

**BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
MODESTO CITY SCHOOLS
STATE OF CALIFORNIA**

In the Matter of the Dismissal against:

JEFF ZEHNER, Respondent

OAH No. 2019050922

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (CPC or Commission) in Modesto, California, on September 10, through 13, 2019. The Commission was comprised of John Colombo, Andrea Mitchell, and Administrative Law Judge Erin R. Koch-Goodman.

Roman J. Muñoz and Nia D. Franklin, Attorneys at Law, Dannis, Woliver, Kelley, represented the Modesto City Schools (District).

Ernest H. Tuttle III, Attorney at Law, Tuttle & McCloskey, represented Jeff Zehner (respondent), who was present at hearing.

The Commission met to deliberate. The matter was submitted for decision on September 13, 2019.

FACTUAL FINDINGS

1. Respondent has been employed by the District as an elementary school teacher since 1990. Specifically, respondent taught grades 4, 5, and 6, at Burbank Elementary School (Burbank), from 1990 to 2000 and 2003 to 2007; El Vista Elementary School, from 2000 to 2003; and Enslen Elementary School (Enslen), from 2007 to 2016. While at Burbank and Enslen, respondent organized a "Noon League Sports Program" (Noon League). Students signed up to play team sports during their lunch hour and respondent created teams and set game schedules for different sports throughout the year. In addition, for a period of time including 1998 to 2004, respondent coached a boys' basketball team at Grace M. Davis High School (Davis). In 2011, while teaching at Enslen, respondent was named "Teacher of the Year" for Stanislaus County, grades 4-6.

2. During his tenure, respondent taught a diverse population of students. At Burbank, respondent served a population of low socio-economic, mostly minority students, where parental involvement was not common. Conversely, at Enslen, respondent served a population of high socio-economic, mostly Caucasian students, where parental involvement was high.

Statement of Charges

3. On April 15, 2019, the Board of Trustees (Board) approved Resolution No. 18/19-5CS adopting a Statement of Charges for Dismissal and Immediate Suspension Without Pay against respondent. The Board alleged multiple violations of the Education Code, including immoral conduct, dishonesty, evident unfitness for service, and persistent violation of or refusal to obey the school laws of the State or reasonable regulations prescribed for the government of the public schools by the State Board or by the governing board of the school district employing him. (Ed. Code, § 44932,

subds. (a)(1), (4), (6), & (8).) More specifically, the Statement of Charges alleges respondent engaged in a series of sexual games with a District student, from 1997 to 2004, and lied to the District about the conduct at issue. The District served the Statement of Charges on respondent on April 16, 2019. On April 23, 2019, respondent timely returned a Demand for Hearing and Notice of Defense. A hearing before the Commission followed.

Conduct at Issue

4. In 2018, J█████ L█████ (J█████) reported to the Modesto Police Department that, from 1997 to 2004, when he was a District student, respondent engaged in a series of inappropriate sexual games with him. Also in 2018, J█████ spoke to the Enslen principal, informing her of the same allegations. The District conducted an investigation, interviewing respondent and J█████. The Statement of Charges followed.

J█████

5. J█████ is 31 years old. He is single and lives in San Diego. He was born and raised in Modesto, and was a District student from 1993 to 2006. He attended Burbank, Mark Twain Junior High School (Mark Twain), and Davis. He was a better-than-average student and an exceptional athlete, playing both basketball and football. J█████ dreamed of someday playing in the National Football League (NFL) as a quarterback.

6. After high school graduation, J█████ attended Marshall University, in Huntington, West Virginia, on a full athletic scholarship for football; however, he left Marshall because of disagreements with the head coach. He transferred to Mendocino Community College, and then attended and graduated from California Lutheran

University in Thousand Oaks, California, where he continued to play football. Ultimately, J [REDACTED]'s dreams of playing in the NFL were never realized. However, J [REDACTED]'s older brother played in the NFL for the Philadelphia Eagles.

7. Today, J [REDACTED] has a job coaching athletics in San Diego, but his employment history is rife with short-term jobs. He has had difficulty maintaining long-term employment and forming lasting relationships with people. He cites problems with male authority and an inability to trust people. He has also been unfaithful to almost every girlfriend, admitting an addiction to pornography and being consumed with lustful and immoral desires. In 2017, J [REDACTED] sought help for his addiction; and found a men's sexual purity support group at Parkhill Church. J [REDACTED] discovered that his inability to thrive, poor conduct, and destructive behaviors were driven by trauma he experienced in his youth. The group leader identified red flags, including being exposed, before age 13, to pornography and masturbation by a stranger. J [REDACTED] immediately thought about his relationship with respondent, and that, from 1997 to 2004, respondent had engaged J [REDACTED] in a series of inappropriate sexual games, involving pornography, vibrators, masturbation, and inappropriate touching. J [REDACTED] spoke to the group leader and then to his mother, recounting respondent's behavior to each of them. He then reported the same to the Modesto Police and the Enslen principal. J [REDACTED] was interviewed by the Modesto Police and the District, and called as a witness at hearing by the District. A summary of his testimony follows.

8. J [REDACTED] met respondent in 1997, while playing in the Noon League. He was 10 years old and in grade 4 at the time. Respondent took an interest in J [REDACTED], telling J [REDACTED] he was an excellent athlete; encouraging him to practice and play; and offering to help J [REDACTED] hone his skills. J [REDACTED] enjoyed respondent's attention. At home, J [REDACTED] had very little parental supervision/attention. His mother was working multiple jobs,

and his father was in jail. J [REDACTED] saw respondent as a mentor and a father-figure; he looked up to respondent, and wanted to make him proud.

9. Between 1998 and 2000, grades 5 and 6, respondent was J [REDACTED]'s classroom teacher. J [REDACTED] also continued to play in Noon League for respondent. During that time, respondent loaded J [REDACTED] with certificates of accomplishment and outstanding achievement awards in both academics and athletics. At the same time, respondent repeatedly took J [REDACTED] to the mall and bought him athletic gear, including shoes and clothes. He also took J [REDACTED] to Davis to watch the freshman boys' basketball team practice and play games. Sometimes, respondent arranged for J [REDACTED] to be the scorekeeper for a Davis game.

