represents an addiction that he developed in response to stress." Dr. Berg explained:

Clearly his involvement took on all of the qualities of an addiction. By that I am referring to an increasing usage, an inability to satisfy the needs with lesser amounts of activity, and his usage became more frequent and more graphic. He does not believe he ever viewed any videos, always still shots, but they basically progressed up the line from the most soft type of pornography to much harder pornography including direct views of genitalia, sexual activities, etc. He said that while his usage was increasing generally during the entire time period after he started accessing these images, it “went haywire” the last month or so, referring to the time period October/November, 2010.

42. Dr. Berg’s assessment best explains, and is consistent with other evidence in the record. Dr. Berg believes that the current threat to respondent’s job is akin to an intervention, and that where respondent’s activities were once encapsulated, he is now on the outside looking in and better positioned to address his issues. Dr. Berg believes that respondent is receiving appropriate treatment and that his chances of reoffending are now “extremely unlikely.”

Dr. Berg linked respondent’s inappropriate Internet use to stress. But Dr. Berg also described it as an addiction. As noted in Finding 36, it is the “addiction” quality that was more concerning in assessing likelihood of recurrence. And while stress may be a trigger event for such activity, the addictive nature of respondent’s conduct appeared to have taken on a life of its own. It controlled respondent’s actions independent of any stress he may have been experiencing on a given day. That respondent is “addicted” to porn is more plausible than respondent’s simpler explanation that he accessed porn because he experienced stress or sadness when students exited his classroom. In this sense there was an element of denial or lack of insight into the addictive hold porn has had over him in the past.

43. In sum, respondent’s actions in accessing Internet porn demonstrated evident unfitness for service. To the extent such finding requires a defect in temperament, the evidence disclosed such defects in respondent’s extreme recklessness and lack of judgment. Dr. Berg’s opinion that respondent’s behaviors represented an addiction in response to stress are not inconsistent with a finding of a defect in temperament, notwithstanding Dr. Berg’s more optimistic view that respondent appears to be free from addiction at this time.

*Appropriate Discipline*

44. Having determined respondent's conduct was immoral, constituted evident unfitness for service, and demonstrated persistent violations of District rules, and having found his conduct established he was unfit to teach, the only remaining question is whether dismissal is the appropriate discipline. The Commission concludes that it is. Respondent's only real defense is his ability as a teacher. Respondent's demonstrated good to excellent teaching abilities, particularly as a music teacher, might swing the balance away from dismissal if this were a closer case. However, respondent's conduct as a fifth grade teacher in his classroom is indefensible. He demonstrated extremely poor judgment and recklessness over a substantial period of time. He knew that his actions were wrong and he routinely took steps to avoid being caught. His pervasive and long term accessing of Internet porn demonstrated that he could not differentiate between what was appropriate and what was not appropriate in his classroom. When he was caught doing the same thing at home, he determined to continue the same conduct in his fifth grade classroom where he believed he was safe from being caught again.

The District cannot be satisfied such misconduct on respondent's part would not recur, particularly if respondent were again to believe that his activities would be undetected. There is no requirement the District impose a lesser form of punishment first. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1450-53.) The District's decision to dismiss respondent is the correct one.

## LEGAL CONCLUSIONS

1. It was established by a preponderance of the evidence that respondent committed acts constituting immoral conduct pursuant to Education Code section 44932, subdivision (a)(1), and that such acts demonstrated an unfitness to teach, by reason of Findings 29 through 38.

2. It was established by a preponderance of the evidence that respondent committed acts constituting evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(5), and that such acts demonstrated an unfitness to teach, by reason of Findings 29 through 37, and 39 through 43.

3. It was established by a preponderance of the evidence that respondent committed acts constituting persistent violation of the rules of the District pursuant to Education Code section 44932, subdivision (a)(7), and that such acts demonstrated an unfitness to teach, by reason of Findings 8, 24, and 29 through 38.

4. By reason of Legal Conclusions 1, 2 and 3, and Finding 44, dismissal of

respondent from his position as a certificated teacher with the District is warranted.

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#### ORDER

The decision by the Fairfield-Suisun Unified School District to dismiss respondent Jon Gall from his position as a certificated teacher with the District is affirmed.

DATED: December 14, 2011

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JONATHAN LEW  
Administrative Law Judge  
Office of Administrative Hearings  
Commission Member

DATED: December 14, 2011

LINDA ORTEGA  
Commission Member

DATED: December 14, 2011

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JULIE TYLER  
Commission Member