

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

OAH No. 2014110111

DANNY WASHINGTON,

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence (Commission) at Los Angeles, California, on February 23, 24, 25, 26, 2015, March 9, 10, 11, 12 and 13, 2015 and May 12 and 13, 2015. The Commission consists of the following members: Debbie Frame, Teacher; Kelly J. Glusovich, Teacher; and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, who presided.

The Los Angeles County Office of Education (LACOE) was represented by Assistant General Counsel Jennifer A. Williams. Respondent Danny Washington (Respondent) was present and was represented by Rosty Gore, Esq., of Trygstadt, Schwab & Trygstadt, Attorneys at Law.

Rulings on motions were made on the record during the proceedings. Oral and documentary evidence was received. The Commission considered the matter in executive session. After due consideration of the record, the Commission makes the following factual findings, conclusions of law, and order:

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Arturo Delgado, Ed.D, in his official capacity as Superintendent for LACOE.
2. On May 8, 2014, Respondent was given written notice of the LACOE's intention to dismiss Respondent unless he demanded a hearing. Respondent submitted a timely demand for a hearing.
3. The Statement of Charges and the Accusation, both dated September 26, 2014 recommend the dismissal of Respondent from LACOE for the following legal causes under

Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) immoral conduct; (3) evident unfitness for service; and (4) 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 employing Respondent.

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

5. LACOE contends that Respondent came to class late and left early thereby routinely depriving students of the certificated instruction time indicated in their Individualized Education Programs (IEPs). LACOE also contends that Respondent was insubordinate when he ignored administrators' instructions not to leave his classroom and to submit documents including performance plan summaries, lessons plans and IEP documents as directed by his supervisors.

6. Respondent contends that he has been unfairly targeted for conduct which is consistent with LACOE's practices as retaliation for his complaints about poor facilities and lack of resources. Respondent also contends that he is a caring, dedicated and experienced teacher who motivates students and staff.

Background Information

7. Respondent is a 59-year-old special education teacher with more than 25 years of experience. He holds a physical education credential and special education severely handicapped and learning handicapped credentials. Respondent also has a Cross-cultural language and development (CLAD) certificate, an industrial safety certificate, SDAI certification and highly qualified teacher certification. Respondent graduated from Dallas-Fort Worth High School in 1975. He was recruited by Oklahoma State University and given a full scholarship. Respondent played football in college and was an All-American. Unlike the majority of his classmates, Respondent graduated in four years. He received a Bachelor of Science Degree in Industrial Science and Safety. Next, Respondent attended Central Oklahoma University where he graduated with a Masters' Degree in Education with an emphasis in Special Education and Industrial Safety.

8. Respondent began his teaching career in Lawton, Oklahoma where he taught classroom and behind the wheel Drivers' Education. Respondent was also the high school football and track coach. Respondent was very successful in Lawton. His team won multiple championships, he was named coach of the year, and many of his students received college scholarships.

9. In 1993, Respondent was newly married and decided to move to California where his brother already resided. Initially, Respondent worked as a substitute teacher for LACOE. Respondent worked at various juvenile detention camps and juvenile hall. His assignments included stints at Los Padrinos Juvenile Hall, Camp Rocky in San Dimas, Alta

Pasa detention center and the North Lake program. Respondent was an integral part of the Camp Rocky and Alta Pasa staff. Respondent was one of the first staff members at Alta Pasa, a program which serviced 12-18 students transitioning from juvenile detention camp back to a regular school. From there he was assigned to what was then called the "Caldwell PAU"¹ in Compton. The Caldwell PAU name was later changed to the "Avalon PAU" at some time not established by the evidence.

10. In 1996, Respondent was recruited to teach a LACOE class at Centennial High School in Compton by one of his former colleagues from Camp Rocky. He began a teacher internship with LACOE taking classes at California State University, Long Beach and obtained a California teaching credential. Respondent was happy at Centennial High School where he taught students in ninth through twelfth grade who were eligible for special education under the category of emotionally disturbed (ED) and coached athletic teams.

11. Respondent was well liked by his colleagues and became involved with the Shared Decision Making Committee (SDMC) as a member and chairperson. The SDMC is a comprised of site representatives and stakeholders throughout the PAU. The SDMC conducted meetings to determine spending priorities for various "budgets" including lottery monies and other special funds. Typically, the SDMC met during the school day at various locations within the PAU and conducted its business. The SDMC submitted its proposal for the expenditure of funds to the LACOE special education director. In his role with the SDMC, Respondent often was at odds with the LACOE administration and challenged the administrators on budgetary issues. He was respectful, but insistent when seeking information. This role also caused him to be away from his class for meetings and SDMC related matters. At some point in the last few years, the SDMC meetings were changed to after school hours. Respondent's involvement with the SDMC lasted for the duration of his employment at LACOE. Respondent was also active in efforts to obtain better and safer facilities for his students and books for all students.

12. Respondent's friend, colleague and union representative, Marilyn Gilbert-Banks, Ph.d. was also a member of the SDMC. Dr. Banks grew up in the Compton area and returned to teach in Compton with LACOE. Dr. Banks has deep roots in the community and cares deeply about the success of the students in Compton. Dr. Banks challenged LACOE

¹ PAU stands for Principal's Administrative Unit. LACOE teachers teach the special education classes for many school districts within Los Angeles County that do not have their own special education departments. As such, LACOE teachers are placed on the campuses of school districts, in this case Compton School District. There may only be one or there may be several LACOE teachers on a particular campus. The LACOE teachers are not part of the host school district's staff and are instructed not to use the copiers, office equipment or resources of the host school district. For larger copy needs and resources, the LACOE teachers are instructed to obtain materials from their PAU office. The LACOE teachers are grouped into PAUs, each with its own principal and assistant principals that are housed at the local PAU office. Each PAU principal reports to Kim Hopko, the special education director for LACOE.

administration about graduation protocols, lack of books, comparable resources amongst the various PAU units and institutional racism. Dr. Banks testified that she found the LACOE special education director Kim Hopko and the Avalon PAU principal Paulette Koss to be racists. She based this opinion on their reactions to requests for resources for students in the Avalon PAU, who were poor or of modest means and overwhelmingly African-American or Latino. Dr. Banks is openly contemptuous of most of the LACOE administration (except Ms. Pamela Branch) and had been disciplined or threatened with discipline for insubordination. At hearing, Dr. Banks opined that Respondent was targeted for dismissal because of his efforts on behalf of the students, the SDMC, and his challenges to LACOE administration over books, facilities and equity in funding of student field trips and activities in the Avalon and Caldwell PAUs compared to other PAUs in LACOE. According to Dr. Banks and all witnesses for both parties, Respondent was well liked by students and staff. Dr. Banks asserts that LACOE retaliated against Respondent as she asserts it did against her when she was moved to less than adequate classroom space that was not accessible by wheelchair or mobility impaired students. Respondent never asserted and the evidence did not establish that Respondent was the victim of racism. However, the evidence did establish that his work habits, his close association with Dr. Banks, his complaints about facilities and anonymous complaints about him, subjected him to intense scrutiny.

13. In 2009, LACOE began experiencing a “take back” of special education services in which many of the school districts to which it had historically provided special education service decided to establish and utilize their own special education departments rather than using LACOE services. This resulted in a reduction in force or “lay off” of many LACOE teachers and massive reassignments of the remaining senior teachers. Respondent and his colleagues were effected by the changing landscape of LACOE’s relationships with school districts. An additional factor at work for LACOE staff was the contraction of the number of PAUs from 8 in 2009 to 3 in 2015. Just as the teachers were reshuffled, so were the administrators, many of which were searching for new jobs as it became evident that there were not enough positions for the number of administrators on staff.

14. In the midst of these events in late 2008 or early 2009, LACOE embarked upon a new pacing plan called “Bridgeworks.” The LACOE teachers received a variety of trainings and in-services over the following years as Bridgeworks was fully implemented. The Bridgeworks pacing plan was contained in a series of binders that the teachers were given. LACOE expected the teachers to use the Bridgeworks program in conjunction with its adopted text and curriculum and state standards. The Bridgeworks program was designed to use with specific texts which were not always available to Respondent or other teachers in the Avalon PAU and they were expected to improvise.

15. In 2009, Respondent was transferred mid-year to Caldwell Elementary School to cover a class where the teacher left or resigned. The class was comprised of 5 to 7 year olds of mixed disabilities. At this time, Marjorie Rudy was the PAU principal and LaShun Washington was the Assistant Principal. Ms. Washington was Respondent’s immediate supervisor.