10. At age 13, in grade 7 (2000-2001), J [REDACTED] attended Mark Twain. Respondent telephoned J [REDACTED] at home to talk and invited J [REDACTED] over to his condominium. But without daily contact at school, their communication waned. Then, respondent bought J [REDACTED] a home computer. Thereafter, J [REDACTED] and respondent began communicating more often again via email and AOL Instant Messenger. Respondent invited J [REDACTED] over to his condominium; J [REDACTED] went, and almost every time, he and respondent were alone together. The two worked out in respondent's converted garage/weight room, watched sports on television, and talked.

11. During one visit, respondent taught J [REDACTED] how to play cards (blackjack and poker) and gave J [REDACTED] money to bet on their games. Respondent also introduced J [REDACTED] to betting on sporting events; the two bet on both college and professional games. When J [REDACTED] lost a bet, respondent assigned him a "consequence": wash respondent's car, help in respondent's classroom, or clean something in respondent's condominium. J [REDACTED] completed the assigned tasks.

12. At the same time, respondent continued to buy J. [REDACTED] athletic gear, either by going to the mall or by telephone at EastBay Sports. In addition, respondent began taking J. [REDACTED] to sporting events, both college and professional matches. Respondent drove J. [REDACTED] to and from the events, paid for J. [REDACTED]'s ticket, and bought J. [REDACTED] food. Most often, the two were alone together in the car. On one occasion, while driving, respondent put his hand on J. [REDACTED]'s thigh. J. [REDACTED] was immediately uncomfortable and moved his leg away from respondent. On another day, respondent told J. [REDACTED] about his mentor, who had been fired from teaching for becoming too close to students. J. [REDACTED] was confused by the story, wondering why respondent would tell him about it.

13. In summer 2001, respondent paid for J. [REDACTED] to attend multiple basketball camps, including Stanford University, Mike Terpstra (Oakland), and Santa Clara University. Respondent frequently visited J. [REDACTED] at camp and watched him play. Respondent also communicated with the camps regarding J. [REDACTED], and arranged for J. [REDACTED] to be placed with certain coaches. That summer, respondent also bought J. [REDACTED] a book - Russell Rules: 11 Lessons on Leadership From the Twentieth Century's Greatest Winner, by Bill Russell. Respondent wrote in the front cover:

J. [REDACTED], To a friend I treasure dearly. This book is to serve memory to the basketball camps for the summer of 2001. You keep improving and you have unlimited potential as an athlete. But no matter how great you become or the success you achieve, you will never be a better athlete than you are a person. You are a special human being.

Always A Friend, J. Z.

14. At age 14, in grade 8 (2001-2002), J█████ continued to visit respondent at his condominium. During one visit, respondent talked to J█████ about "the birds and the bees." He cautioned J█████ about the consequences of an unplanned child and the impact it would have on his future prospects as an athlete. He told J█████ to use condoms when he had sex. He also encouraged J█████ to masturbate, telling him "It feels good. You can do it before school." In addition, during an online discussion, respondent challenged J█████: "let's keep track of the number of times we masturbate in one day, and tally our 'scores'", or words to that effect. Thereafter, respondent, on occasion, invited J█████ over to his condominium using the words: "we can watch sports and 'score.'"

15. J█████ continued to visit respondent at his condominium. They worked out, talked, watched sports on television and bet on games. Now when J█████ lost a bet, respondent gave him different "consequences." The first time, respondent handed J█████ a typed-out list of "challenges," all sexual in nature, with corresponding dollar figures next to each one. Respondent told J█████ he would pay the amounts listed for each challenge J█████ completed. After that, respondent left the list of "challenges" sitting on his master bathroom vanity; and J█████ was to go into respondent's master bedroom to complete a challenge. When a television game took a commercial break, or at halftime, respondent told J█████ "anytime you're ready, you can go do a 'challenge,'" or words to that effect. During countless visits, J█████ walked into respondent's master bathroom to find the list. J█████ completed each challenge while he was alone in respondent's bedroom, and then respondent paid him.

16. J█████ completed many "challenges" for respondent, including: "put your flaccid penis on a piece of paper and draw an outline; then, make your penis erect and put it on a piece of paper and draw an outline"; "use a handheld massager on your penis while you masturbate"; "masturbate while viewing a picture from a

Sports Illustrated Swimsuit magazine and ejaculate on the picture"; and "watch the pornographic movie on the VHS tape in the video recorder in my bedroom and masturbate." Sometimes, respondent asked J [REDACTED] for proof he had completed a challenge, so J [REDACTED] left the Sports Illustrated picture he had ejaculated onto and the outline of his erect penis on respondent's bathroom vanity. For the latter, respondent told J [REDACTED], "looks pretty good there," or words to that effect. A few times, when J [REDACTED] lost a bet, respondent "challenged" J [REDACTED] to get dressed nicely and go to Olan Mills to get photos taken; J [REDACTED] always refused.

17. One weekend, respondent took J [REDACTED], and his best friend, L [REDACTED] M [REDACTED] (A [REDACTED]), to Mt. Diablo for a day-hike. Respondent drove the trio about one-hour west of Modesto to Mt. Diablo. While at Mt. Diablo, respondent took candid photos of the boys. On another weekend, respondent drove J [REDACTED] and A [REDACTED] about one-hour east of Modesto to his cabin in Pinecrest. While at the cabin, respondent took the boys hiking and they all played outdoor games, including darts. Again, respondent took candid photos of the boys. In one photo, respondent asked the boys to turn away from him, lower their pants and underwear below their buttocks, and "moon" him; the boys complied. In the evening, respondent organized an indoor game of "dark tag," with the cabin lights out and the three of them each armed with a can of shaving cream. They ate dinner together and talked, and then the boys went to sleep in the cabin's guestroom. The next morning, while the boys were still asleep, respondent entered their bedroom with a vibrator in his hand. Respondent sat down on J [REDACTED]'s bed, turned the vibrator on, and held it against J [REDACTED]'s penis. J [REDACTED] woke up, startled, and pushed respondent's hand away from his body. Respondent remained sitting on J [REDACTED]'s bed, laughing. J [REDACTED] got out of bed.

