

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Dismissal of:

BRUNO AGHEDOH (EN 706616),

A Permanent Certificated Employee,

Respondent.

OAH No. 2014100284

**DECISION**

On December 3, 4, and 5, 2014, and January 6, 2015, Michael A. Scarlett, Administrative Law Judge, Office of Administrative Hearings, Michael Scheer, and Ray Andrzejewski, hereafter the Commission on Professional Competence (Commission), heard this matter in Los Angeles, California. On January 20, 2015, the Commission reconvened to deliberate regarding the decision in this case. The matter was submitted for decision on January 20, 2015.

Meredeth G. Karasch and My T. Huynh, Attorneys at Law, represented complainant, Justo H. Avila, Chief Human Resources Officer, Los Angeles Unified School District (District). Rosty G. Gore, Attorney at Law, Trygstad, Schwab & Trygstad, represented respondent, Bruno Aghedoh (respondent), a permanent certified employee of the District, who was present throughout the hearing.

Oral and documentary evidence was received and the matter was submitted for decision on January 20, 2015. The Commission finds as follows:

**FACTUAL FINDINGS**

1. Complainant made and filed Statement of Charges in his official capacity on June 13, 2014. On October 9, 2014, complainant made and filed the Accusation against respondent. On October 6, 2014, respondent submitted to complainant a Request for Hearing in response to the Notice of Intention to Dismiss and Statement of Charges. On October 13, 2014, respondent filed a Notice of Defense. All jurisdictional requirements were met to proceed to hearing before the Commission. On December 5, 2014, the third day of hearing, complainant amended the Accusation to conform with the evidence admitted at hearing. The Accusation was amended to change the date in Charges 1 through 4 from Friday, December 6, 2013, to *Thursday, December 5, 2013*. The Accusation was also amended to change

Charge Number 3 as follows: "On ~~Friday~~ Thursday, December 6 5, 2013, AGHEDOH, while still holding student Aaron S. by the back of his shirt, slapped A [REDACTED] S. no less than ~~two~~ one (2) (1) times on the face." The Commission proceeded at hearing on the First Amended Accusation.

2. On March 4, 2014, the District issued respondent a Notice of Unsatisfactory Act(s) of Certificated Employee recommending that respondent be suspended for 15 days and thereafter dismissed from the District. The notice specified causes for discipline for unprofessional conduct and persistent violation of or refusal to obey the school laws of the State or reasonable regulation prescribed for the government of public schools by the State Board of Education or by the Governing of the School District. The notice also included charges that alleged the following:

On or about Friday, December 6, 2013, Mr. Bruno Aghedo [sic], Contract Pool Teacher assigned to Jefferson High School, did the following to 11th grade student, Aaron S., during 3rd period class:

- a. Chased A [REDACTED] in the classroom.
- b. Grabbed A [REDACTED] by the back of his shirt and pulled him towards him.
- c. While still having hold of him, turned him around and slapped A [REDACTED] no less than 2 times on the face with enough force to be heard by other students in the class.
- d. Yelled, "don't you ever touch me!" and pushed A [REDACTED] away.

3. On March 31, 2014, Dr. Shelly Holt, the Local District Superintendent or Designee, approved the Notice of Unsatisfactory Acts' recommendation for a 15-day suspension and respondent's dismissal. The District made and filed the Statement of Charges and Accusation against respondent based upon the March 4, 2014 Notice of Unsatisfactory Acts.

4. Respondent is a permanent certificated teacher who has taught with the District for almost 17 years. In April 1998, respondent was hired by the District as a substitute teacher and worked various schools within the District. In November 1998, he was hired as a special education teacher at Jefferson High School (Jefferson) 9-12th grades, a position he held for two years. From July 2001 until his dismissal in March 2014, respondent taught Chemistry/Integrated Coordinated Science (ICE) 9-12th grade at Jefferson. Respondent has a single subject teaching credential in Chemistry with a Clear Cross-Cultural Language and Academic Development (CCLAD) certificate.

5. Respondent was born in Nigeria, Africa and moved to the United States in 1997. He is 45 years old and unmarried and has no children. Respondent testified that he had polio as a child in Nigeria, and as a result, his left leg is severely atrophied and is shorter than his right leg. Consequently, respondent walks with a severe limp and has restrictions in his mobility and difficulty with his balance. He wears a two-inch elevated shoe on his left foot to prevent him from falling when walking and to minimize back pain caused by his

disability. Respondent also wears a brace on his left leg to assist him with walking and standing. Respondent has difficulty standing for extended periods and typically leans on objects or furniture when standing, and has difficulty walking. Respondent credibility testified that he has severe mobility limitations and demonstrated in court the physical limitations caused as a result of his atrophied left leg and the leg brace and modified shoe that must be worn to compensate for his physical limitations. Respondent is incapable of running and experiences difficulty walking and maintaining his balance.

6. Dr. Timothy C. Tran, MD, Kaiser Permanente, submitted a letter dated February 28, 2014, which corroborated respondent's testimony. Dr. Tran states that respondent suffers from "post poliomyelitis syndrome," which caused asymmetry in the muscle development of respondent's legs and which rendered him susceptible to falling. Dr. Tran confirmed that respondent has chronic pain which requires him to take medication and he wears a leg brace to alleviate some of the problems or symptoms associated with his condition.