16. In 2010, Respondent was transferred to Davis Middle school where he remained until the end of the 2011-2012 school year. At Davis, Respondent taught a middle school ED class comprised of sixth to eighth graders. Because of poor classroom conditions including rodents and insect infestations, and poor repair, Respondent's class was moved to several different classrooms after he complained about the conditions. Ms. Washington remained Respondent's immediate supervisor at Davis Middle school. Respondent, like all teachers, was on a performance plan, and was evaluated annually on his progress. At some point, under Ms. Washington's tenure, Respondent was placed on an augmented performance plan to improve the rigor of his instruction and to align his instruction with Bridgeworks, LACOE's adopted pacing plan. Because Respondent was on an augmented performance, he became the subject of an extraordinary number of administrative observations starting in 2010. Ms. Washington testified that Respondent was not in his classroom on many of the occasions that she attempted to visit him or observe his class. Ms. Washington testified that on one occasion, she visited Respondent's classroom while on her way to deliver layoff notices to other teachers, did not find him in the classroom, and she therefore stayed with his students until dismissal instead of delivering the layoff notices which were of immediate importance.

17. Respondent's paraeducators Tara Cannon and Laniece Rollins testified about Respondent's ability to manage the classroom behaviors and bring calmness and respectfulness to the classroom. Respondent developed a rapport with the students, parents and paraeducators. Both paraeducators testified that Respondent rarely left campus for lunch or took a lunch break instead remaining in the classroom working with students or paraeducators. He did have lunch in the classroom with the paraeducators when the students were away at lunch on occasion. Respondent left the classroom for IEP meetings, mainstreaming of students into other classes, in-service or staff trainings, doctor appointments and physical therapy appointments related to a workers' compensation injury he received when a student hit him.

18. Respondent's contracted start time was at 7:45 a.m., 15 minutes before the start of the school day, and his end time was 3:00 p.m., 15 minutes after the school day ended or until the students had all boarded the school bus. As a practical matter, all but one of the students that attended Respondent's class arrived by school bus in the morning. One of Respondent's paraeducators rode on the bus with the students. The bus was rarely on time and was as much as 45 minutes late on a regular basis. Respondent was expected by LACOE to unlock the school gate for the bus to enter and students to disembark. As a practical matter, the bus rarely arrived by 8:00 a.m. Therefore, when Respondent arrived late for work it was not noticed unless he failed to arrive in time to open the gate for his students and his colleagues opened the gate when they did so for their own students. Upon disembarking from the bus, the students went to the cafeteria for breakfast where the paraeducators that were on the bus and those arriving for work met them and supervised them. Sometimes, Respondent met the students at the gate or in the cafeteria. On many occasions, the paraeducators walked the students to the classroom to meet Respondent. On those occasions, other LACOE teachers "kept an eye on" Respondent's students until he arrived or they were in their classroom. For a period of time, Respondent left several days each week for several

hours to attend physical therapy appointments. Respondent provided a list of appointments to the PAU office. LACOE did not provide a substitute teacher for those appointments, IEP meetings, nor for most trainings and administrators did not provide coverage or supervision of Respondent's classroom. Respondent also called the PAU office and spoke to a secretary to advise the PAU of his absences from the classroom for medical appointments. He generally advised the PAU several days before the appointments and then called on the day of the appointment to advise the PAU office when he was leaving for the appointments.

19. For the 2012-2013 school year, the middle school ED class was moved from Davis Middle School to Vanguard Middle School and Respondent continued teaching the class. Respondent's morning and afternoon practices remained the same. It was at this time that Paulette Koss became the PAU principal and Vernita Adkins-Barlow became the Assistant Principal and Respondent's immediate supervisor. Joe Mahabir was also an Assistant Principal in the Avalon PAU. Respondent was acquainted with Mahabir and had a preference for working with Mr. Mahabir rather than Ms. Adkins-Barlow. Respondent and Ms. Adkins-Barlow had worked together as colleagues at a prior school in the past and were not fond of each other. Respondent requested that Principal Koss change his supervising administrator, but she refused to do so. Because Respondent was on an augmented performance plan which was supposed to help him increase the rigor of his lessons and align his instruction with the Bridgeworks pacing program, he became the subject of an extraordinary number of administrative observations by Ms. Adkins-Barlow starting in 2010.

20. Ms. Adkins-Barlow continued the augmented performance plan that was previously in place and made frequent "pop-in visits" to Respondent's classroom and well-documented formal observations. Ms. Adkins-Barlow's visits increased from multiple weekly visits to multiple daily visits over time and were always unannounced. She left notes on Respondent's desk after her visits. During the visits she came into the classroom, generally without speaking, looked around, sat in the back or walked around the classroom looking at the student's work and materials. Respondent's students did not always respond well to Ms. Adkins-Barlow's presence in the classroom. On several occasions the students made derogatory remarks about her when she left the class or wrote derogatory comments about her during free writing journal time. On those occasions, Respondent addressed the students' conduct directly and called their parents. The students were particularly disturbed by the fact that Ms. Adkins-Barlow did not greet anyone when she entered the class. Because Ms. Adkins-Barlow was in the classroom so often, the students sensed that Respondent was under scrutiny and they were protective of him. When Ms. Adkins-Barlow attempted to conduct a demonstration lesson in the classroom, the students disregarded her and failed to show her the respect that they showed to Respondent.

21. For the 2013-2014 school year, Respondent was transferred to Compton Adult School to teach an adult transition class for 18-22 year olds with severe disabilities. Despite Respondent's request that Ms. Atkins-Barlow be replaced as his immediate supervisor, he remained under her supervision until she left employment with LACOE in February of 2014. Mr. Mahabir supervised the only other LACOE teacher placed at Compton Adult School. According to the credited testimony of paraeducator Chris Donaghby, an experienced

LACOE paraeducator, the students in this classroom were incontinent requiring diaper changes and for the most part were nonverbal and of low cognitive ability. Respondent rose to the task of caring for and educating the students and provided them with individualized instruction. The students looked forward to seeing Respondent and he worked very hard to design lessons that would engage them. Neil Donat was the Avalon PAU principal from December of 2013 to June of 2013.

Specific Allegations in the Accusation

22. In Charge 1 of the Accusation, Complainant alleges:

On May 9, 2012, at Vanguard Middle School, Respondent was approached by LaShun Washington, Assistant Principal, and Respondent's immediate administrators to discuss and conduct the final evaluation summary of his performance plan. At that time, Respondent requested a copy of the evaluation for review and indicated to the administrator that he would contact her to discuss it further. By May 15, 2012, Respondent had not contacted the administrators. Respondent was directed to meet the expectations outlined in the performance plan. These directives were provided to Respondent in a Final Evaluation Summary dated May 15, 2012 by Assistant Principal, LaShun Washington.

23. Complaint established by a preponderance of the evidence that On May 9, 2012, Vanguard Middle School Assistant Principal LaShun Washington (Ms. Washington) asked Respondent to meet with her regarding her evaluation summary of Respondent's performance plan. Complainant also established that Respondent delayed meeting with Assistant Principal Washington because he wanted to discuss the evaluation summary with his union representative. Ms. Washington was not amenable to having a union representative present at the meeting, but provided Respondent with a draft copy of the evaluation summary so that Respondent could consult with his union representative prior to meeting with Ms. Washington. By May 15, 2012, Respondent had not scheduled a meeting with Ms. Washington. Therefore, Ms. Washington finalized her draft without Respondent's input and issued a May 15, 2012 written evaluation summary to Respondent. In the written evaluation summary, Ms. Washington directed Respondent to meet the expectations outlined in the performance plan.

24. In Charge 2 of the Accusation, Complainant alleges:

On September 13, 2012, Respondent was present at school but did not attend the PAU staff meeting at 3:00 p.m. at the PAU office. According to Respondent's principal, Paulette Koss, Respondent was given a list of monthly staff meeting dates at Orientation on August 23, 2012, and told that the meetings were mandatory. Respondent was reminded of the meeting on September 6, 2012, and informed that the

meeting was mandatory. Additionally, Respondent was advised that his contract states "within 48 hours prior notification, except for urgent circumstances, the immediate administrator may reasonably require the unit member to attend faculty meetings and to perform other on-site professional duties." Respondent was subsequently reminded in a memo dated September 13, 2012, "Attendance at PAU Staff meetings" of future meetings.

25. Complainant established by a preponderance of the evidence that Respondent received a list of monthly staff meeting dates at the mandatory orientation on August 23, 2012. At the orientation, all staff were advised that the monthly staff meetings were mandatory. On September 13, 2012, Respondent was present at school, but did not attend the monthly Principal's Administrative Unit (PAU) meeting at 3:00 p.m. at the PAU office despite having received a reminder of the meeting on September 6, 2012. Respondent did not believe that his union had approved attendance at staff meetings after school hours, so he did not attend.