18. Notwithstanding the above, J [REDACTED] continued to visit respondent at his condominium. At some point, respondent expressed a desire for J [REDACTED] to attend Davis,

respondent's alma mater and where he coached boys' basketball, and not Modesto High School where J█████ was assigned. Respondent told J█████ to select the Davis "Health Academy" on his District paperwork, a program for students interested in a career in the health/medical fields. Although J█████ was not interested in the health/medical fields, he selected the Davis "Health Academy" on his District paperwork and was reassigned to Davis.

19. In the summer before high school, respondent paid for J█████ to attend multiple basketball camps, including California State University, Stanislaus and Modesto Junior College. Respondent frequently visited J█████ at camp and watched him play. Respondent communicated with the camps regarding J█████, and directed camps to place J█████ with certain coaches. Respondent continued to buy J█████ athletic gear and take him to sporting events.

20. At age 15, J█████ began grade 9 at Davis (2002-2003). He played freshman football and basketball, with respondent serving as the assistant coach for the freshman boys' basketball team. Respondent continued to invite J█████ to his condominium to work out, watch sports, and talk; and J█████ continued to visit respondent. Respondent continued to make bets with J█████, and assign him sexual "challenges." That year, respondent bought J█████ a cellular telephone, and frequently called J█████ on it. When J█████ did not answer, respondent left a voicemail message; but respondent became angry with J█████ when he failed to promptly return his calls or J█████'s voice-mailbox was full and respondent was unable to leave a message. Respondent continued to buy J█████ athletic gear and take J█████ to sporting events. When J█████ began dating, respondent offered J█████ his condominium's guestroom to have "safe sex" with his girlfriend. Respondent also offered to buy J█████ condoms; J█████ refused.

21. That year, respondent started sending interest/recommendation letters to colleges and universities regarding J [REDACTED]'s athletic abilities. Respondent also had J [REDACTED] begin drafting the same. Respondent hired a college recruiter for J [REDACTED], to pursue an athletic scholarship/placement at a Division I school. One day, respondent told J [REDACTED] he needed a workout video to send to prospective colleges; so, respondent took J [REDACTED] to the Davis gym and set up his video-recorder. Respondent directed J [REDACTED] to start by shooting baskets, but respondent quickly became upset with J [REDACTED]. Respondent turned off the video-recorder, and told J [REDACTED], "you don't know how to shoot. We have to teach you how to shoot all over again" or words to that effect. J [REDACTED] was distressed with the interaction, and did not know why respondent was mad at him.

22. At age 16, in grade 10 (2003-2004), J [REDACTED] played sophomore/junior varsity (JV) boys' football and basketball. That year, respondent stopped coaching the freshman boys' basketball team and started working as the assistant coach for the JV boys' basketball team. When J [REDACTED] turned 16, respondent bought him a new car, leaving an approximately \$18,000 to \$20,000 cashier check at the dealership for J [REDACTED] and his mother to pick out the car. Respondent told J [REDACTED] he bought him the car because he wanted J [REDACTED] to concentrate on athletics and not have to work. At the same time, respondent began dating Rosie, his now wife. Respondent told J [REDACTED] not to tell Rosie that he had bought him a new car, because "she doesn't approve of our relationship." However, there was little risk J [REDACTED] would talk to Rosie, as respondent never left Rosie and J [REDACTED] alone in the same room together. Nonetheless, J [REDACTED] did not like Rosie.

23. While playing JV basketball, the varsity boys' basketball coach asked J [REDACTED] to move-up and play for him. Respondent strongly discouraged J [REDACTED] from

making the move, but J█████ chose to move-up anyway. Thereafter, the relationship between J█████ and respondent faded.

24. At high school graduation, respondent gave J█████ \$1,000. Since graduation, J█████ has seen respondent, face-to-face, fewer than five times; and they have communicated less than a dozen times, and even then, only briefly via email or Facebook messaging. While in college, J█████ contacted respondent and asked for money to pay his credit card debts; respondent agreed and gave J█████ between \$1,000 and \$2,000. After college, in 2012, J█████ found work as a volunteer football coach for California State University San Diego. He needed a laptop computer for work, but had limited funds. He contacted respondent and asked for money to buy a laptop computer; respondent agreed and gave J█████ money. J█████ contacted respondent after high school for money, because respondent had bought him things in the past and he hoped respondent would do so again.

25. In 2017, J█████ wrote respondent a letter, thanking him for helping and coaching him in basketball, sending him to camps, and encouraging him to read books; but also recounting for respondent the series of inappropriate sexual challenges he had performed, as a child, at respondent's behest. After that, J█████ told his mother, the Modesto Police, and the District about respondent's conduct. J█████ has hired a civil attorney. Today, J█████ reflected: "this is a tough deal. I was looking for a father figure; I trusted somebody and was manipulated and used for their pleasure." Now, "I'm not a little kid anymore. I know what happened and it was wrong. I'm not mad at [respondent]; I'm trying to forgive him; and I'm getting help. I [also] don't blame [respondent] for me not becoming an NFL player."

L [REDACTED] M [REDACTED] (A [REDACTED])

26. A [REDACTED] is 31 years old. He is married with two minor children and lives in Roseburg, Oregon with his family. He was born and raised in Modesto, and was a District student from 1993 to 2006. He attended Burbank, Mark Twain and Roosevelt junior high schools, and Davis. Most recently, A [REDACTED] served in the armed forces (2010-2019); he was in combat, and was honorably discharged.