#### *December 5, 2013 Incident*

7. On December 5, 2013, respondent was experiencing problems with two students in his third period class, W [REDACTED] and A [REDACTED]. At the beginning of the third period class, respondent assigned a "dispatch" or class exercise to the students who began working on the dispatch, which respondent began to review and correct with each student. Wilbert B. came into class late and he and A [REDACTED] began being disruptive and disturbing the other students, including pouring pencil shavings on two other students. Respondent requested both students to take their assigned seats but they initially ignored his instructions. After W [REDACTED] took his assigned seat, respondent had to move a student who was being disturbed by W [REDACTED]. Respondent had to separate A [REDACTED] and W [REDACTED] who poured pencil shavings on another student who had become angry with them because of their disruptive behavior. Respondent had to take W [REDACTED] outside of the classroom to talk to him to try control and stop his disruptive behavior. Ultimately, respondent had to separate A [REDACTED] and W [REDACTED] from sitting near each other.

8. While walking around the classroom reviewing the students' work, unbeknownst to respondent, W [REDACTED] and A [REDACTED] had come up behind him and were mimicking tapping or rubbing respondent's head. While standing behind respondent, W [REDACTED] hit respondent on the back of his head. Respondent was shocked and startled by being hit or slapped on the back of the head. He turned around quickly and twisted his right knee, lost his balance and almost fell to the floor. Respondent testified that when he turned around A [REDACTED] was standing behind him. He reached out and grabbed A [REDACTED] by the hand to keep from falling and to regain his balance, but the student pulled away which further destabilized respondent's balance. According to respondent, he grabbed A [REDACTED] with one hand and inadvertently hit him softly in the face with his other hand while trying to regain his balance. Respondent admits that he firmly told A [REDACTED], "Don't touch me!", or words to that effect, when he turned around and grabbed the student. He stated that he did not run or chase after A [REDACTED], but just instinctively reached out and grabbed him because he was falling and A [REDACTED] was the only student behind him. Respondent was in significant pain as

a result of twisting his right knee. The incident occurred at the end of respondent's third period class just before the bell rang to dismiss his class, and was over very quickly. Students in respondent's third period class, including A [REDACTED] and W [REDACTED], left the class immediately. Several of the respondent's third period students witnessed varying portions of the incident and told other students that respondent had slapped a student.

9. Respondent admitted that he did not immediately report the December 5, 2013 incident to school administration because he was dazed and in shock immediately following the incident. He did not think it was necessary to report the incident immediately because it had been an accident and A [REDACTED] was not injured or hurt. The incident also occurred at the end of respondent's third period class and students were beginning to arrive for his next class. Respondent did not want to leave his class unsupervised to go to the school office to report the incident. Moreover, the telephone in the classroom was not working and he could not walk to the office because his knee was in pain as a result of the incident. Finally, he did not report the incident at the end of the school day because he was tutoring students and admittedly forgot the incident as the day progressed.

10. Later that day, at approximately 3:15 pm, Acquinetta Cook, the Assistant Principal at Jefferson, was informed that respondent had slapped a student in his third period class. Emily P., a "City Year" volunteer tutor, told Ms. Cook that J [REDACTED], a student in respondent's third period class, told her respondent slapped a student, whose name was unknown. Emily P. did not witness the incident. Later that afternoon, after school was out, Ms. Cook contacted Michael Taft, the Jefferson Principal, to inform him about incident. Mr. Taft was away from the school campus attending a conference on December 5 and 6, 2013. He told Ms. Cook to meet with respondent the next day, December 6, 2013, to obtain respondent's statement about the incident. Ms. Cook was assigned to Jefferson in September 2013 as the Assistant Principal, her first position as an assistant principal.

11. On December 6, 2013, respondent arrived at school at approximately 6:30 am. Respondent intended to report the incident to an administrator, however, Mr. Taft and the Title I Coordinator, the persons respondent believed he should report the incident to, were not in the main office when he arrived. Consequently, respondent went to his classroom to grade student papers and to prepare for his next class. Ms. Cook arrived at school at approximately 6:30 am, but did not see respondent and respondent did not attempt to contact her that morning. Respondent admitted that he did not report the incident to Ms. Cook because she was new at Jefferson, and he believed Mr. Taft was his supervisor and the person he should notify. Respondent did not notify or contact Mr. Taft regarding the incident on December 5 or 6, 2013, because the principal was off campus attending a conference. He did not notify Mr. Taft by email or by leaving a message with his office before being summoned to Ms. Cook's office on December 6, 2013.

#### *District's Investigation of Incident*

12. On December 6, 2013, at approximately 8:00 am Ms. Cook sent a substitute teacher to respondent's first period class and summoned respondent to her office. Ms. Cook interviewed respondent and prepared a written statement of the interview on that same day.



(Exh. 6.) According to Ms. Cook's written statement, she asked respondent what had occurred in his third period class the previous day. She specifically asked respondent about an allegation that he had slapped a student during his third period class. According to Ms. Cook's statement, respondent stated that the allegations were hearsay and the incident could have been misunderstood and blown out of proportion. Ms. Cook again asked respondent what had happened in his third period class and whether he "had contact with a student." (Exh. 6.) Respondent was initially hesitant to answer Ms. Cook's question, but after being asked again whether he had contact with another student, respondent stated "Yes." Ms. Cook then asked respondent "did that involve you putting your hands on another student?" and respondent again answered "Yes." (Exh. 6.) According to Ms. Cook's written statement, respondent then stated: "I was circulating and explaining to students and someone hit me in the back of my head. I turned around fast and saw A [REDACTED] running. I almost fell. I grabbed and held him and hit him back. I slapped him. I told him don't touch me." (Exh. 6.) Respondent told Ms. Cook that the incident occurred during the last 10 minutes of his third period class, and that he had planned to speak to Mr. Taft after school, but he was working with a student and lost track of time.