26. In Charge 3 of the Accusation, Complainant alleges:

On October 11, 2012, a conference was held in the office of Vernita Adkins-Barlow, Respondent's supervisor, at Avalon PAU. Present at the meeting were Respondent and Marilyn Banks, LACEA representative.

At the conference, Ms. Adkins-Barlow expressed concern after having been at Respondent's school site, Vanguard Middle School, on Tuesday, October 9, 2012, from 1:00 until 2:45 p.m. and not having seen Respondent on campus. Respondent's students had been left in the supervision of his paraeducators. Ms. Adkins-Barlow asked the paraeducators to let Respondent know that Ms. Adkins-Barlow was looking for him and that Ms. Adkins-Barlow would like to see him before leaving the school. An Individualized Education Plan ("IEP") team was meeting and, as a participant, Ms. Adkins-Barlow would be available to meet with him upon the completion of the student's IEP.

Ms. Adkins Barlow also mentioned that on Monday, October 8, 2012, Ms. Adkins-Barlow had looked for Respondent, at the beginning of school, and he was not present when his students arrived at school and exited the bus. Respondent's paraeducators supervised his students exiting the bus and eating breakfast.

Respondent explained that on October 8, 2012, he was searching for student books at the PAU site; this was verified. Respondent explained that on Tuesday, October 9, 2012, he had left the classroom, gone to the restroom and was sitting in his car in the Vanguard parking lot. When

the students were ready to get on the bus, Respondent said that he was present to load them on the bus. Respondent said that the paraeducators did not inform him that Ms. Adkins-Barlow was on the school campus looking for him.

Respondent's behavior led to a conference summary issued to him by Vernita Adkins-Barlow dated October 11, 2012.

27. Complainant established the allegations set forth in Charge 3 by a preponderance of the evidence.

28. In Charge 4 of the Accusation, Complainant alleges:

On October 19, 2012, Respondent received an email by Vernita Adkins-Barlow, Assistant Principal, Respondent's immediate administrator. She had not received Respondent's performance plan which was due at the end of September (2012). Ms. Adkins-Barlow had to reschedule the meeting to discuss the plan for Tuesday, October 30, 2012.

29. Complainant established by a preponderance of the evidence that Ms. Adkins-Barlow sent such an email to Respondent and that the October 30, 2012 meeting was rescheduled. However it was not established that the meeting was rescheduled because Respondent did not provide his performance plan to Assistant Principal Adkins-Barlow. It was established that Ms. Atkins-Barlow extended the due date for submission until the end of September 2012 and Respondent provided the documents by the end of September 2012 which was the extended deadline. However, it was not established that Respondent received Ms. Adkins-Barlow's email. In October of 2012, Respondent had difficulty accessing his email account. The access code that Respondent had been given was not correct and his requests for assistance from administration and technical support did not result in his having access to the email system. Ms. Adkins-Barlow provided Respondent an access code but the code was for the photocopy machine not for the email. Respondent's prior administrator, Ms. Washington, corroborated Respondent's testimony that the email system was unreliable. In fact, she had experienced so many problems with the LACOE email system that she had resorted to forwarding all LACOE email to her personal email account in order to preserve her email communications and records. Once Respondent finally obtained access to his email account, he delegated the task of opening, printing and responding to email to one of his classroom paraeducators. Respondent preferred to use the computer and email system as little as possible.

30. In Charge 5 of the Accusation, Complainant alleges:

On November 2, 2012, Ms. Adkins-Barlow sent an email regarding the focus of classroom observations for the month of November 2012. In her email, she asked for Respondent (and other teachers) to submit a

lesson plan document to her by Friday, November 16, 2012 for her review. A reminder email was mailed to all staff regarding the lesson plan due date on November 15, 2012. By November 28, 2012, Respondent had failed to submit lesson plans. By December 4, 2012, Respondent received another email as he still had not submitted the November lesson plans.

31. Complainant established by a preponderance of the evidence that Ms. Adkins-Barlow sent the emails alleged in Charge 5. However, for the reasons set forth in factual finding 29, it was not established that Respondent received Ms. Adkins-Barlow's email messages. By the end of November 2012, Respondent placed or had his paraeducator place the requested lesson plans in Ms. Adkins-Barlow's mailbox at the PAU office.

32. In Charge 6 of the Accusation, Complainant alleges:

On December 4, 2012, Ms. Adkins-Barlow sent an email to Respondent and his colleagues regarding written lesson plan reviews. Ms. Adkins-Barlow scheduled meetings with all teachers, including Respondent. Respondent's meeting was scheduled for Thursday, December 13, 2012. She also informed Respondent she had not received his lesson plans in a separate email also dated December 4, 2012.

33. Complainant established the factual allegations set forth in Charge 6 of the Accusation by a preponderance of the evidence. It was also established that Respondent read the email concerning the scheduled meetings and was annoyed and perplexed by the fact that all of the teacher meetings were scheduled during the school day except his meeting which was scheduled after the conclusion of the school day. Respondent was not comfortable with Ms. Adkins-Barlow and did not want to meet with her after school. Although Ms. Adkins-Barlow sent Respondent an email notifying Respondent that she had not received his lesson plans, he assumed she had received what had been placed in her mail box.

34. In Charge 7 of the Accusation, Complainant alleges:

On December 5, 2012, Ms. Adkins-Barlow emailed Respondent regarding the placement of a sample lesson plan in his mailbox to assist with the planning of his lessons.

35. Complainant established by a preponderance of the evidence that Ms. Adkins-Barlow emailed Respondent a portion of a lesson plan to illustrate her preferred format.

36. In Charge 8 of the Accusation, Complainant alleges:

On December 9, 2012, Ms. Adkins-Barlow, provided Respondent a memo regarding his classroom instruction, the lack of rigor and

relevance to his academic instruction. Ms. Adkins-Barlow offered her assistance in addressing these concerns while preparing Respondent's lesson plans. Respondent was directed to complete a lesson plan and submit it to her for review and conference by December 13, 2012 at 4 p.m. pursuant to her email dated December 4, 2012.

37. Complainant established the factual allegations contained in Charge 8 by a preponderance of the evidence except that it was not established that Ms. Adkins-Barlow offered Respondent "assistance in addressing these concerns." Instead, it was established that Ms. Adkins-Barlow referred Respondent to some appropriate resources that he could consult to prepare lesson plans and offered him suggestions about items to include in the lesson plans.

38. In Charge 9 of the Accusation, Complainant alleges:

On December 20, 2012, Respondent was informed that Respondent's lesson plans needed to follow the LACOE Pacing Plans. Ms. Adkins-Barlow hand carried information to Respondent regarding sample lesson plans and how she wanted him to use the Pacing Plans to develop his lesson plans. She asked that they be returned on January 7, 2013. She received them on January 11, 2013, and referenced them in an email dated January 18, 2013. The lesson plans Respondent provided did not follow the provided template by omitting:

- *Name of text.
- *Pacing plan pages being addressed.
- *What paraeducators were to work on with which students during small groups and
- *What they were to do.
- *What instructional strategies were being utilized.
- *How the student IEP's goals/objectives were being addressed during small group activity.

The lesson plans were returned to Respondent, and he was notified that his formal observation was scheduled for Wednesday, January 23, 2013. Respondent's failure to submit his lesson plans within the deadline issued to him by his immediate administrator was an act of insubordination.

39. Complainant established the factual allegations contained in charge 9, except that a template was provided, by a preponderance of the evidence. However, Respondent did not establish the ultimate conclusion that the factual allegations constituted an act of insubordination. The Commission found that a preponderance of the evidence established that Respondent attempted to comply with each and every request for lesson plans and revisions made to him by Ms. Adkins-Barlow, but became demoralized by her continued

demands. There was no evidence that Respondent was in any way defiant of Ms. Adkins-Barlow's authority or requests for lesson plans.

40. In Charge 10 of the Accusation, Complainant alleges:

On January 15, 2013, Ms. Adkins-Barlow emailed Respondent regarding her concerns over his lack of diligence shown by him in not providing requested documents in a timely manner. Ms. Adkins-Barlow was informed by the attendance clerk that Respondent had been consistently late in presenting his class attendance registers to her. The attendance clerk received the documents on January 15, 2013, when they were due to her by Friday, January 11, 2013.

Ms. Adkins-Barlow also had concerns regarding her request for a copy of IEPs for review that were not given to her based upon her conversation with Respondent on January 8, 2013 (and via email on January 7, 2013). When she inquired, on January 8, 2013, of needing to see Respondent's lesson plans, they were not ready, so she was unable to review them.