27. In school, A [REDACTED] and J [REDACTED] were best friends. To date, A [REDACTED] and J [REDACTED] remain friends, although distant. When they are both in Modesto, they get together; otherwise, they communicate via infrequent texts. Less than a year ago, J [REDACTED] called A [REDACTED] and reported being a victim of respondent's abuse while he was in school. A [REDACTED] listened, but neither confirmed nor denied he too had been a victim of respondent. Then, A [REDACTED] was contacted by the District and asked about his interactions with respondent while he was in school. The District interviewed A [REDACTED] and called him as a witness at hearing. A summary of his testimony follows.

28. A [REDACTED] first met respondent in 1997, when he was 10 years old, in grade 4, and played in the Noon League. Respondent took an interest in A [REDACTED] and befriended him. Respondent asked A [REDACTED] about his home life, and A [REDACTED] reported being raised by his mother and grandmother, with no father at home. During grade 5, respondent contacted A [REDACTED]'s mother and asked if A [REDACTED] could switch tracks, so respondent could be his grade 6 teacher; A [REDACTED]'s mother agreed. At age 12, in grade 6 (1999-2000), A [REDACTED] was assigned to respondent's classroom. A [REDACTED] also continued to play in the Noon League for respondent. A [REDACTED] saw respondent as a coach, mentor, and father-figure; he looked up to respondent; and he respected respondent's opinion of him more than his own mother's opinion.

29. In grade school (1997-2000), respondent bought A [REDACTED] athletic gear, either at the mall or by phone from EastBay Sports. Respondent also took A [REDACTED] to Davis to watch the freshman boys' basketball team practice and play games.

30. In middle school (2000-2002), A [REDACTED] attended Mark Twain and Roosevelt. A [REDACTED] continued to communicate with respondent via email and AOL Instant Messenger. Respondent invited A [REDACTED] over to his condominium. A [REDACTED] went; sometimes, J [REDACTED] was also present. At his condominium, A [REDACTED] and respondent worked out, watched sports on television, ate, and talked. A [REDACTED] has a very specific and fond memory of making lasagna with respondent at his condominium.

31. On one visit, respondent taught A [REDACTED] how to play cards (blackjack and poker) and he gave A [REDACTED] money to bet on their games. Respondent also introduced A [REDACTED] to betting on sporting events; the two bet on both college and professional games. When he lost a bet, A [REDACTED] washed respondent's car or cleaned up around the condominium. A [REDACTED] also played in respondent's fantasy football league. A [REDACTED] went to respondent's condominium to draft his team; A [REDACTED] won the season in or about 2000.

32. Respondent also took A [REDACTED] to sporting events, both college and professional. Respondent drove A [REDACTED] to and from the events, paid for A [REDACTED]'s ticket, and bought A [REDACTED] food. In the summers of 2000 and 2001, respondent paid for A [REDACTED] to attend a couple of basketball camps, including Pacheco's Hoops. Respondent frequently visited A [REDACTED] and J [REDACTED] at camp and watched them play.

33. One weekend, respondent took A [REDACTED] and J [REDACTED] to Mt. Diablo for a day-hike. Respondent drove the trio about one-hour west of Modesto to Mt. Diablo. While at Mt. Diablo, respondent took candid photos of the boys. On another weekend,

respondent drove J [REDACTED] and A [REDACTED] about one-hour east of Modesto to his cabin in Pinecrest. While at the cabin, respondent took the boys hiking and they all played outdoor games, including darts. Again, respondent took candid photos of the boys. In one photo, respondent asked the boys to turn away from him, lower their pants and underwear below their buttocks, and "moon" him; the boys complied. Later, A [REDACTED] saw the photo at respondent's condominium.

34. Respondent continued to buy A [REDACTED] athletic gear, take him to sporting events, and invite him over to his condominium. Respondent also continued to make sports bets with A [REDACTED]. However, now when A [REDACTED] lost a bet, respondent did not assign him chores. Instead, respondent told A [REDACTED] he would pay him if he completed a challenge. A [REDACTED] accepted and went into respondent's master bedroom closet, masturbated and ejaculating onto a Sports Illustrated magazine picture. Respondent wanted proof of completion and told A [REDACTED] to leave the picture on the bathroom vanity after he completed the challenge. A [REDACTED] complied.

35. Notwithstanding the above, A [REDACTED] continued to visit respondent at his condominium. At some point, respondent expressed a desire for A [REDACTED] to attend Davis, and not Modesto High School, where A [REDACTED] was assigned. Respondent told A [REDACTED] to select the Davis "Health Academy" on his District paperwork; the program was for students interested in a career in the health/medical fields. A [REDACTED] was not interested in the health/medical fields, but he selected the Davis "Health Academy" on his District paperwork and was reassigned to Davis.

36. In or about the summer before high school, A [REDACTED] suffered a knee injury. He was unable to go to any basketball camps that summer and could not play freshman boys' basketball at Davis. Even still, respondent remained engaged in A [REDACTED]'s life.

37. At age 16, in grade 10 (2003-2004), A [REDACTED] played JV boys' basketball. That year, respondent stopped coaching freshman boys' basketball and started working as the assistant coach for the JV boys' basketball team. While playing JV basketball, the varsity boys' basketball coach asked A [REDACTED] to move-up and play for him. A [REDACTED] chose to move and play on the varsity team. Thereafter, the relationship between A [REDACTED] and respondent faded. The last time A [REDACTED] saw respondent was in 2007, about a year after he graduated from high school, about town in Modesto.

38. At hearing, A [REDACTED] admitted "this is not where I want to be." When J [REDACTED] called him, about a year ago, he tried to be a good friend and just listen. When the District called him, he was uncomfortable having to relive things from 20 years ago. Ultimately, he is torn. A [REDACTED] believes respondent "played a huge part in my life; he molded me; [and] the values I teach my children I got from him." Now, "my heart breaks; I did nothing wrong; I was just a kid; [what happened] was not good; I'm embarrassed to say I masturbated for money; I was a poor, young kid; I feel like I did something wrong; I'm disgusted. These are memories I've kept from 20 years ago."