13a. Following Ms. Cook's interview with respondent, on December 6, 2013, she randomly selected six students from respondent's third period class, J [REDACTED], A [REDACTED], E [REDACTED], E [REDACTED], K [REDACTED] and I [REDACTED], to interview regarding the incident. Ms. Cook obtained written signed statements from each student she interviewed. Ms. Cook's December 6, 2013 written statement regarding her investigation and interview with respondent indicates that all of the students she interviewed stated that respondent slapped a student. (Exh. 6.)

b. A [REDACTED]'s written statement indicated that he and his friend "C [REDACTED]" (W [REDACTED]) were behind respondent and "C [REDACTED] has his hands up behind the teacher head pretending to grab it then the teacher moved his head back and C [REDACTED] started running and I ran behind him then the teacher grabbed me by my shirt and pulled me then swung [sic] at me while yelling "don't you ever touch me" when really I never touched him so he swing [sic] the last time then hit me hard in the face liked slapped me with anger ... I was upset." (Exh. 4f.) A [REDACTED] did not testify at hearing.

c. E [REDACTED], who testified at hearing, prepared a written statement stating that he was focused on his school work until he heard "laughing and screaming" and "turned around" and saw respondent "grabbing a student and slapped the student 2 times in the face," and "push the student." (Exh. 4a.)

d. E [REDACTED], who testified at hearing, prepared a written statement stating that a student was "messing with the teacher and the teacher got annoyed and mad so he slapped the student." (Exh. 4b.) She states that "the teacher got mad because the student was touching him." (Exh. 4b.)

e. J [REDACTED]'s written statement indicated that "the kids did something to the teacher behind his back while the teacher was looking away." (Exh. 4e.) He stated that "when teacher notice the touch he quickly turned around and started chasing them," and that

one of the kids managed to escape, but the other did not. J [REDACTED] claimed that respondent caught up to one of the kids, became angry and slapped the student "3 or less/more times," while telling the student "Don't ever touch me." (Exh. 4e.) He stated that respondent "was really angry and the kid was trying to block but the teachers hand still managed to slap him." (Exh. 4e.)

f. K [REDACTED] prepared a signed written statement indicating that she did not really pay much attention to what was going on until she heard "people arguing" and respondent scream "Don't you ever talk to me like that." (Exh. 4i.) At that time, she turned around saw respondent "slap the kid two times." (Exh. 4i.) K [REDACTED] did not see the entire incident but heard other students stating that respondent "slapped the wrong kid." (Exh. 4i.) K [REDACTED] did not testify at hearing.

g. I [REDACTED] prepared a written statement indicating that he was doing his work when he heard respondent yell "don't touch me!" (Exh. 4h.) He said there was a "slaping [sic] sound" but he did not observe respondent hitting A [REDACTED] (Exh. 4h.) He just recalled that the other students were saying "someone got slapped [sic] by the teacher." (Exh. 4h.) I [REDACTED] did not testify at hearing.

14. After interviewing respondent and the students, Ms. Cook again contacted Mr. Taft, who advised Ms. Cook to remove respondent from the classroom and to replace him with a substitute teacher. Mr. Taft also advised Ms. Cook to contact Irene Hyland, the Operations Coordinator at Jefferson, who directed Ms. Cook to contact the Los Angeles Police Department (LAPD) Abuse hotline.

15. On December 6, 2013, LAPD dispatched two police officers to Jefferson to take statements from respondent and A [REDACTED]. The LAPD investigation report indicates that respondent told officers that during class he was "slapped in the back of his head" and he turned around and saw A [REDACTED] running away. (Exh. 8.) According to the LAPD report, respondent stated he grabbed A [REDACTED] by his clothing, and told him "'don't ever touch me again' and slapped him across the face." (Exh. 8.) A [REDACTED] reportedly told officers that he and another student were standing behind respondent when respondent "stepped back and hit the other students hand [with] the back of his head, causing him to turn around." (Exh. 8.) A [REDACTED] told officers that he and the other student tried to run away, but respondent grabbed him by his clothing and "slapped him across the face," and stated "don't ever touch me again." (Exh. 8.) The investigation report indicates that A [REDACTED] did not have any marks or bruises on his face and that he told officers that the slap did not hurt.

16. On December 10, 2015, Ms. Hyland reportedly interviewed W [REDACTED] who was not interviewed by Ms. Cook on December 6, 2013. W [REDACTED] prepared a written statement that stated he was "messing around behind" respondent and respondent "turn around all pissed off and he grabbed my friend." (Exh. XXXX.) W [REDACTED] stated that he was "out of there" when respondent turned and that "I didn't clearly see when he got hit," referring to his friend A [REDACTED] (Exh. XXXX.)

17. On January 17, 2014, Mr. Taft and Ms. Hyland interviewed respondent regarding the December 5, 2013, incident. This was the first official interview of respondent conducted by Mr. Taft (principal) and Ms. Hyland. An official "Record of Interview" dated January 17, 2014, was prepared by Mr. Taft. (Exh. 4k.) Respondent told Mr. Taft and Ms. Hyland that W [REDACTED] and A [REDACTED] were being disruptive in his third period class and that he had to stop instruction on several occasions to address their disruptive behaviors. He stated that as he was walking around his classroom checking his student's assigned work, someone came up behind him and hit him in the back of the head. The January 14, 2014 Record of Interview indicates that respondent told Mr. Taft and Ms. Hyland the following:

My Back was turned when I felt someone hit the back of my head. As I turned, I tweaked my right knee. This rapid movement caused me pain on my knee. I grabbed him by the hand and I as I did this, he pulled back. I swung my arm towards him so that I could stabilize my balance. That is when I slapped him. I slapped him once. It was not a hard hit. There was no malice on my part. I just reacted. I told him 'Don't touch me.'

(Exh. 4k.)