41. The Commission found that Complainant established that Ms. Adkins-Barlow requested lesson plans, but failed to establish the remaining factual allegations of Charge 10 by a preponderance of the evidence.

42. In Charge 11 of the Accusation, Complainant alleges:

On January 18, 2013, Ms. Adkins-Barlow sent Respondent an email (and memo) regarding corrections to an IEP he participated in. Respondent was directed to have the corrections made before the IEP scheduled for January 22, 2013.

43. The Commission found that Complainant established the factual allegations of Charge 11 by a preponderance of the evidence.

44. In Charge 12 of the Accusation, Complainant alleges:

On January 23, 2013, Respondent received an email from Ms. Adkins-Barlow wherein he was informed by her that he was provided a sample lesson plan using the Bridgeworks pacing plan as a template for future lessons. Respondent was reminded to provide the names of texts that he still needed for student use.

45. The Commission found that Complainant established the factual allegations of Charge 12 by a preponderance of the evidence. The Commission also determined that Respondent established by a preponderance of the evidence that he told Ms. Adkins-Barlow

which texts he needed. When Ms. Atkins-Barlow provided Respondent with some text books, they were not the correct books nor the ones requested by Respondent. Respondent searched in libraries and at the PAU office for appropriate textbooks as required by the Bridgeworks program so that he could prepare lesson plans as directed by Ms. Atkins-Barlow.

46. In Charge 13 of the Accusation, Complainant alleges:

On January 22, 2013, an interim conference was held to discuss Respondent's performance to date for the 2012-2013 school year. Concerns regarding his teaching practices, instructional strategies, and student engagement were discussed with Respondent. Other issues of concern included the lack of diligence exhibited in submitting requested paperwork in a timely manner as referenced in emails and notes dated:

10/19/2012
11/02/2012
11/15/2012
11/28/2012
12/04/2012
12/05/2012
12/09/2012
12/20/2012
01/07/2013
01/15/2013
01/18/2013

47. The Commission found that the Complainant failed to establish by a preponderance of the evidence that Respondent demonstrated a lack of diligence in submitting the requested paperwork. Complainant established by a preponderance of the evidence that Ms. Atkins-Barlow had concerns about Respondent's performance during the 2012-2013 school year including his teaching practices, instructional strategies and student engagement and that a conference was held on January 22, 2013, wherein she made Respondent aware of these concerns. Ms. Atkins-Barlow also documented her concerns in emails and memorandum.

48. In Charge 14 of the Accusation, Complainant alleges:

Respondent's January 2013 lesson plans were submitted at the end of January 2013, failing to abide by administrative directives.

49. Based upon Respondent's credited testimony and exhibit 2, page 109, the Commission found that Respondent submitted his lesson plans on January 11, 2013.

Complainant failed to establish the factual allegations of Charge 14 by a preponderance of the evidence.

50. In Charge 15 of the Accusation, Complainant alleges:

On February 22, 2013, Respondent was issued an unsatisfactory performance evaluation by Ms. Adkins-Barlow. Respondent received unsatisfactory remarks in all six of the California Standards for the Teaching Profession. Respondent's performance plan goals were modified, and Respondent was provided with opportunities for professional growth, via formal observations which were scheduled and provided to Respondent. By February 28, 2013, Respondent had refused to sign a copy of his performance plan and evaluation. Article VIII, Section H of the Los Angeles County Education Association ("LACEA") states that "whether or not the unit member agrees with the evaluation, the unit member shall acknowledge receipt of the evaluation by signing the evaluation form." Respondent refused to abide by the LACEA agreement and would not sign to acknowledge the receipt of the evaluation.

51. Complainant established by a preponderance of the evidence that Ms. Atkins-Barlow issued an unsatisfactory performance evaluation as alleged in Charge 15 and recommended that LACOE not retain Respondent. It was also established that Ms. Adkins-Barlow had advised Respondent before the meeting that this was to be an informal meeting and there was no need for union representation. Respondent felt ambushed by Ms. Adkins-Barlow in this situation. It was established by a preponderance of the evidence that Respondent refused to sign the evaluation. Respondent did not know, and Ms. Adkins-Barlow did not tell him, that failure to sign acknowledgement of receipt of the evaluation was a violation of the LACEA contract. Respondent did not have union representation at the meeting and did not receive a copy of the evaluation until early March of 2013. The remaining allegations were not established by a preponderance of the evidence.

52. In Charge 16 of the Accusation, Complainant alleges:

Respondent's February 2013 lesson plans were submitted at the end of February 2013 failing to abide by administrative directives.

53. The Commission found that Complainant failed to establish the factual allegations of Charge 16 by a preponderance of the evidence.

54. In Charge 17 of the Accusation, Complainant alleges:

On March 4, 2013, Respondent was observed by Ms. Adkins-Barlow. Ms. Adkins-Barlow observed significant areas of concern regarding his instructional delivery, use of instructional strategies, his classroom environment, and lesson planning.

55. Complainant established by a preponderance of the evidence that Ms. Adkins-Barlow observed Respondent on March 4, 2013 and that she believed there were significant areas of concern regarding his instructional delivery, use of instructional strategies, his classroom environment and lesson planning.

56. In Charge 18 of the Accusation, Complainant alleges:

On March 13, 2013, Respondent was formally observed by Ms. Adkins-Barlow. Ms. Adkins-Barlow provided him with a summary of her observations including strengths and weaknesses of his lesson. On March 21, 2013, Respondent was formally observed by Ms. Adkins-Barlow. Ms. Adkins-Barlow provided him with a summary of her observations including strengths and weaknesses of his lesson.

57. The Commission found by a preponderance of the evidence that Complaint established the factual allegations set forth in Charge 18 by a preponderance of the evidence.

58. In Charge 19 of the Accusation, Complainant alleges:

On March 25, 2013, Ms. Adkins-Barlow emailed Respondent regarding a meeting invitation with him to discuss expectations for the instructional program in his class for April 2013. On March 28, 2013, Respondent received a 3rd Quarter Progress Report from Ms. Adkins-Barlow regarding concerns over student records.

59. Complainant established the factual allegations set forth in Charge 19 by a preponderance of the evidence.

60. In Charge 20 of the Accusation, Complainant alleges:

On March 28, 2013, during a Thursday morning visit to Respondent's class, his immediate supervisor, Ms. Adkins-Barlow, Assistant Principal, asked that he prepare a set of student texts to provide for person/s that would be demonstrating lessons in his class after the spring break. Ms. Adkins-Barlow would not be on site before break and the school would be closed for the break so Ms. Adkins-Barlow needed the texts that day. When she returned to Respondent's class that afternoon, the texts had not been prepared. Ms. Adkins-Barlow let him know that she would return to get the texts after visiting two (2) other classes on the campus. When she returned, the following incident occurred in the presence of two (2) paraeducators and three (3) students: Ms. Adkins-Barlow began to collect student texts that were sitting on desks. Respondent abruptly said, "You can't take my texts." Again, she explained that they were needed for persons to prepare subject lessons for demonstration after spring break. Respondent said, "You can't take my texts." Ms. Adkins-Barlow said, "As an administrator, I can take the texts," again

explaining the purpose for them. Respondent's tone was irritated as he said, "Don't take the texts." Ms. Adkins-Barlow said, "I am going to take the texts" and continued to pick up a set. Ms. Adkins-Barlow also said that Respondent could "write me up." Respondent defiantly said, "You can write yourself up." Respondent became increasingly agitated and said that he did not want to force her to put them down. Respondent stood up, approached Ms. Adkins-Barlow as her back was turned, and reached over her shoulder to take the books from her arms. Respondent was only able to get some papers which Respondent threw down, as Ms. Adkins-Barlow held them close to her chest. She kept her back to Respondent as Ms. Adkins-Barlow continued to move away from him, as he continued to approach her. Respondent continued stating, "You can come back tomorrow, Monday or next week" to get the texts. Ms. Adkins-Barlow said that the spring break would begin the following week and the office would be closed and there were other things that she needed to do that week in the office, including supervising the Longfellow move. Ms. Adkins-Barlow said that there was nothing Respondent would be doing for the remainder of the day to need the texts (it was about 1:50 p.m.). Respondent said that Ms. Adkins-Barlow did not know that. As Ms. Adkins-Barlow approached the back door, passing Respondent's desk, Respondent aggressively said, "Don't take any books from my desk." Ms. Adkins-Barlow had no intention of taking any teacher guides and/or anything else from his desk, since her original request had only been for student texts. By that time, Ms. Adkins-Barlow had obtained enough of the subject texts and as Respondent was at the front door to the room, Ms. Adkins-Barlow exited from the back door in order to avoid another physical confrontation.