RESPONDENT

39. Respondent is 54 years old. He was born in Pasadena, but grew up in Modesto. He attended Enslen, Roosevelt, and Davis. He went to Modesto Junior College and then California State University Stanislaus. He earned his teaching credential in Turlock. For 29 years, he has been employed by the District, and he has always received satisfactory teaching evaluations.

40. Respondent loves teaching and his students. He strives to be highly involved with students, and attends workshops and lectures to make himself a better teacher. He has developed creative teaching modalities to more fully engage students

in academic learning. He is also a strong advocate for involving kids in physical activity via team sports; hence, organizing the Noon League at Burbank and Enslen, for no pay.

41. Overall, respondent describes himself as a generous person and a poor money manager. Prior to July 2004, respondent's "practice" was to buy shoes and clothes for students in need, although he was unable to name any additional students, other than J [REDACTED] and A [REDACTED] and lavish his friends with expensive trips, including a 50th birthday weekend trip to play golf at Pebble Beach, Spy Glass, and Poppy Hills for three. However, on July 15, 2004, he married his wife, Rosie, and thereafter stopped spending on students and friends, because he needed to focus his finances on his family. Today, respondent and his wife are proud parents to two minor children, a boy and a girl. In 2012, respondent's mother died. She left respondent a substantial inheritance; and the inheritance money has allowed respondent to once again be financially generous with others.

42. Respondent confirmed meeting J [REDACTED] and A [REDACTED] in 1997 or 1998, when they were in grade 4, playing in the Noon League at Burbank; and contacting A [REDACTED]'s mother to request he switch tracks so A [REDACTED] could be in respondent's grade 6 class with J [REDACTED]. He admitted buying J [REDACTED] and A [REDACTED] athletic gear, because the boys asked for the items. He acknowledged taking J [REDACTED] and A [REDACTED] to Davis to watch boys' basketball practices and games, college and professional sporting events, Mt. Diablo for a day-hike, and overnight to his cabin at Pinecrest, all without other adults. He remembers having J [REDACTED] and A [REDACTED] over to his condominium, but only after they graduated grade 6, referring to them then as "former students." He also admitted making excellent lasagna. He did encourage both boys to attend Davis for high school, and he did tell them to designate their interest in the Davis "Health Academy" to ensure placement at Davis. Finally, he conceded paying for both boys to attend multiple basketball camps in or about the summers of 200, 2001, and 2002. In

addition, for J█████ alone, respondent also admitted buying: a home computer, a cellular phone, books, a college scout, and a new car (\$18,000 - \$20,000). After high school, respondent recalled giving J█████ \$1,000 to \$2,000 for credit card debt, and money for a laptop computer.

43. However, respondent denies teaching either boy how to play cards; betting with the boys on card games or sporting events; giving them money to bet with; or having them do chores or anything sexual while at his condominium. He also denies talking to J█████ about sex or offering his condominium's guestroom to J█████ to have sex in with his high school girlfriend. However, respondent acknowledged having a handheld massager for his back, with several attachments, but he could not remember whether he showed it to J█████ or not. Further, he denied placing his hand on J█████'s leg, at any time.

44. Respondent offered character and support testimony from seven colleagues and friends: Kristen Marine, Katrina Martin, Stephanie Orona, and Sarah Shank; Larry Ashabraner, Mark Musselmann, and Curtis Reynolds.

Kristen Marine, Katrina Martin, Stephanie Orona, and Sarah Shank

45. Ms. Marine worked with respondent at Enslen, and had a child in his class. Ms. Marine described respondent as a "well-respected teacher, who brought new ideas into the classroom." Ms. Martin also worked with respondent at Enslen, and found him to have "fantastic teaching skills." Ms. Orona worked with respondent at Enslen, and had a child with attention issues in his class. Ms. Orona noted her son "loved [respondent]." She was impressed with respondent's ability to "get kids involved." Ms. Shank has had two children in respondent's class. She is a "highly involved parent" at Enslen. She thinks of respondent as an "absolutely fabulous

teacher" and an "incredibly generous person." None of the women knew respondent when he taught at Burbank.

Larry Ashabraner

46. Mr. Ashabraner is a District elementary school teacher. He and respondent met at Burbank when their teaching schedules overlapped for a few months in the 2001-2002 school year. Mr. Ashabraner described respondent as "always very generous." He was aware respondent helped a student buy a car. Respondent was also very generous with Mr. Ashabraner: including Mr. Ashabraner and his family on a Zehner family trip to Disneyland; allowing the Ashabraner family to use the Zehner cabin in Pinecrest; and took Mr. Ashabraner golfing at Pebble Beach and to a three-day Ron Clark workshop in Atlanta, Georgia. Mr. Ashabraner considers respondent to be "enthusiastic about learning" and engaged with students inside and outside the classroom, sometimes even playing basketball with students at lunch.

47. Mr. Ashabraner has also interacted with respondent socially, including playing in respondent's fantasy football league. Respondent holds the draft at his condominium, and Mr. Ashabraner has attended. One year, Mr. Ashabraner arrived at the draft party and noticed several young men also drafting teams. Mr. Ashabraner questioned respondent, and respondent confirmed for Mr. Ashabraner that the young men were all former students. For Mr. Ashabraner, he wanted assurances that everyone playing in the league was over the age of 18 and no longer a District student, because "legally, I don't want to be involved with students outside the workplace. I want to leave work at work, and home at home." Mr. Ashabraner does not recall respondent saying he took two students overnight to his Pinecrest cabin. "If parents did not go, I would have questions. Being alone with students is not the best choice for an educator to make; not the best situation to put a teacher or a student in;

the appearance is not the best." Years earlier, Mr. Ashabraner recalled his credentialing program cautioning new teachers to: "make sure there are always two students present with you and always keep your classroom or office door open."