18. On January 27, 2014, respondent met with Mr. Taft again to discuss the December 5, 2013, incident. Also in attendance was an UTLA representative and an Operations Coordinator from the District. A memorandum summarizing the January 27, 2014 conference memorandum indicates that respondent was given a summary of the evidence obtained by the District regarding the December 5, 2013 incident including: (1) Ms. Cook's statement that respondent had grabbed and slapped A [REDACTED] during his third period class, on December 5, 2013; (2) that respondent had told LAPD officers that he grabbed and slapped A [REDACTED] once on the face because the student hit respondent hard on the back of the head; (3) that Ms. Hyland had interviewed seven students who provided statements that respondent had slapped a student in class, describing the contents of the students' statements; and (4) a brief description of respondent's January 17, 2014 interview with Mr. Taft and Ms. Hyland. Respondent was given information regarding District's policies regarding teacher conduct and informed that the results of the District's investigation may lead to disciplinary action District.

19. On February 3, 2014, respondent submitted a written statement to Mr. Taft in response to the January 27, 2014, conference memorandum prepared by Mr. Taft. Respondent reiterated that on December 6, 2013, he told Ms. Cook that W [REDACTED] and A [REDACTED] had been disruptive in his third period class on December 5, 2013, and that he was suddenly slapped on the back of his head by someone standing behind him. He stated that he was shocked and in pain, after turning awkwardly and twisting his right knee. Respondent stated that he almost fell and reached out and grabbed A [REDACTED]'s hand for support, but the student pulled his hand back. Respondent stated when A [REDACTED] pulled his hand back, he was further destabilized and he reached out with his hand and inadvertently hit A [REDACTED] in the face. He admitted that he firmly told A [REDACTED] "Don't touch me!," while reaching out for support and stumbling towards A [REDACTED] (Exh. YYY.) Respondent stated that he told LAPD

officers on December 6, 2013, that he lost his balance when he turned around, almost fell and inadvertently hit A [REDACTED] in the face. He stated he told the police officers about his leg brace, showed them the brace, and explained how the sudden slap caused him to lose his balance. Respondent told Mr. Taft that he was dealing with "post-polio syndrome" which caused him to frequently lose his balance, and that he wore a leg brace and a modified shoe to help manage his pain and loss of balance. He stressed that he could not have chased after two students as alleged due to the condition of his left leg. (Exh. YYY.) Respondent again stated that he did not report the incident immediately because students from his next class started walking into the classroom and his focus shifted to teaching and preparing for his next class. As the day progressed, respondent stated he became immersed in his normal activities and forgot about the incident. Finally, respondent again denied using the words "slap" or "grab" to describe the December 5, 2013 incident when interviewed on January 17, 2014, by Mr. Taft and Ms. Hyland. He stated that he told Mr. Taft and Ms. Hyland that he inadvertently hit A [REDACTED] one time. (Exh. YYY.)

20. The District relies heavily on Ms. Cook's statement that respondent admitted slapping A [REDACTED] and the students' statements indicating that respondent slapped a student in his third period class. Ms. Cook testified that respondent admitted that he "slapped" A [REDACTED] and that he never stated that the slap was an accident or that he hurt himself during the incident. Respondent admitted that he hit A [REDACTED] across the face, although he denies ever describing the contact as a "slap" as the District contends. It is not significant whether respondent described the contact as a "slap" or a "hit," what is important is whether respondent intentionally slapped or hit the student in the classroom. However, the preponderance of the evidence established that respondent inadvertently and unintentionally hit A [REDACTED] across the face as he was trying to regain his balance after quickly turning in response to being hit himself by a student on the back of the head.

21. The evidence established that W [REDACTED] and A [REDACTED] were disruptive in respondent's third period class on December 5, 2013, and that W [REDACTED] hit respondent on the back of the head from behind while he was working with another student. There is no dispute that respondent hit or slapped A [REDACTED] once in the face during the December 5, 2013, incident. Respondent credibly testified that he was shocked after being hit from behind and lost his balance and almost fell when he quickly turned to see who had hit him and grabbed A [REDACTED]. He also credibly testified that he twisted right knee, which caused him significant pain, and that when he grabbed A [REDACTED] to avoid falling he inadvertently hit the student in the face. Respondent suffers from post poliomyelitis syndrome which caused atrophy in left leg and makes him susceptible to falling. Dr. Michael Hall, MD., Kaiser Permanente, treated respondent's right knee on March 5, 2014, and reported that respondent sustained the injury to the knee on December 5, 2013, and noted that the injured right knee could occasionally swell and cause pain after prolonged standing and walking. He prescribed physical therapy as a result of the injury. This evidence corroborates respondent's testimony that he almost fell and twisted his knee after being hit in the back of the head by W [REDACTED].

22. Respondent admitted that he was reluctant to provide information to Ms. Cook during the December 6, 2013 interview because she was a new Assistant Principal whom he



did not know, and that he chose to merely answer specific questions asked by Ms. Cook without elaborating on the circumstances of the incident. Respondent believed he would have been better served by preparing a formal written statement explaining the incident because he feared he might be misunderstood or misinterpreted by Ms. Cook. For example, in his February 3, 2014 written statement to Mr. Taft, respondent stated that he did not tell Ms. Cook that he grabbed A [REDACTED] because he had lost his balance and twisted his knee, although he clearly told her that he almost fell after being hit. While testifying at hearing, it was apparent that respondent spoke with a heavy accent or dialect from his native Nigerian language and culture, which explained his preference to submit a written statement because of a fear of being misunderstood or misinterpreted. His reluctance to fully explain the incident to Ms. Cook contributed to Ms. Cook reaching the conclusion that respondent intentionally slapped or hit A [REDACTED].