During the entire interaction, others were watching Respondent's insubordination to her authority. Students who are within the LACOE ED program, who have - difficulty respecting authority, observed Respondent's actions of insubordination to the authority of his site supervising administrator. Student CC had to move his wheelchair to avoid being in the middle of Respondent's attempt to remove the books. Student TM giggled as she observed what Respondent was doing, just as she had done that morning when Respondent commented on how Ms. Adkins-Barlow would not sign student progress reports written in pencil. Ms. Adkins-Barlow could also observe one (1) paraeducator's face as she watched the interaction in shock. Respondent's conduct led to a letter of reprimand dated March 28, 2013 issued to Respondent by Ms. Adkins-Barlow.

61. Complainant failed to establish the factual allegations of Charge 20 by a preponderance of the evidence. The Commission found that Ms. Adkins-Barlow came into Respondent's classroom and began gathering books without speaking to him or requesting his permission. Respondent had spent a considerable amount of time obtaining the books he needed for his classroom from various school sites, the library, the internet and other PAUs, and was concerned that the books would not be returned and not be available for the

students. While Respondent is a big man approximately 6 foot, 5 inches tall, his demeanor is respectful and polite. The Commission found it incredible that Respondent would engage in any physical altercation or verbal altercation with Ms. Adkins-Barlow in front of his ED students or paraeducators. Respondent's requests that Ms. Adkins-Barlow not remove text books from his classroom during a class session and under these circumstances were reasonable. Ms. Adkins-Barlow's testimony about Respondent's behavior and demeanor was not corroborated by any other evidence and was contrary to the testimony of all other witnesses about Respondent's demeanor and the Commission's observations of Respondent's demeanor. Furthermore, there was no evidence to support the factual allegation that student TM giggled during interactions between Respondent and Ms. Adkins-Barlow or that paraeducators were shocked by Respondent's behavior. On the contrary, several paraeducators were concerned by Ms. Adkins-Barlow's behavior and what they perceived to be harassment of Respondent. It was established that Ms. Adkins-Barlow issued a letter of reprimand to Respondent based upon her perception of the incident.

62. In Charge 21 of the Accusation, Complainant alleges:

Respondent's March 2013 lesson plans were submitted at the end March 2013, failing to abide by administrative directives. Comments provided on the plans by Ms. Adkins-Barlow indicated these plans only addressed one specific area. Questions written by Ms. Adkins-Barlow indicated, *"what para is working with which students in small groups and what are groups doing?....How are specific IEP needs of students in Language Arts going to be addressed in small group activities?...Are these questions from text, pacing plans or teacher developed? Are there other activities using graphic organizers that may be used by students in small groups?....Text? Pacing Plan information?"* On April 10, 2013, Respondent was provided with an Interim Conference Evaluation #2 by Ms. Adkins-Barlow. The summary of his progress provided areas of growth as well as areas of concern which had been brought to his attention as part of the evaluation process. Respondent was informed his performance continued to be unsatisfactory, and his goals reflected an improvement plan which contained revised goals, and observation dates in his classroom. Respondent declined to sign the April 10, 2013 Interim Conference Evaluation #2. Article VIII, Section H of the Los Angeles County Education Association ("LACEA") states that "whether or not the unit member agrees, with the evaluation, the unit member shall acknowledge receipt of the evaluation by signing the evaluation form." Respondent refused to abide by the LACEA agreement and would not sign to acknowledge the receipt of the evaluation.

63. With respect to Charge 21 of the Accusation, the Commission found by a preponderance of the evidence that Respondent timely submitted his March 2013 lesson plans and that he did not violate an administrative directive in that regard. Ms. Adkins-Barlow made the alleged comments about Respondent's lesson plans and provided Respondent with an Interim Conference Evaluation #2 Summary on or about April 10, 2013

as described in Charge 21. Respondent refused to sign the acknowledgement and receipt of the document. Respondent was not aware, and Ms. Adkins-Barlow did not inform him, that the LACEA agreement provided that teachers were to sign as acknowledgement and receipt of such documents whether or not the teacher agreed with the contents of the document.

64. In Charge 22 of the Accusation, Complainant alleges:

On April 11, 2013, Respondent was observed arriving to training at the Avalon PAU staff meeting room at 8:45 a.m. Ms. Adkins-Barlow was informed that Respondent left the training at approximately 10:15 a.m. informing the trainer that he "had an appointment." Paulette Koss, Avalon Principal, inquired at the PAU staff meeting of Respondent and others who had attended the ELD workshop, how they had liked it. Respondent said that he did not stay at the training because of a doctor's appointment. She asked whether he had called the office and turned in an absence claim, Respondent said that he had called the office and would turn in an absence claim. Upon returning to the office, Ms. Adkins-Barlow, inquired of the attendance clerk if he had called informing her of his absence. She said that she had received a phone message saying that he was going back to class. Throughout the day, Ms. Adkins-Barlow had been at Vanguard Middle School and when she asked if Respondent had been there, the substitute teacher assigned to his class said that he had only been there that morning. The ELD strategies workshop was scheduled specifically in response to a recommendation made by Respondent's LACEA representative at a formal observation conference meeting. Respondent's attendance was necessary to continue to address concerns specified in his performance plan. Respondent was directed to submit an absence claim indicating his absence on Thursday, April 11, 2013, from 10:15 a.m. until the end of his school day at 3:00 p.m., as anything but "school business." Ms. Adkins-Barlow provided Respondent with a memo on this directive on April 12, 2013, regarding, "Avalon PAU ELD Strategies Workshop." Respondent submitted the absence claim form only after Ms. Adkins-Barlow issued this directive.

65. As to Charge 22, the Commission found that the Complainant failed to prove by a preponderance of the evidence that Respondent either left a message or told the PAU office staff that he would return to class after his appointment. Complainant also failed to establish by a preponderance of the evidence that the English Language Development, also known as ELD, workshop was scheduled in response to Respondent's LACEA representative's recommendation or that Respondent's attendance was necessary to continue to address concerns specified in his performance plan. Complainant established the remainder of the factual allegations contained in Charge 22 by a preponderance of the evidence.

66. In Charge 23 of the Accusation, Complainant alleges:

In April 2013, Respondent was provided with an Interim Conference Evaluation #3 by Ms. Adkins-Barlow. The summary of Respondent's progress provided areas of growth as well as areas of concern, which had been brought to his attention as part of the evaluation process. Respondent was informed his performance continued to be unsatisfactory, and his goals reflected an improvement plan which contained, revised goals, and observation dates in your classroom.

67. Complainant established the factual allegations set forth in Charge 23 by a preponderance of the evidence.

68. In Charge 24 of the Accusation, Complainant alleges:

Respondent's April 2013 lesson plans were submitted on April 26, 2013. Also on this date, Ms. Adkins-Barlow emailed Respondent regarding the scheduling of his May 2013 formal observations.

69. Complainant established the factual allegations contained in Charge 24 of the Accusation by a preponderance of the evidence.

70. In Charge 25 of the Accusation, Complainant alleges:

On May 3, 2013, Respondent was informed by Ms. Adkins-Barlow that a meeting was scheduled for Friday, May 10, 2013, at 11:30 a.m. at Vanguard Middle School to discuss his progress as an Interim Conference Evaluation, and expectations of his "Augmented Performance Plan" for the month of May 2013.

71. Complainant established the factual allegations contained in Charge 25 of the Accusation by a preponderance of the evidence.

72. In Charge 26 of the Accusation, Complainant alleges:

On June 7, 2013, Respondent was informed that attempts had been made to schedule a "Summary Augmented Performance Plan Meeting." Specifically, at his May 10, 2013 "Performance Plan Progress" meeting, his LACEA representative scheduled a tentative date for Monday, June 3, 2013 at 11:30 a.m. However, this conflicted with an important IEP meeting scheduled for one of Respondent's students, per the student's mother's request. Per Respondent's LACEA representative, a second date was proposed to schedule a meeting for Wednesday, June 5, 2013 at 2:30 p.m. Respondent informed Ms. Adkins-Barlow that it was not possible for him to have a meeting on that date due to an appointment scheduled after the school day. Respondent's augmented performance plan observation completion summary was provided to him via certified mail as the result of his inability to meet. Goals and

objectives that were not met prior to the completion of the 2012-2013 school year were carried over to the 2013-2014 school year.