Mark Musselmann

48. Mr. Musselmann has been a District teacher for 28 years. He teaches and coaches basketball at Mark Twain. Mr. Musselmann has known respondent for 20 years. They met when respondent came to watch J█████ and A█████ play basketball at Mark Twain. Mr. Musselmann describes respondent as a colleague and his best friend, and characterizes him as "generous with everyone." Respondent took Mr. Musselmann to play golf at Pebble Beach, Spy Glass, and Spanish Hill for his 50th birthday. He is aware that respondent was helping J█████ and A█████ financially, and knows respondent bought J█████ a computer as well as paid the down payment on a car for him. He saw respondent as a mentor to J█████, in a normal relationship between a teacher and a former student. Mr. Musselmann has helped students before, giving a student \$500 once, explaining "It is not out of the ordinary for a teacher to financially help a student."

Curtis Reynolds

49. Mr. Reynolds works for the Stanislaus County Office of Education. He has been a District teacher at Burbank and Enslen, and coached girls' basketball. He has known respondent for 15 years; they have co-taught classes together; and become friends outside of work. Mr. Reynolds also has had a child in respondent's class. Mr. Reynolds believes respondent "relates well with kids." He described him as "a good basketball coach, and a better than average spender on kids; but providing extras is common for all teachers." Mr. Reynolds knew respondent paid for J█████ to attend

several basketball camps, and respondent told Mr. Reynolds he was helping J [REDACTED] make car payments. Respondent was also generous with Mr. Reynolds and his family, letting them use his Pinecrest cabin.

50. When questioned, Mr. Reynolds expressed concern about respondent having J [REDACTED] at his condominium without other adults present. Mr. Reynolds cautioned: this is "the part of education that scares the hell out of me . . . as a teacher and a coach, we are one accusation away from never being able to coach again. We must take as many precautions as possible." When Mr. Reynolds takes the girls' basketball team out-of-state, he insists on having female chaperones travel too.

Discussion

51. A teacher is an educator, a role-model, and a mentor; students aspire to be like their teachers. A teacher is also an authority figure, a power broker, and a guardian, with the ability to reward and discipline a student. To be a teacher requires selflessness and an ability to focus solely on assisting students in their journey to learn, grow, and discover self-reliance. To be a teacher means not negatively influencing, controlling, or manipulating students into acting for the teacher's own benefit. Children are vulnerable. They lack understanding and awareness of right and wrong, and they are powerless to reject a teacher. Finally, for students with absent parents, a teacher can become the strongest influence in their lives: such awesome power comes with awesome responsibility.

52. Between 1997 and 2004, respondent was a District teacher. His Burbank teaching assignment allowed him to meet J [REDACTED], a District grade 4 student. When they met, respondent was 32 years old and J [REDACTED] was 10. Over several years, respondent developed a personal relationship with J [REDACTED]. For J [REDACTED], respondent was an athletic

coach, a teacher, a mentor, and a father-figure. J [REDACTED] trusted respondent. Respondent saw J [REDACTED] as an excellent athlete, a former student, and a good friend.

53. J [REDACTED], A [REDACTED], and respondent testified at hearing. For many things, J [REDACTED], A [REDACTED], and respondent provided very similar factual accounts (e.g., Mt. Diablo day-hike, overnight at Pinecrest cabin, the purchase of items, basketball camps, etc.). Together, their testimony is taken as true. However, J [REDACTED] and A [REDACTED] also testified that respondent had them engage in sexual games and touching; while respondent denies any such conduct occurred. Given the factual dispute, a credibility evaluation is necessary.

54. J [REDACTED] offered compelling and tortuous testimony. His demeanor was, at all times, appropriate for the topic: solemn, intense, and emotional. He revealed extensive private and personal information, with no concern for his public image and no personal gain. Yet, at the same time, he acknowledged and thanked respondent for his help. Overall, J [REDACTED]'s testimony was mature and insightful and was deemed reliable. A [REDACTED] offered similar testimony, revealing private and painful facts about his childhood; and yet, he admitted remaining indebted to respondent for his help in becoming the man he is today. His demeanor reflected his struggle to share embarrassing facts about his childhood and his mentor. Ultimately, A [REDACTED] corroborated J [REDACTED]'s factual accounts and appeared at hearing without a bias or motive. Overall, A [REDACTED]'s testimony was deemed truthful and reliable.

55. In comparison, respondent's testimony was troublesome. First, he focused his testimony, almost entirely, on his most recent teaching position at Enslen and his recent awards and accolades; however, his teaching at Enslen is not at issue in this case. When asked about J [REDACTED] and A [REDACTED], specifically, respondent exhibited an inability to answer questions directly: he qualified his answers; used euphemisms (e.g., "No, not that I recall. No."); and claimed a lack of memory. In addition, respondent's

demeanor showed confusion and frustration and lacked any emotion, except when he spoke of his lasagna recipe. Ultimately, respondent has every motive to deny the allegations because his District job is at issue; yet, at the same time, respondent often appeared disconnected and uninterested in the proceedings. Overall, respondent's testimony was evasive and his demeanor lacked believability.

FACTS NOT IN DISPUTE

56. There was no dispute that respondent: repeatedly bought J [REDACTED] athletic gear, including clothes and shoes; bought him a computer, a cellular phone, books, and a car; took J [REDACTED] to sporting events, both college and professional; paid for J [REDACTED] to attend a myriad of basketball camps; hired a college scout for J [REDACTED]; took J [REDACTED] for a day-hike at Mt. Diablo and for an overnight trip to his Pinecrest cabin; and repeatedly entertained J [REDACTED] at his condominium, where the two were most often alone together.