23. Although Ms. Cook testified that respondent never stated he hit or slapped A [REDACTED] accidentally, Ms. Cook's written statement describing her interview with respondent indicates that respondent stated he almost fell when he turned and grabbed A [REDACTED]. This supports respondent's assertion that he lost his balance and hit A [REDACTED] accidentally when he grabbed the student to break his fall. The District also relies on the LAPD investigation report to support its assertion that respondent admitted intentionally slapping A [REDACTED]. However, respondent credibly testified that the LAPD investigation report inaccurately describes his statement to the LAPD officers. Respondent stated that he told the officers that he lost his balance, almost fell and inadvertently hit A [REDACTED] in the face, and that he told the officers he previously had polio and wore a leg brace as a result, although these statements do not appear in the LAPD investigation report. Ms. Cook testified that respondent told the LAPD officers that he had previously had polio and that she first learned of his polio and his leg brace during the LAPD interview. Ms. Cook's testimony corroborates respondent's testimony that he told the officers that he had suffered from polio and wore a leg brace. The only plausible reason respondent would disclose this information to officers would be to support his statement to them that he lost his balance and almost fell after being hit by the student. The LAPD officers did not testify at hearing and based upon both Ms. Cook and respondent's testimony, the investigation report does not reflect respondent's complete statement to officers. Consequently, respondent's testimony that he told the LAPD officers that he inadvertently hit A [REDACTED] is found to be credible.

24. The students' written statements relied upon by the District also do not establish that respondent intentionally slapped A [REDACTED]. Neither A [REDACTED] nor W [REDACTED], the two students involved in the December 5, 2013 incident, testified at hearing. W [REDACTED]'s statement fails to admit that he hit respondent on the back of the head, and merely states that he was "messing around behind" respondent. He indicated that he did not see respondent slap or hit A [REDACTED]. A [REDACTED]'s statement also neglects to state that W [REDACTED] hit respondent in the back of the head, instead stating that respondent "moved his head back" which caused the contact with W [REDACTED]'s hand. Both W [REDACTED] and A [REDACTED]'s failure to include the truth in their written statements about W [REDACTED] hitting respondent in the back of the head render their statements unreliable and not credible.

25. E [REDACTED] and E [REDACTED] were the only two percipient student witnesses that testified at hearing. Both of these students testified that they saw respondent grab and slap A [REDACTED]. E [REDACTED], however, admittedly did not see the entire incident. He testified he did not see A [REDACTED] or W [REDACTED] hit respondent on the back of the head and that he turned around only after hearing laughing and screaming. (Exh. 4a.) E [REDACTED] did not see respondent pivot and turn and lose his balance after being hit by W [REDACTED]. He only saw respondent grabbing A [REDACTED] and appearing to hit or slap the student intentionally. Without seeing the beginning of the incident, he could not have fully understood or appreciated the contextual nature of the rapidly occurring incident. He would not have known that respondent reached out to grab A [REDACTED] in an attempt to regain his balance or that the slap or hit was unintentional. E [REDACTED] testified respondent's voice sounded angry and that he looked mad and had a frown on his face. But the anger in respondent's voice and the frown on his face could have been attributed to respondent being shocked by being unexpectedly hit from behind and the pain he experienced when he twisted his knee. E [REDACTED] also claimed he saw respondent slap A [REDACTED] two times, but A [REDACTED]'s own written statement indicates he was only slapped once. Finally, E [REDACTED] was seated on the opposite side of the classroom from where the incident occurred which further reduced his ability to effectively witness the incident. Consequently, E [REDACTED]'s written statement and testimony is not persuasive.

26. E [REDACTED]'s written statement and testimony were not consistent and on some points in contradiction. Her written statement did not indicate that two students, A [REDACTED] and W [REDACTED], were involved in the incident, but merely states that a single student was messing with respondent and respondent became annoyed and mad and slapped the student because the student was touching him. At hearing she testified that she saw two students playing with respondent, A [REDACTED] standing behind respondent and W [REDACTED] was in front of respondent. This contradicts the evidence that established that both students were standing behind respondent. She testified that both students were tapping respondent on the head and respondent turned and slapped A [REDACTED]. Again the evidence showed that W [REDACTED], not A [REDACTED], hit respondent on the head. E [REDACTED] also testified that respondent did not push or grab A [REDACTED] after respondent slapped him, which contradicts other evidence that established respondent grabbed A [REDACTED] when he turned to see who had hit him on the head. E [REDACTED] appeared to be honest and forthright in her testimony. However, her recollection of the incident was inconsistent and contradictory and therefore not persuasive. Moreover, E [REDACTED] was seated on the opposite side of the classroom from where the incident occurred which impacted her ability to clearly see the incident.

27. The written statements by J [REDACTED], K [REDACTED], and I [REDACTED] unreliable because the statements indicate that they did not witness the entire incident, or did not witness the incident at all. J [REDACTED], who did not testify at hearing, did not see the entire incident. His written statement indicates the "kids did something to the teacher behind his back," suggesting that J [REDACTED] did not see the beginning of the incident. (Exh. 4e.) He did not know which students were involved because when he told E [REDACTED] about the incident, who reported the incident to Ms. Cook, J [REDACTED] did not know A [REDACTED] or W [REDACTED]'s name. This suggests that he did not see the incident at all, or did not have a clear recollection of the incident. Additionally, J [REDACTED]'s statement that respondent

chased after two students is also implausible given respondent's physical limitations. Finally, J [REDACTED]'s statement that respondent slapped a student three times, more or less, is not supported by the record. The evidence established that respondent hit A [REDACTED] only once. Consequently, J [REDACTED]'s statement is not credible. K [REDACTED]'s written statement indicates that she also did not see the entire incident. She stated she only looked up after hearing respondent scream "don't you ever talk to me like that," and saw respondent "slap the kid two times," and that the "kids were saying that he slapped the wrong kid." (Exh. 41.) These statements contradict other evidence which established that respondent screamed "don't ever touch me," or words to that effect, and that he slapped A [REDACTED] only one time. K [REDACTED]'s statement also indicates that she relied on statements by other student's in preparing her written statement, which suggests that her statement was not based entirely on her own observations. I [REDACTED] written statement indicates that he did not see the incident at all. Because these students did not witness the entire incident, and did not testify at hearing, their statements are not persuasive.