73. Complainant established the factual allegations contained in Charge 26 of the Accusation.

74. In Charge 27 of the Accusation, Complainant alleges:

On October 29, 2013, Respondent was formally observed by Ms. Adkins-Barlow. Ms. Adkins-Barlow provided him with a summary of her observations including weaknesses of his lesson. On November 7, 2013, Ms. Adkins-Barlow followed-up on an email Respondent deleted and did not read regarding, "DW Current Progress Report." Ms. Adkins-Barlow was aware of the deleted email as she had set a "read receipt" message on the email. Ms. Adkins-Barlow forwarded Respondent the deleted email message, with a message regarding "FC" which stated, *"If you are checking your emails this morning, I need the completed paperwork for Student FC. I would like to complete SEIS by the end of the week and you will not be here tomorrow."* By November 13, 2013, Ms. Adkins-Barlow informed Respondent she had not received his students' progress reports and Student FC's ELD DEP Paperwork. Respondent was directed to complete his students' Progress Reports and Student FC's IEP paperwork by November 20, 2013 for review. Respondent finally complied with producing FC's paperwork nearly two weeks after it was requested.

75. It was established by a preponderance of the evidence that Ms. Adkins-Barlow sent the email messages alleged in Charge 27 of the Accusation and that the documents were submitted later than requested. However, it was not established that Respondent received, read, or deleted the emails. The factual allegations set forth in Charge 27 are alleged to have occurred during the time period in which Respondent's email was not functioning correctly and he had limited or no access. Additionally, when Respondent did obtain email access, his paraeducators managed his email.

76. In Charge 28 of the Accusation, Complainant alleges:

On November 13, 2013, Ms. Adkins-Barlow emailed Respondent (and other staff) regarding a request for adult transition information on the students who had been "conserved" in his classroom. The request required a response to Ms. Adkins-Barlow no later than November 22, 2013. By November 25, 2013, Respondent had not provided Ms. Adkins-Barlow with the requested information and he was directed to submit the information no later than December 4, 2013. Respondent's failure to persistently not comply with directives issued to him by his immediate administrator was an act of insubordination.

77. It was established by a preponderance of the evidence that Ms. Adkins-Barlow sent the email messages alleged in Charge 28 of the Accusation. However, it was not established that Respondent received or read the emails. The factual allegations set forth in Charge 28 are alleged to have occurred during the time period in which Respondent's email was not functioning correctly and he had limited or no access. To the extent that Respondent may have failed to comply with Ms. Adkins-Barlow's request because he did not receive it, such non-compliance was unintentional and did not constitute a persistent failure to comply with administrative directives or insubordination.

78. In Charge 29 of the Accusation, Complainant alleges:

On December 12, 2013, Respondent did not attend the pre-scheduled monthly staff and professional development meetings indicating that LACEA has not approved meetings after work hours. Respondent failed to attend:

PLC: November 21, 2013 at 3:00 p.m.

Staff Meeting: December 12, 2013 at 3:00 p.m.

Respondent received a letter, of warning regarding this behavior dated December 12, 2013 by Ms. Adkins-Barlow.

79. The Commission found that Complainant failed to establish the factual allegations set forth in Charge 29 by a preponderance of the evidence. Respondent credibly testified that he attended the meetings, but may not have signed in if he was late or did not see a sign in sheet.

80. In Charge 30 of the Accusation, Complainant alleges:

On January 15, 2014, Respondent deleted without reading an email sent to him by Ms. Adkins-Barlow regarding "SEIS IEP Compliance." Ms. Adkins-Barlow was aware Respondent had erased her message because she had set a "read receipt" on the email prior to sending. Respondent's deletion of an email from his immediate administrator without reading it was an act of insubordination.

81. Complainant established by a preponderance of the evidence that the email referenced in Charge 30 was sent to Respondent by Ms. Adkins-Barlow. However, it was not established by a preponderance of the evidence that he received the email or that he was responsible for the email being deleted. Accordingly, it was not established by a preponderance of the evidence that deletion of the email was an act of insubordination.

82. In Charge 31 of the Accusation, Complainant alleges:

On February 5, 2014, Respondent deleted an email sent to him by Ms. Adkins-Barlow regarding a student, "FC." Ms. Adkins-Barlow was aware the email was deleted as she had set a "read receipt" on the email prior to sending. Respondent's deletion of an

email from his immediate administrator without reading it was an act of insubordination.

83. Complainant established by a preponderance of the evidence that the email referenced in Charge 31 was sent to Respondent by Ms. Adkins-Barlow. However, it was not established by a preponderance of the evidence that he received the email or that he was responsible for the email being deleted. Accordingly, it was not established by a preponderance of the evidence that deletion of the email was an act of insubordination.

84. In Charge 32 of the Accusation, Complainant alleges:

On February 11, 2014, Respondent deleted an email sent to him by Ms. Adkins-Barlow regarding "Adult Transition Info Request." Again, Ms. Adkins-Barlow had set a "read receipt" in order to determine if Respondent was opening her emails. Respondent's failure to read and instead to delete the email from his immediate administrator without reading it is an act of insubordination.

85. Complainant established by a preponderance of the evidence that the email referenced in Charge 32 was sent to Respondent by Ms. Adkins-Barlow. However, it was not established by a preponderance of the evidence that he received the email or that he was responsible for the email being deleted. Accordingly, it was not established by a preponderance of the evidence that deletion of the email was an act of insubordination.

86. In Charge 33 of the Accusation, Complainant alleges:

On February 12, 2014, Respondent was provided a memo by Acting Principal Ms. Adkins-Barlow. Ms. Adkins-Barlow requested to meet with Respondent to discuss his PPAS interim review. Respondent was provided with several choices, and was informed the interim conference would take approximately 30 minutes. On this day, Ms. Adkins-Barlow stopped by Compton Adult School at approximately 9:00 a.m. to present Respondent with the memo. Respondent was not present, and had not arrived. Ms. Adkins-Barlow left the memo on Respondent's desk. Ms. Adkins-Barlow asked class staff to have Respondent call the office upon arrival. Upon inquiry of the attendance clerk by Ms. Adkins-Barlow, Respondent had not called by 2:30 p.m. Ms. Adkins-Barlow noticed that Progress reports envelope had not been opened for corrections and distribution to students' families, from the previous week's review. In addition, according to Ms. Adkins-Barlow's visitation records, Respondent informed her on February 21, 2014, that he would not be able to meet with Ms. Adkins-Barlow regarding his Interim PPAS due to family problems. Ms. Adkins-Barlow subsequently mailed him his unsatisfactory evaluation stating that his performance plan remains in effect.

87. Complainant established the factual allegations alleged in Charge 33 of the Accusation by a preponderance of the evidence. However, it was not established by a preponderance of the evidence that Respondent was not on the campus at 9:00 a.m. or that he received Ms. Adkins-Barlow's message and understood the message to mean that he was to contact her.

88. In Charge 34 of the Accusation, Complainant alleges:

On March 14, 2014, a Notice of Unsatisfactory Performance and Unprofessional Conduct was issued to Respondent by Cuauhtemoc Avila, Ed.D., Assistant Superintendent, Educational Programs dated March 14, 2014.

89. Complainant established the factual allegations of Charge 34 of the Accusation by a preponderance of the evidence.

90. In Charge 35 of the Accusation, Complainant alleges:

On Wednesday, March 19, 2014, Respondent left school around 10:30 a.m. and never returned to his classroom for the rest of the day. On Friday morning, March 21, 2014, Principal Mr. Donat met with Respondent at Compton Adult School in his classroom regarding this matter and he stated that he did leave school at 10:30 a.m. and went to drop off some papers at two different sites within the PAU, and he stated he returned about noon on the same day. His special education classroom students had been left in the supervision of his paraeducators for 2.5 hours and did not receive services by a teacher. This conduct led to a letter of reprimand dated March 26, 2014, by Principal Neil Donat.

91. Complainant established by a preponderance of the evidence that Respondent left the school between 10:30 and 11:00 a.m. to deliver papers to different sites within the PAU and returned between noon and 1:00 p.m. The students were left in the care of the paraeducators during that time. Mr. Donat issued Respondent a reprimand dated March 26, 2014 as a result.

92. In Charge 36 of the Accusation, Complainant alleges:

On Thursday, March 20, 2014, Respondent arrived twenty minutes late to the Avalon PAU staff meeting, and mentioned to the Regional Director, Pamela Branch, who was in attendance that he always comes late. The meeting started on time at 3:00 p.m. When Respondent arrived, Respondent crossed in, front while Mr. Donat was addressing staff. Respondent sat with another teacher, and engaged in side-bar conversation that was disruptive to the meeting. This behavior led to a letter of reprimand dated April 14, 2014 issued to Respondent by Neil Donat, Principal.

