

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
POMONA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

OSENI IRIAFEN,
A Permanent Certificated Employee,

Respondent.

OAH No. 2017110534

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Pomona on February 26 & 28, 2018, and March 1, 2, 5-9, 12-15, 2018. The Commission consisted of Tom Hood, Ray Andrzejewski, and Erlinda G. Shrenger, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, who presided.

L. Carlos Villegas and Nima Jalali, Fagen Friedman & Fulfrost, LLP, represented Pomona Unified School District (District). Eli Naduris-Weissman and Daniel B. Rojas, Rothner, Segall & Greenstone, represented Oseni Iriafen (respondent).

Oral and documentary evidence was received. As stated on the record, the ALJ ordered that student names would appear in the hearing transcript as first name and last initial.¹ In addition, when noted by the ALJ, documentary evidence was redacted to show student names in that format.

The presentation of witness testimony concluded on March 14, 2018. Due to the lateness of the hour, the respective counsel for the parties agreed to having the ALJ alone conduct a telephonic conference on March 15, 2018, to address issues and finalize the exhibits admitted into the record.

On March 15, 2018, the ALJ held a telephone conference with counsel, which was electronically recorded. During the telephone conference, documents were presented and marked as Exhibits 29 through 33. Exhibits 29 and 30 were admitted for impeachment

¹ The students' full names are set forth in a confidential names list marked and admitted under seal as Exhibit 33.

purposes. Exhibits 32 and 33 were admitted. Respondent's objection to Exhibit 31 was sustained, and that exhibit was not admitted.

The hearing was concluded on March 15, 2018. The record was held open for the submission of written closing briefs as follows: District's closing brief was due by April 16, 2018; Respondent's closing brief was due by May 18, 2018; and District's reply brief was due by June 1, 2018. The ALJ permitted the parties, if they wished, to lodge with OAH excerpts from the hearing transcript cited in their closing briefs.

The parties timely filed their briefs. The District's Closing Brief was marked as Exhibit 34. On April 16, 2018, the District also filed a Notice of Lodging Exhibits in Support of Closing Brief, which was marked as Exhibit 35, and a Supplemental Notice of Lodging Exhibits, which was marked as Exhibit 36. On April 30, 2018, the ALJ issued an order directing the District's counsel to prepare an index that identified the witnesses whose testimony was reflected in the hearing transcript pages contained in the Notice of Lodging and Supplemental Notice of Lodging, and to file the index with OAH by June 1, 2018. The ALJ's order was marked as Exhibit 37.

On June 1, 2018, the District submitted a written request to extend the deadline for filing the hearing transcript index to June 5, 2018, which respondent did not oppose. The ALJ issued an order extending the deadline for filing the index to June 8, 2018. The District's written request was marked as Exhibit 38. The ALJ's order extending the deadline was marked as Exhibit 39. Thereafter, the District's index for the hearing transcript excerpts was filed and served on June 8, 2018, and marked as Exhibit 40. Respondent's Closing Brief was marked as Exhibit T. The District's Reply Brief was marked as Exhibit 41. The District's Notice of Lodging of Exhibits in Support of Reply Brief was marked as Exhibit 42.

The record closed and the case was submitted for decision on June 8, 2018.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a permanent certificated employee of the District.
2. On September 20, 2017, the District served respondent with a Notice of Immediate Suspension Without Pay and Intent to Dismiss (Notice), which notified respondent of the District's intent to dismiss him within 30 days unless he made a written request for a hearing. The Notice included a Statement of Charges with exhibits, a Demand for Hearing form, and copies of relevant Education Code sections.
3. On October 16, 2017, respondent, through his counsel, served the District with a Demand for Hearing/Notice of Defense, which contained respondent's demand for a

hearing and also served as his notice of defense pursuant to Government Code sections 11505 and 11506.

4. All jurisdictional requirements have been met.

Respondent's Background

5. Respondent is originally from Nigeria. He completed high school in Nigeria.

6. In March 1986, respondent moved from Nigeria to California. He attended Fullerton College, where he received an associate's degree in architecture in 1988 and an associate's degree in biology in 1990. Respondent subsequently attended California State Polytechnic University, Pomona (Cal Poly Pomona). In June 1994, respondent graduated from Cal Poly Pomona with a bachelor's degree in biological sciences.

7. In June 1998, after completing the teaching credential program at Cal Poly Pomona, respondent received his professional, clear single-subject with CLAD credential, and supplemental credential in mathematics and chemistry. In June 2000, respondent received his master's degree in education from Azusa Pacific University.

8. Respondent began teaching as a day-to-day substitute teacher for four different school districts, including the District, from September 1995 to January 1996. He worked for the District as a long-term substitute teacher at Pomona High School from September 1996 to January 1997. He then went to work for the Los Angeles Unified School District as a biology and life science teacher at John Muir Middle School from January to June 1997. In September 1997, respondent was hired by the District as a physical science and math teacher at Marshall Middle School. After receiving his teaching credential in June 1998, respondent continued working at Marshall Middle School as a physical science and math teacher during the next five years until June 2003. From September 2003 to June 2011, respondent continued his employment with the District as a teacher at Simons Middle School, where he taught physical science, life science and algebra. In September 2011, respondent began working as a teacher at Pomona High School, teaching biology for ninth and tenth graders and anatomy & physiology for eleventh and twelfth graders.

9. At Pomona High School, respondent also taught Saturday School, which are classes held on campus on Saturdays so students can make up work missed because of absences and/or get extra help from teachers. Not every teacher teaches Saturday School, which is voluntary. Students choose which teacher's classroom they will attend for Saturday School.

10. Respondent is the club advisor for the Science Club, which was formed in the 2013-2014 school year. Respondent was involved in forming the Science Club.