28. The December 5, 2013 incident occurred very quickly, in a matter of seconds, and some of the student statements indicate that they did not see the entire incident, which influenced their perception of what actually occurred. Some students' statements were influenced by other students' versions of the incident, and were not based their own observations. E [REDACTED], E [REDACTED], and K [REDACTED], students whose statements the District relied upon, all were seated on the opposite side of the classroom from where the incident occurred which hindered their ability to fully observe the incident. Although J [REDACTED] and I [REDACTED] were seated nearest to the incident, J [REDACTED] did not witness the entire incident and I [REDACTED] did not witness the incident at all. Finally, Ms. Cook interviewed only six of the over 30 students who were in respondent's third period class at the time of the incident. This is a relatively small percentage of the available student witnesses to the incident. Several students who were seated closest to the incident were not interviewed at all.

29. Respondent's testimony regarding the December 6, 2013 interview is credited over Ms. Cook's version of the interview. Ms. Cook admitted that the focus of her investigation when she interviewed respondent was that respondent had slapped or hit a student. Although respondent told Ms. Cook that he was hit in the back of the head by a student and almost fell, Ms. Cook did not explore whether respondent's loss of balance played any part in respondent hitting the student in the face. She did not ask A [REDACTED] whether he or W [REDACTED] intentionally hit respondent in the back of the head or whether respondent stumbled and almost fell when he turned around and grabbed A [REDACTED]. Ms. Cook did not interview W [REDACTED] on December 6, 2013, and did not recall why she neglected to question W [REDACTED] who was directly involved in the incident. Ms. Cook admitted at hearing that when she interviewed respondent she was not aware that respondent had suffered polio, and as a consequence, had severe limitations in mobility and was susceptible to falling. Ms. Cook did not consider respondent's assertion that had hit the student accidentally, she relied on student statements that were contradictory and unreliable, and she interviewed a small sampling of students who purportedly saw the incident. In short, Ms. Cook did not conduct a thorough interview of respondent and was unduly influenced by student statements that proved to be inconsistent and unreliable.

30. Respondent has consistently stated that he hit A [REDACTED] inadvertently in an attempt to break his fall after being unexpectedly hit in the back of the head. Mr. Taft testified that respondent admitted during the January 17, 2014 interview that he slapped A [REDACTED], and that he never claimed it was an accident. However, respondent told Mr. Taft that he grabbed and slapped A [REDACTED] during an attempt to stabilize himself and regain his balance. According to Mr. Taft's record of the interview, respondent specifically stated he swung his arm in an attempt stabilize his balance and that he slapped A [REDACTED] without malicious intent. Mr. Taft did not believe respondent was being truthful during the January 17, 2014 interview, and stated that respondent never expressed any remorse for the incident.

31. On February 3, 2014, respondent prepared written statement in response to Mr. Taft's memorandum following the January 17, 2014, interview. Respondent again asserted that he hit A [REDACTED] inadvertently and fully explained his physical disability and how he could not have chased A [REDACTED] and W [REDACTED] as alleged by the District given his physical limitations. Respondent gave Ms. Cook and Mr. Taft a consistent account of what occurred during the December 5, 2013, incident. Consequently, respondent's testimony regarding his December 6, 2013 interview with Ms. Cook, and his January 17, 2014, interview with Mr. Taft and Ms. Hyland is found to be credible and afforded more weight than Ms. Cook's and Mr. Taft's recollections of the respective interviews. The evidence did not establish that respondent intentionally hit or slapped A [REDACTED]. Rather, respondent inadvertently made contact with the student's face when grabbed the student in an attempt to avoid falling and further injuring himself after being unexpectedly hit from behind by a student.

#### *Other Relevant Facts*

32. Respondent presented as a teacher that is extremely conscientious about his profession. His testimony was forthright and consistent with the statements he had made to District representatives during the District's investigation. Respondent expressed a sincere enjoyment from teach and stated that he has always made himself available to his students for additional help and tutoring even if it meant remaining at school long after the school day is over. Respondent is soft spoken and exudes a gentle demeanor with a high degree of humility. Respondent became extremely emotional when discussing his physical disability and the mobility restrictions he lives with as a result of post poliomyelitis syndrome. Respondent has no prior history of any physical or verbal misconduct involving a student. To the contrary, respondent was described as being soft spoken and beloved by both students and teachers alike. Base on this evidence,

33. During the four year period immediately preceding the District's Statement of Charges and First Amended Accusation. Respondent had no prior disciplinary history with the District.

34. On April 23, 2012, the District provided respondent a Final Performance Evaluation for the 2011-2012 school year. The teacher evaluation indicated that respondent had met all the District standards of performance for that school year. Respondent's 2011,



2012, and 2013 AGT Reports<sup>1</sup> showed that his Chemistry students were performing above District average on the CST in all three years, and his ICE students were performing above District average on the CST in 2012, and just below District average on the CST in 2011 and 2013.

35. By all accounts respondent has been a responsible, conscientious, competent teacher who enjoys teaching students and appears to be well qualified to perform his duties. He is respected amongst teachers and students at Jefferson. On December 18, 2013, several of respondent colleagues in the Jefferson science department submitted a character reference on behalf of respondent. The teachers stated that for more than ten years respondent had been one of the most distinguished teachers in the science department. They praised respondent for his highly professional approach towards faculty and students and his expertise in teaching Chemistry and Integrated Science. They note that respondent has always made himself available to students, including frequently tutoring students after school. Several students also submitted letters on respondent's behalf. The students generally described respondent as a teacher who always provided additional assistance and was generous with his time. He was overwhelmingly described as a very conscientious and effective teacher by his students.