93. Complainant established by a preponderance of the evidence that Respondent was twenty minutes or less late to the Avalon PAU staff meeting which had a scheduled start time of 3:00 p.m. Respondent walked behind Mr. Donat. However, a colleague that arrived at the same time and Dr. Banks, did cross in front of Mr. Donat and were distractions to Mr. Donat. Respondent did not engage in a side-bar conversation with another teacher or disrupt the meeting. Instead, he did ask the person seated next to him where the speaker was in the agenda. Mr. Donat issued Respondent a letter of reprimand dated April 14, 2014 based upon the tardiness and the alleged disruption.

94. In Charge 37 of the Accusation, Complainant alleges:

On Wednesday, April 2, 2014, at 9:10 a.m., Mr. Donat stopped by to visit Respondent's classroom and did not see him in the room. Mr. Donat asked his classroom paraeducator where Respondent was and the response from him was that he had left to go to the PAU office. Mr. Donat drove back to the PAU and Respondent was not in the office.

Mr. Donat drove back to Respondent's school at 9:35 a.m. and Respondent was not in his room. Mr. Donat called the PAU office and Respondent had not arrived, meaning Respondent was not at either the PAU office or his site. Mr. Donat also noticed Respondent's car was not in the school parking lot. Mr. Donat waited at Respondent's school until 10:00 a.m. and received a call from the office telling him that Respondent arrived at the PAU. Mr. Donat drove back to the school and Respondent's excuse was he needed to use a printer in the PAU office because he did not have a printer in his room and his explanation in the lapse of time from when he left his site and arrived at the PAU was that he was in the restroom at his school. His special education students did not receive services for more than 2.5 hours. This behavior led to a letter of reprimand dated April 14, 2014 issued to Respondent by Neil Donat, Principal.

95. Complainant established by a preponderance of the evidence that on April 2, 2014, at 9:10 a.m., Mr. Donat stopped by to visit Respondent's classroom and did not see him in the room. Mr. Donat interrogated each of the paraeducators separately about Respondent's whereabouts, and learned that Respondent had gone to the PAU office. The paraeducators were upset and intimidated by Mr. Donat's interrogation and agitated behavior. Mr. Donat drove back to the PAU office and did not see Respondent in the office. It was also established that Mr. Donat drove back to Compton adult school at 9:35 a.m. and did not see the car that he believed Respondent would be driving in the parking lot. At that time, Respondent owned three automobiles. Mr. Donat was looking for a white jaguar which he believed that Respondent would be driving that day. Instead, Respondent was driving his usual automobile, which was a silver Mercedes-Benz. It was not established by a preponderance of the evidence that Respondent's car was not in the parking lot at 9:10 a.m. Respondent credibly testified that he went to the restroom at the school before driving to the PAU office to print materials for his class. At 10:00 a.m., the PAU office staff called Mr.

Donat to advise him that Respondent was in the PAU office. Mr. Donat was focused on catching Respondent in a lie and for that reason did not call Respondent's cellphone to ascertain his location and instead drove back and forth between the two locations.

96. In Charge 38 of the Accusation, Complainant alleges:

On April 10, 2014, Mr. Donat arrived at Respondent's assigned school, Compton Adult School at 7:45 a.m. Between 7:50 a.m. and 8:00 a.m. the student bus arrived and the students entered Respondent's assigned classroom where Respondent was not present and there was no Certificated Staff Member present. Mr. Donat stayed with the students until 8:20 a.m. when Mr. Donat observed Respondent driving into the school parking lot. Respondent stayed in his car for five minutes until 8:25 a.m. and he arrived in his classroom at 8:30 a.m. Respondent made the dishonest comment that he just came back from the restroom with one of the students. This behavior led to a letter of reprimand dated April 14, 2014 issued to Respondent by Neil Donat, Principal, as his special education students did not receive services for at least 45 minutes.

97. Complainant established by a preponderance of the evidence that Respondent was late on April 10, 2014, arriving on campus sometime between 8:25 a.m. and 8:30 a.m. and arriving at his classroom between 8:25 a.m. and 8:30 a.m. Respondent credibly testified that he told Mr. Donat that he had stopped at the restroom, but never said that he had taken a student to the restroom. Complainant also established that the students were in the care of the paraeducators. Respondent called the PAU office and advised the secretary that he would be late. It was not established by a preponderance of the evidence that Respondent made any dishonest comments although he did tell Mr. Donat that he had just come from the restroom.

98. In Charge 39 of the Accusation, Complainant alleges:

On Wednesday, April 30, 2014, at 10:15 a.m. Mr. Donat stopped by to visit Respondent's classroom and did not see him in the room. Mr. Donat asked his classroom paraeducators and the response was Respondent had left for a doctor's appointment for his arm.

The classroom did not have a certificated staff member in the room, Mr. Donat went next door and asked the other Special Education Teacher if Respondent had asked her to cover his room and her response was that Respondent had not asked her to cover his room.

When Mr. Donat returned to the PAU office at about noon, the Assistant Principal, Joe Mahabir, told Mr. Donat that Respondent had called at about 11:45 a.m., saying he was at the doctor's office. The Assistant Principal also stated that he had directed Respondent to bring in a doctor's note before he

returned to his classroom. At about 12:55 p.m. Mr. Donat drove back to his school, and noticed Respondent's car was in the parking lot. He did not show up at the PAU office until 4:00 p.m. His students did not receive services for at least 2 hours and 45 minutes. This behavior led to a letter of reprimand issued on May 7, 2014 by Neil Donat, Principal.

99. Complainant established the factual allegations in Charge 39 of the Accusation by a preponderance of the evidence except that it was not established that Mr. Mahabir asked Respondent to bring a doctor's note to the office before returning to class. Respondent credibly testified at hearing that he went straight to class after the medical appointment, then delivered the doctor's note to the office at 4:00 p.m. after completing his work day. Respondent also credibly testified that he was not instructed to deliver the doctor's note before going back to work. His testimony was not contradicted in this regard.

100. In Charge 40 of the Accusation, Complainant alleges:

On Monday, May 5, 2014, Mr. Donat arrived to Respondent's classroom. Respondent asked why he was not registered to attend an English Learner Training that other teachers were attending. Mr. Donat informed him the error was clerical, and advised him that the same training would take place on Tuesday, May 6, 2014. Mr. Donat permitted him to attend the May 6, 2014 training. Respondent attended the English Learner Training at the Head Start Building, 10100 Pioneer Blvd., Santa Fe Springs, CA 90607.

Mr. Donat was informed by the administrator overseeing the training on May 6, 2014 that Respondent left the training stating he was going to a doctor's appointment. Respondent did not sign in for the afternoon portion of the training. Mr. Donat contacted the Worker's Compensation Department. Respondent did not have a Worker's Compensation related doctor's appointment, nor did Respondent return to the site. However, a Worker's Compensation appointment was scheduled in advance on April 7, 2014 for May 5, 2014, and Respondent was a "NO SHOW" to this appointment according to the Worker's Compensation Department. This behavior led to a letter of reprimand issued on May 7, 2014 by Neil Donat, Principal.

101. Complainant established by a preponderance of the evidence that Respondent had been told that he would be scheduled to attend an ELD training on May 5, 2014, but found out at the last minute that due to an administrative error he was not registered. He contacted a colleague that was in attendance at the training to inquire if the training was full. Respondent learned from his colleague that there was space available and the trainer would allow him to attend. When Mr. Donat came to Respondent's class, Respondent asked him if he could attend the training. Mr. Donat promised to check to see if Respondent could attend. Late in the day, Mr. Donat advised him that he could not attend on May 5, 2014, but that Respondent would be scheduled for the following day and would attend in the space that had been reserved for Mr. Donat. At that time, Respondent advised Mr. Donat that he had an

appointment in the afternoon and would not be able to attend for the entire day. Mr. Donat then told Respondent that he could "just leave" if he had to in the afternoon. Respondent was suspicious of Mr. Donat's instruction. When he attended the training the following day, he spoke to the trainer during the break and advised her that he would need to leave in the afternoon. The trainer advised Respondent that he could receive credit for the training if he took the second half of the training when it was next offered. Mr. Donat checked with the trainer to see if Respondent had attended the training. Mr. Donat verified that Respondent had not attended the afternoon portion of the training and had informed the trainer he had an appointment. Mr. Donat assumed that the appointment involved Respondent's ongoing worker's compensation matter, but it did not. Claimant did not establish by a preponderance of the evidence that Respondent was dishonest about having to attend a medical appointment in the afternoon.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter pursuant section 44944. (Factual Findings 1 through 4.)

2. Pursuant to section 44944, subdivisions (d)(1)-(3), when a school board recommends dismissal for cause, the Commission may only vote for or against it. Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction.