57. Respondent freely admitted to all of the above and appeared completely unaware that these undisputed facts were problematic. First, respondent formed an inappropriately close relationship with J [REDACTED], a District student and a minor; and whether J [REDACTED] was a "former student" or not is a distinction without a difference. Second, respondent's male character witnesses were adamant that teachers should not be alone with a District student, or someone under the age of 18, and should not take a District student on an overnight trip without another adult present. Mr. Ashabraner explained further: "Being alone with students is not the best choice for an educator to make; not the best situation to put a teacher or a student in; the appearance is not the best." Third, repeatedly buying things for J [REDACTED], a student with limited means, left J [REDACTED] constantly indebted to respondent. Respondent's relationship with J [REDACTED] was rife with uneven power and influence, and respondent should have known better.

FACTS IN DISPUTE

58. Respondent denies talking to J█████ about sex and masturbation, offering J█████ his guestroom to have sex with his girlfriend, having J█████ perform a series of sexual challenge, and/or placing his hand on J█████'s thigh and a vibrator on J█████'s penis. Respondent's denials were not believable, and therefore, his testimony is not credited. The Commission finds that between 1997 and 2004, respondent engaged J█████ in a series of inappropriate sexual games.

MORRISON CRITERIA

59. 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 demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30. (*Fontana Unified School Dist. v. Burman (Fontana)* (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.

60. Before a decision can be made as to whether respondent's conduct was immoral (Ed. Code, § 44932, subd. (a)(1)), dishonest (Ed. Code, § 44932, subd. (a)(4)), constituted evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), and/or was a 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 or

by the governing board of the school district employing him (Ed. Code, § 44932, subd. (a)(8)), the Commission must determine 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.) The *Morrison* 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.)

LIKELIHOOD CONDUCT MAY HAVE ADVERSELY AFFECTED STUDENTS OR TEACHERS

61. Between 1997 and 2004, respondent spent an inordinate amount of time focused on one District student. Respondent's singular focus on J [REDACTED] took time and attention away from other equally deserving students in his classes, the Noon League, and those he coached in basketball. In addition, his failure to maintain proper student-teacher boundaries with J [REDACTED] is cause for further concern regarding other students in his sphere of influence.

62. Further, respondent's conduct reflects poorly on the District and teachers, in general. The District is now under greater scrutiny for failure to protect students; and teachers are now viewed as suspect, even if they have maintained proper boundaries with their students.

THE DEGREE OF THE ADVERSE EFFECT

63. Respondent's behavior has caused J [REDACTED] a great deal of suffering, resulting in an inability to thrive, repeated poor conduct, and destructive behaviors. More specifically, he has had difficulty maintaining long-term employment and forming lasting relationships with people. He has problems with male authority and an inability to trust people. He has also been unfaithful to almost every girlfriend, admitting an addiction to pornography and being consumed with lustful and immoral desires.

PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT

64. The conduct at issue took place over 15 years ago; between approximately 1997 and 2004, when J [REDACTED] was in grades 4 through 10, and he was between 10 and 16 years old. J [REDACTED] is now 31. However, remoteness in time does not excuse respondent's conduct.

TYPE OF TEACHING CERTIFICATE

65. Respondent is a Multi-Subject Credentialed teacher with 29 years of teaching experience.

EXTENUATING AND AGGRAVATING CIRCUMSTANCES

66. Respondent is a credentialed teacher. His behavior was offensive and inconsistent with the tenets of teaching. Respondent should have known better than to conduct himself as he did; and his behavior raises legitimate concerns about respondent's overall character and his ability to make good decisions.

LIKELIHOOD OF RECURRENCE

67. Between 1997 and 2004, respondent formed an incredibly close relationship with a District student; leaving J [REDACTED] beholden to respondent in any number of ways. At hearing, in 2019, respondent failed to recognize that his relationship with J [REDACTED], with or without the sexual games, was inappropriate. In fact, respondent freely admitted spending more than \$25,000 on J [REDACTED]. Given respondent's lack of insight and awareness, his conduct likely might occur again. However, respondent is now married with two minor children, and he is very occupied with his family. In addition, his most recent teaching position was at Enslen, with fully-engaged parents, and not Burbank, where students had minimal parental supervision. Altogether respondent's current situation makes the likelihood of repetition less, his children will grow up and move out, and he will again be left with a void to fill; and paired with his clear lack of judgement, the risk is too great.

ADVERSE IMPACT OR CHILLING EFFECT UPON THE CONSTITUTIONAL RIGHTS OF THE TEACHER INVOLVED OR OTHER TEACHERS

68. There was no evidence that dismissing respondent would inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

CONCLUSION

69. After considering the *Morrison* criteria outlined above, the evidence established that respondent is unfit to teach.

Causes of Action

IMMORAL CONDUCT

70. In general, the term "immoral" is defined 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 willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare." (*The Board Of Education Of The San Francisco Unified School District et al. v. Marilyn Weiland* (1960) 179 Cal.App.2d 808, 811.) The immoral conduct of a teacher has been compared to the unprofessional conduct or moral turpitude of an attorney. "Moral turpitude is sometimes used synonymously with dishonesty or a high degree of unfairness." (*Ibid.*)

DISHONESTY

71. Dishonesty indicates a lack of honesty; a disposition to lie, cheat, or steal (www.dictionary.com); or to deceive. (*Midway District of Kern County v. Griffeath* (1946) 29 Cal.2d 13, 18.) "Dishonesty necessarily includes the element of bad faith." (*Smith v. Smith* (1971) 16 Cal.App.3d 450, 456.) "[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Ibid.*) "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Fontana Unified School District v. Burman (Fontana)* (1998) 45 Cal.3d 208, 220, fn. 12.)

72.

"Where dishonesty is involved, notice 'would not serve the purpose of § 44938, which is to allow a permanent employee the chance to correct his or her conduct and thus overcome grounds for the charge.'" (*Bassett Unified School Dist. v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1447.) "[N]otice would serve no useful purpose in cases of dishonesty: 'It is rather clear that the stigma of recognized immorality, known dishonesty, conviction of a felony or of a crime involving moral turpitude, or of guilt of criminal syndicalism or sedition could not be removed by ninety days' good behavior.' (*Fresno City H.S. Dist. v. De Caristo* (1939) 33 Cal.App.2d 666, 674-675.)