36. Respondent was provided with the District's policies and procedures annually, which included among others, the Abolition of Corporal Punishment bulletin; the Child Abuse and Neglect Reporting requirements; the LAUSD Code of Ethics; the Bullying and Hazing Policy; the Discipline Foundation Policy (positive behavior support and discipline plan); LAUSD Code of Conduct with Students; and the California Standards for the Teaching Profession. The District's corporal punishment policy specifically defines "corporal punishment" as the "willful infliction of, or willfully causing the infliction of, physical pain on a pupil." (Exh. 10.) Under the District's child abuse and neglect policy, child abuse is defined in relevant part as "physical abuse", which included "physical injury (external or internal) such as a bruise, welt, burn, or cut inflicted on a child by other than accidental means by another person." (Exh. 11.) Child abuse also includes "willful cruelty or unjustifiable punishment" which occurs when "any person willfully causes, inflicts or permits unjustifiable physical pain or mental suffering . . ." upon a student. (Exh. 11.)

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The District has the burden of proof in this matter and 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, 1038-1040.) Proof by a preponderance of the evidence requires a showing that it is more likely than not to be true.

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<sup>1</sup> The AGT Reports (Academic Growth over Time) reports provide data which measure the teacher impact on the academic growth of students for California Standards Tests (CST) tested subjects.

In other words, the evidence is more convincing than that which is offered in opposition. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) When a school board recommends dismissal for cause, a Commission on Professional Competence may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).) The Commission's decision is deemed to be the final decision of the district's governing board. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 331.) A Commission has broad discretion to determine the issues before it, including whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

### *Grounds For Dismissal*

3. The District alleged six causes for dismissal in the First Amended Accusation and Statement of Charges: (a) unprofessional conduct, pursuant to Education Code sections 44932, subdivision (a)(1)<sup>2</sup>; immoral conduct, pursuant to sections 44932, subdivision (a)(1), and 44939; unsatisfactory performance, pursuant to sections 44932, subdivision (a)(4); evident unfitness for service, pursuant to section 44932, subdivision (a)(5); persistent violation of or refusal to obey school laws of the state or reasonable regulations by the State Board of Education, pursuant to section 44932, subdivision (a)(7); and willful refusal to perform regular assignments without reasonable cause, pursuant to section 44939. The District alleged that on December 5, 2013, respondent chased A [REDACTED] in his classroom, grabbed the student by the back of his shirt, slapped him no less than one time, and yelled "don't you ever touch me!" or words to that effect and pushed A [REDACTED] away.

4a. Cause does not exist to dismiss respondent for unprofessional pursuant to section 44932, subdivision (a)(1), by reason of Factual Findings 1 through 36.

4b. "Unprofessional conduct," as used in section 44932, subdivision (a)(1), 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.)

4c. Here, the District failed to prove by a preponderance of the evidence that respondent chased A [REDACTED] and intentionally slapped the student. The evidence established that respondent was physically unable to chase A [REDACTED] because of his physical limitations caused by his atrophied left leg, leg brace and the modified shoe that he wears as a result of previously having polio as a child. The evidence also established that respondent was shocked when he was unexpectedly hit on the back of the head from behind by W [REDACTED]. Respondent turned fast and awkwardly, twisted his right knee and lost his balance.

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<sup>2</sup> All further statutory references shall be to the Education Code unless otherwise specified.

Respondent then grabbed A [REDACTED] by the hand or shirt, the only student he saw standing behind him, in an attempt to avoid falling and to regain his balance. A [REDACTED], who was attempting to run away, pulled away which further destabilized respondent's balance. Respondent swung his other free hand towards A [REDACTED] trying to regain his balance and inadvertently hit or slapped A [REDACTED] in the face. Respondent did scream "don't you ever touch me" while turning and grabbing A [REDACTED]. However, respondent credibly testified that his reaction was triggered by the shock of being hit from behind and the pain he experienced when he twisted his knee while awkwardly turning. Finally, student written statements relied upon by Ms. Cook during the District's investigation revealed that the students did not witness the entire incident, or relied upon other students' versions of the incident to prepare their statements. The student statements were determined to be inconsistent and unreliable by the Commission.

4d. Although respondent did not immediately report the December 5, 2013 incident to school administration, he provided justifiable reasons for his delay. Respondent reasonably chose to begin instruction for his next class, which was already arriving in the classroom, and he did not want to leave his students unsupervised. There was not a working telephone in his classroom so he could call the school office from his classroom. As the day went on respondent was preoccupied with his students and admittedly forgot the incident. Respondent attempted to report the incident the following morning, December 6, 2013, but Mr. Taft and the Title I Coordinator were not in their offices when respondent arrived at school. Ms. Cook summoned respondent to her office before he could make any further attempt to report the incident. Finally, in spite of respondent's decision not to immediately report the incident, the District does not allege that the failure to report the incident constituted unprofessional conduct or a basis for discipline.

4e. Accordingly, the Commission determined that respondent did not commit unprofessional conduct when he inadvertently hit or slapped A [REDACTED] on the face on December 5, 2013.

5a. Cause does not exist to dismiss respondent for immoral conduct pursuant to section 44932, subdivision (a)(1), by reason of Factual Findings 1 through 36.

5b. "Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. It is sometimes used as synonymous with "dishonesty" or a high degree of unfairness. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).) Immoral conduct can be construed according to common usage. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as 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.” (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972 (*Hensey*)).