3. LACOE 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, 1039.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700,709.)

4. The Accusation and Statement of Charges does not set forth specifically which of LACOE's factual allegations relate to each of the four alleged grounds for dismissal: (1) unprofessional conduct, (2) immoral conduct, (3) evident unfitness for service, and (4) refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district.

5. Section 44932, as amended, provides in pertinent part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral conduct, including but not limited to, egregious

misconduct....¶

(2) Unprofessional conduct.

...[¶]...

(4) Dishonesty

(5) Evident unfitness for service.

...[¶]...

(7) 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 or by the governing board of the school district employing him or her.

6. The term “immoral conduct” has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as 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 Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. “Unprofessional conduct” as used in section 44932, subdivision(a)(2), as amended, may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553; *Perez v. Commission on Professional Competence* (1983) 149 Cal. App. 3d 1167, 1174.)

8. “Evident unfitness for service,” within the meaning of section 44932, subdivision (a)(6), as amended, 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.) Evident unfitness for service 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 p. 1444.)

9. Under section 44932, subdivision (a)(8), as amended, 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, 84.) 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.)

10. With respect to determination of witness credibility: On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted -- but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability. (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.) The trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.* at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

11. The Commission found that Complainant did not establish by a preponderance of the evidence that Respondent's conduct was immoral. It was not established that Respondent's conduct was inconsistent with rectitude, indicative of corruption, indecency, depravity, dissoluteness; nor that he displayed willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community or an inconsiderate attitude toward good order and the public welfare. The Commission determined that cause does not exist to dismiss Respondent for immoral conduct, pursuant to section 44932, subdivision (a) (1), for the reasons set forth in Factual Findings 7-101 and Legal Conclusions 3, 5, 6 and 10.

12. The Commission found that Complainant established by a preponderance of the evidence that Respondent's conduct was unprofessional. Respondent's delegation of his email to paraeducators and his failure to be in his class providing instruction throughout the class day were unprofessional. The conduct over a substantial period of time constituted conduct unbecoming of a member of a profession in good standing pursuant to section 44932, subdivision (a)(2). While Respondent's classroom instruction may not have reflected best practices, it did not rise to the level of constituting unprofessional conduct. (Factual Findings 25, 29, 63, 65, 75, 87, 91, 93, 95 and 97 and Legal Conclusions 3, 5, 7 and 10.)

13. The Commission found that Complainant did not establish by a preponderance of the evidence that Respondent is unfit to teach. It was not established that Respondent has a defect in his temperament or a fixed character trait that makes him unfit to teach. The Commission determined that cause does not exist to dismiss Respondent for evident unfitness for service, pursuant to section 44932, subdivision (a)(6), for the reasons set forth in Factual Findings 7-101 and Legal Conclusions 3, 5, 8 and 10.

14. The Commission determined that cause does not exist to dismiss Respondent for persistent violation of school laws of the state or the reasonable regulations prescribed by the government of the public schools by the state board or by the board of the school district employing him pursuant to section 44932, subdivision (a)(8), for the reasons set forth in Factual Findings 7-101 and Legal Conclusions 3, 5, 9 and 10.

15. Even where unprofessional conduct or evident unfitness for service are established, it must also be established that such unprofessional 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; *Woodland, supra*, 4 Cal.App. 4th at pp. 1444-1445.) Under the facts of the *Morrison* 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 the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

16. 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.) The *Morrison* factors are analyzed with Respondent to Respondent's conduct as follows:

(a) *Morrison* Factor: *The likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity.* The conduct adversely affected teachers to a mild degree when they were called upon to "keep an eye" on Respondent's students when he was not where he should be. The conduct also placed an undue burden on the paraeducators to assume total responsibility for the class during his absences. The students were adversely affected by Respondent's conduct when he was not in the classroom because they did not receive the services of a credentialed teacher to which they were entitled.

(b) *Morrison* Factor: *The proximity or remoteness in time of the conduct.* The conduct was proximate in time.

(c) *Morrison* Factor: *The type of teaching certificate held by the teacher.* Respondent held a special education credential which was the appropriate credential.

(d) *Morrison* Factor: *The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct.* There were no extenuating or aggravating circumstances.

(e) *Morrison Factor: The praiseworthiness or blameworthiness of the motives resulting in the conduct.* Respondent's motives were neither praiseworthy nor blameworthy.

(f) *Morrison Factor: The likelihood of recurrence of the questioned conduct.* The Commission found that the conduct is unlikely to recur and specifically found that Respondent responds to specific unequivocal direction to change his conduct.

(g) *Morrison Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.* No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from LACOE.

17. Even where cause for dismissal has been established, the Commission has broad discretion to determine whether discipline is warranted. (*Fontana, supra*, 45 Cal.3d at pp. 220-222.) A disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal. (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 343-344.)

18. The Commission determined that the instances of unprofessional conduct, although constituting cause for dismissal under section 44932, subdivision (a)(2), were insufficient, separately and in the aggregate, to warrant dismissal or to demonstrate that respondent is unfit to serve as a teacher. The Commission members agree unanimously. The Commission does not believe that dismissal is necessary to protect students, school employees, or others or to further deter Respondent from engaging in similar conduct in the future. The Commission found that Respondent's practice of leaving his students with paraeducators while he handled matters at the PAU office or other school related business without a substitute teacher or other certificated staff present to be disturbing whether or not it complied with common practice at LACOE and regardless of what other responsibilities Respondent may have had for LACOE. Had the Commission the discretion to impose a suspension upon Respondent for this conduct, it would have chosen to do so. However, imposition of a suspension is not an option available to the Commission here. Accordingly, all evidence having been considered, the Commission found that Respondent is fit to teach and is a capable teacher serving a difficult population of students and should not be dismissed.

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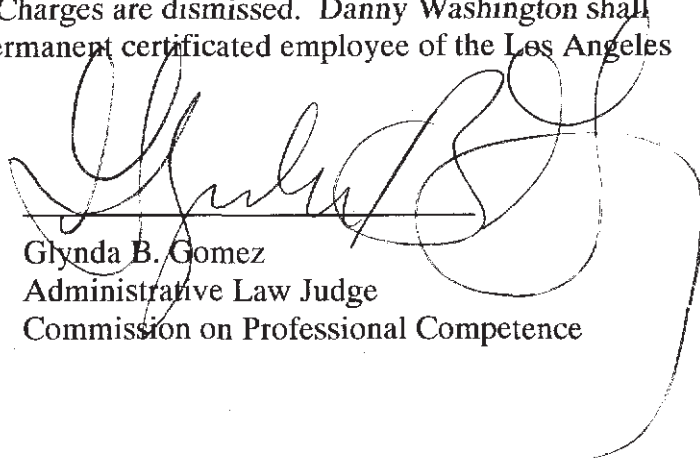
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ORDER

The Accusation and Statement of Charges are dismissed. Danny Washington shall not be dismissed from his position as a permanent certificated employee of the Los Angeles County Office of Education.

Dated: July 7, 2015



Glynda B. Gomez
Administrative Law Judge
Commission on Professional Competence

Dated: July____, 2015

Debbie Frame
Member
Commission on Professional Competence

Dated: July____, 2015

Kelly J. Glusovich
Member
Commission on Professional Competence

ORDER

The Accusation and Statement of Charges are dismissed. Danny Washington shall not be dismissed from his position as a permanent certificated employee of the Los Angeles County Office of Education.

Dated: July __, 2015

Glynda B. Gomez
Administrative Law Judge
Commission on Professional Competence

Dated: July __, 2015

Debbie Frame
Member
Commission on Professional Competence

Dated: July 20, 2015



Kelly J. Glusovich
Member
Commission on Professional Competence

suspension upon Respondent for this conduct, it would have chosen to do so. However, imposition of a suspension is not an option available to the Commission here. Accordingly, all evidence having been considered, the Commission found that Respondent is fit to teach and is a capable teacher serving a difficult population of students and should not be dismissed.

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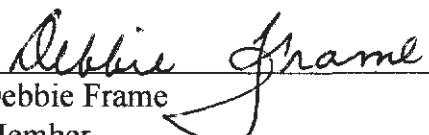
ORDER

The Accusation and Statement of Charges are dismissed. Danny Washington shall not be dismissed from his position as a permanent certificated employee of the Los Angeles County Office of Education.

Dated: July____, 2015

Glynda B. Gomez
Administrative Law Judge
Commission on Professional Competence

Dated: July 7, 2015



Debbie Frame
Member
Commission on Professional Competence

Dated: July____, 2015

Kelly J. Glusovich
Member
Commission on Professional Competence