73. The District alleges respondent misled and withheld information during his District interview and/or deposition regarding:

the approval he received from J [REDACTED]'s mother regarding the many purchases he made. Respondent failed to recall how he obtained approval from J [REDACTED]'s mother (e.g., in person, email, or over the phone). Respondent admitted to making a number of big purchases for J [REDACTED], including a car, computer, and cell phone, but was unable to recall or provide any specific information as to how he communicated with either J [REDACTED] or his mother to arrange for most of the purchases.

74. The District failed to prove respondent was dishonest. No evidence was offered at hearing regarding respondent's communication with J [REDACTED]'s mother. Therefore, this allegation is dismissed.

PERSISTENT VIOLATIONS

The school district board has the right to adopt rules governing the conduct of its employees and to require the employees to observe the rules. However, a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (a)(8) of section 44932. (*Governing Board of the Oakdale Union School District v. Seaman (Seaman)* (1972) 28 Cal.App.3d 77, 84.) The Legislature, apparently to allow an opportunity for correction, has decreed that a single violation is insufficient to warrant dismissal; "it is the persistent disregard" of school rules that subdivision (a)(8) is designed to regulate. (*Board of Education of Richmond School District v. Mathews* (1957) 149 Cal.App.2d 265, 272.) As such, the District must establish that an employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Seaman, supra*, 28 Cal.App.3d at 82.) In other judicial decisions, the word has been interpreted to mean "continuing or constant." (*Ibid.*)

75. Here, the District alleges respondent violated the following laws:

- Education Code section 212.5 which prohibits "sexual harassment" in California schools. Sexual harassment includes conduct that has the purpose or effect of having a negative impact upon the individual's work

or academic performance, or of creating an intimidating, hostile, or offensive work environment.

- Board Policy (BP) 4119.21 which requires employees "to maintain the highest ethical standards, exhibit professional behavior, follow district policies and regulations, and abide by state and federal laws." Further all employees are expected "to exercise good judgment and maintain professional standards when interacting with current [Modesto City Schools], or minor students in general."

EVIDENT UNFITNESS FOR SERVICE

76. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. Unlike 'unprofessional conduct,' 'evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district."

(*Woodland Joint Unified School Dist. v. Commission on Professional Competence (Woodland)* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* criteria must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* criteria are met, the next step is to determine if the teacher's unfitness is "evident"; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

77. In sum, the Commission finds respondent had an improper relationship with a District student, involving big purchases, activities outside of school, and a series of inappropriate sexual games. Overall, respondent displayed willful, flagrant,

and shameless conduct; and showcased a failure to exercise good judgment and maintain professional boundaries when interacting with current District students or minor students in general. Finally, respondent's conduct displayed a fixed character trait inconsistent with the tenets of teaching. Given the above, a preponderance of the evidence established that respondent's conduct was immoral, a persistent violation of Board policy, and involved an evident unfitness for service.

78. Finally, all arguments and evidence presented to support respondent's asserted affirmative defenses have been considered and are rejected.

LEGAL CONCLUSIONS

1. A permanent employee may be dismissed for cause. (Ed. Code, § 44934.) Causes include: immoral conduct, dishonesty, persistent violation of Board policy, and evident unfitness for service. (Ed. Code, §§ 44932, subds. (a)(1), (4), (6), & (8).)

2. A permanent employee served with a Notice of Dismissal is entitled to a due process hearing. (Ed. Code, § 44934.) Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member CPC, and sets forth the CPC's authority to issue a final decision. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Causes for Discipline

3. A trier of fact may consider the totality of the offensive conduct, evaluating facts in the aggregate. (*Woodland, supra*, 2 Cal.App.4th at p. 1456-1457.) When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. Second, causes can be consolidated. "It is true that a particular act or omission on the part of a teacher may constitute more than one of the causes for his removal specified in Education Code section 13403, [now 44932]." (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 260.) "Acts that are unprofessional conduct may at the same time be evidence of evident unfitness, i.e. a fixed character trait or temperamental defect which renders the teacher incapable of avoiding acts that are unprofessional." (*Ibid.*) "The prohibitions against immoral, and unprofessional conduct, and conduct involving moral turpitude by a teacher constitutes a general ban on conduct which would indicate his unfitness to teach." (*Morrison, supra* 1 Cal.3d at p. 233.) "Unprofessional conduct," as used in section 44932, subdivision (a), has been viewed broadly as 'conduct such as to indicate unfitness to teach.'" (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. Based upon the Factual Findings as a whole, cause exists to dismiss respondent under Education Code section 44932 for immoral conduct, persistent violations of Board policy, and an evident unfitness for service based upon his improper relationship with a District student, involving big purchases, activities outside of school, and a series of inappropriate sexual games.

Discipline

5. Here, the Commission has only two choices: to dismiss or not to dismiss. (Ed. Code, § 44932, subd. (a).) "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension . . . shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933." (*Fontana, supra*, 45 Cal.3d at p. 216.)

6. Based upon the Factual Findings as a whole, the District proved, by a preponderance of the evidence, that respondent violated sections 44932, subdivisions (a)(1), (6), and (8), and the conduct supports dismissal of respondent.

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ORDER

The Modesto City Schools dismissal of respondent Jeff Zehner from his employment as a teacher at Enslen Elementary School is UPHELD. Respondent's appeal of his dismissal from employment with the Modesto City Schools is DENIED.

DATE: October 12, 2019

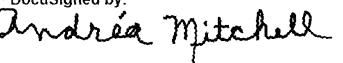
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JOHN COLOMBO

Commission Member

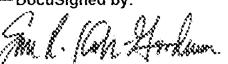
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Andrea Mitchell
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ANDREA MITCHELL

Commission Member

DATE: October 11, 2019

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ERIN R. KOCH-GOODMAN

Administrative Law Judge

Office of Administrative Hearing