5c. The District failed to establish by a preponderance of the evidence that respondent committed immoral conduct. As stated above in Legal Conclusion 4, the evidence established that respondent inadvertently slapped or hit the student in the face while trying to regain his balance after being unexpected hit from behind by a student. Thus, the Commission determined that the District failed to establish that respondent committed the alleged conduct. Accordingly, it was not established that respondent committed immoral conduct.

6a. Cause does not exist to dismiss respondent for unsatisfactory performance pursuant to section 44932, subdivision (a)(4), by reason of Factual Findings 1 through 36.

6b. The term “unsatisfactory performance” is not specifically defined in the Education Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in subdivision (a) of section 44932, and we are not to presume the Legislature intended to enact completely duplicative statutes, (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that “unsatisfactory performance” does not include any other cause for dismissal specified in section 44932.

6b. While unprofessional conduct can be determined by analyzing a teacher’s conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher’s performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance. It refers to section 44660 et seq. that establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs unsatisfactorily within his employing school district.

6c. The District failed to establish by a preponderance of the evidence that respondent’s performance in the classroom was unsatisfactory in any manner. As stated above in Legal Conclusion 4, the evidence established that respondent inadvertently slapped or hit A [REDACTED] in the face, and thus did not intentionally slap the student as alleged by the District. The evidence established that respondent has otherwise been a good teacher that has meet all the expectations and requirements of his duties as a Chemistry and ICS teacher at Jefferson. His students typically have performed at or above the District average for students taking the California Standards Test. Respondent frequently remains after school to tutor his students and often spends additional time with students to assist in their learning the material in his class. Respondent is highly respected by his peers and students at Jefferson and respondent has no prior history of discipline with the District. Accordingly, the Commission determined that the District failed to show that respondent should be dismissed based upon unsatisfactory performance.



7a. Cause does not exist to dismiss respondent for evident unfitness for service pursuant to section 44932, subdivision (a)(5), by reason of Factual Findings 1 through 36.

7b. Education Code section 44932, subdivision (a)(5), provides the District may suspend or dismiss a permanent employee for "evident unfitness for service." "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445 (*Woodland*)). Evident unfitness for services requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444.)

7c. "Evident unfitness for service" is not synonymous with "unprofessional conduct," and the term means clearly not fit for teaching, ordinarily by reason of temperamental defects or inadequacies; it connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "Evident unfitness" includes in its definition "unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." To terminate the teacher on grounds of immoral conduct, unprofessional conduct, or evident unfitness for service, it must also be established that the conduct renders the teacher unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230.) Thus a determination of evident unfitness requires an analysis based on criteria set forth in *Morrison*.<sup>3</sup> In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.)

7d. The District failed to establish by a preponderance of the evidence that respondent is unfit to teach based upon the alleged misconduct. As stated in Legal Conclusion 4, respondent did not chase Aaron. S. in the classroom or intentionally hit or slapped the student. Consequently, the Commission determined that the District failed to establish that the alleged misconduct occurred. The District did not establish the existence of a fixed character defect or a temperamental inadequacy. The single inadvertent incident that occurred on December 5, 2013, does not establish respondent's evident unfitness, as defined

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<sup>3</sup> In *Morrison*, the Supreme Court of California held that the determination of whether a person is fit to teach must be based on an objective and analytical approach, consisting of a review of the teacher's conduct and an assessment of a variety of specific factors including: (1) the likelihood of recurrence of the questioned conduct; (2) the presence of extenuating or aggravating circumstances; (3) the effect of notoriety and publicity; (4) the likelihood that the conduct adversely affected students or fellow teachers; (5) the disruption of the education process; (6) the motive underlying the conduct; and (7) the proximity or remoteness in time of the conduct.

by the statute and applicable case law, including under the factors established in *Morrison*. Accordingly, it was not established that respondent is unfit to teach.

8a. Cause does not exist to dismiss respondent for persistent violation of or refusal to obey school laws or regulations pursuant to section 44932, subdivision (a)(7), by reason of Factual Findings 1 through 36.

8b. Persistent violation of or refusal to obey school laws or regulations under section 44932, subdivision (a)(7), require that the violation be either "persistent" or "motivated by an attitude of continuous insubordination." (*Governing Bd. of Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

8c. As stated in Legal Conclusion 4, the Commission determined that the District did not meet its burden of proving that respondent committed the charged acts, and there is no other evidence that respondent violated any other school laws or regulations. To the contrary, respondent has no prior history of insubordination or discipline with the District. Accordingly, the District failed to show respondent persistently violated school laws and regulations.

9a. Cause does not exist to dismiss respondent for willful refusal to perform regular assignments without reasonable cause pursuant to section 44939, by reason of Factual Findings 1 through 36.

9b. The District presented no evidence that respondent willfully refused to perform his teaching assignments at Jefferson. Accordingly, the District failed to establish by a preponderance of the evidence that respondent should be dismissed on these grounds.

10. Since no cause for discipline exists, complainant having failed to prove the factual allegations in the First Amended Accusation and Statement of Charges, the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 need not be considered.

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ORDER

The determination of the Governing Board of the Los Angeles Unified School District seeking to dismiss respondent Bruno Aghedoh (EN 706616) pursuant to Education Code sections 44932 and 44939 is not upheld. Accordingly, the Statement of Charges and First Amended Accusation are hereby dismissed. Respondent shall be reinstated as a certificated employee of the District.

DATED: May 4, 2015

  
MICHAEL A. SCARLETT  
Administrative Law Judge,  
Office of Administrative Hearings,

DATED: 5/5/2015

  
MICHAEL SCHEERLE  
Commission Member

DATED: 5/7/2015

  
RAY ANDRZEJEWSKI  
Commission Member