11. Respondent has been a teacher at Pomona High School since the 2011-2012 school year. This dismissal proceeding is based on alleged conduct by respondent while a

teacher at Pomona High School during the 2013-2014, 2014-2015, 2015-2016, and 2016-2017 school years.

Pomona High School

12. Pomona High School has approximately 1,600 students. Most of the students are from Title 1, low income households.

13. Pomona High School received a three-year school improvement grant. The grant covered the 2010-2011, 2011-2012, and 2012-2013 school years. The school used the grant money for instructional coaches for English, math, and science. The instructional coaches were other Pomona High School teachers selected to be coaches. The school provided extra professional development for the faculty in the same content area to meet one hour per week.

14. (A) Roger Fasting has been the principal at Pomona High School since February 2008. Principal Fasting's testimony established the steps taken by Pomona High School to change the culture and climate of the school. There were five student-free days in a school year. There were also late-start Fridays that were used for professional learning and meetings. The school also received an S-3 grant (school safety grant) which was a grant to enhance school culture. One late-start Friday was dedicated to improving and enhancing the school's culture and climate. Teachers received training on staff development days. At the start of the school year, teachers received one paid day to set up their classrooms. The school also had a "student norming day" during which the school developed behavioral norms. During the first semester of a school year, teachers in every class spent five to 15 minutes per day teaching students the behavioral norms, so the students were taught the norms in all of their classes throughout the school day.

(B) In addition, the school developed a Wellness Center as an alternative to off-campus suspension. Thus, for example, when students are off-task or have behavioral issues, the students are kept at school at the Wellness Center instead of sent home from school, which gives the school the opportunity to determine the root of the behavior. The Wellness Center and S-3 grant center provide each teacher with a binder that is a compilation of resources and materials from meetings. The binder is separate from the teacher handbook and is specific to classroom management, student engagement, and best practices to de-escalate situations with students.

15. Pomona High School invested in AVID², which is a program to prepare students for college eligibility and success. The school eventually became an AVID demonstration school. AVID demonstration schools undergo a rigorous validation process to ensure implementation of AVID strategies and must be revalidated every few years.

² AVID stands for Advancement Via Individual Determination.

16. According to Principal Fasting, the graduation rate at Pomona High School is now higher than the county and state-wide averages. The school has received awards from the California Department of Education. Pomona High School is one of 12 schools to receive an award for engaging students in civic projects. Principal Fasting attributes the school's success to the collective efforts of the faculty and administration to change the culture and climate of the school for the better.

District Policies

17. The District has a policy regarding the acceptable use of electronic information resources, which are defined as "technology resources including, but not limited to, computers and systems, Intranet and Internet resources, electronic communications and data files." (Exh. 23.) The policy provides that access to electronic information resources "must be for the purpose of education or research, and must be consistent with the educational goals and objectives and/or the business uses of [the District]." (*Id.*) The policy gives examples of unacceptable use, which include "[c]reating, communicating, using, or knowingly accessing images or text that are obscene, pornographic, inflammatory, harassing, threatening, degrading, or harmful to minors, or that promote illegal, discriminatory, or unethical activities." (*Id.*)

18. Board Policy Nos. 4119.11, 4219.11, and 4319.11 set forth the District's policy regarding sexual harassment of District personnel. (Exh. 24.) Board Policy No. 5145.7 is the District's policy regarding sexual harassment of students (Exh. 25). Board Policy No. 5145.7 states, in part: "The Governing Board is committed to maintaining a learning environment that is free of harassment. The Board prohibits the unlawful sexual harassment of any student by any employee, student, or other person at school or any school-related activity." (Exh. 25.) Under the policy, the types of conduct which are prohibited in the District and which may constitute sexual harassment include, but are not limited to, unwelcome sexual flirtations or propositions; unwelcome sexual slurs, leering, epithets, threats, verbal abuse, derogatory comments or sexually degrading descriptions; graphic verbal comments about an individual's body or overly personal conversations; and sexual jokes, notes, stories, drawing, pictures or gestures. (Exh. 25.)

19. Board Policy No. 1270 is the District's civility policy, which provides, in part: "[The District] is committed to a learning environment that fosters mutual respect and civil conduct between and among students, school District employees, parents, volunteers, and the general public." (Exh. 26, p. 249.) The policy further provides: "The Board of Education encourages positive communication and discourages volatile, hostile, or aggressive actions that could have a negative impact on the learning environment of both teachers and students." (*Id.*) The policy defines civility as "[m]utual respect and consideration reflected in language, attitudes, and behaviors." (*Id.*) Expected behaviors include, but are not limited to, respect and courtesy in language, demeanor, and actions, and respectful acknowledgment of cultural differences. (Exh. 26, p. 250.) Unacceptable behaviors include, but are not limited to, rude, insulting, or demeaning language and/or actions, harassment and intimidation, and threatening and/or abusing gestures and behavior. (*Ibid.*)

20. Board Policy No. 4119.21 sets forth the District's Code of Ethics. The policy states that the Governing Board of the District "believes that certificated staff members should accept as guiding principles and abide by the 'Code of Ethics of the Teaching Profession' as adopted and revised by the Commission on Teacher Credentialing." (Exh. 27.) The Code of Ethics of the Teaching Profession sets forth specific commitments to the student, the public, and the teaching profession, when teachers accept the responsibility to practice the profession according to the highest ethical standards. (*Id.*)

21. Board Policy No. 5137 is the District's policy for promoting a Positive School Climate. (Exh. 28.) The policy provides, in part: "The Governing Board desires to enhance student learning by providing an orderly, caring, and nurturing educational and social environment in which all students can feel safe and take pride in their school and their achievements. The school environment should be characterized by positive interpersonal relationships among students and between students and staff. [¶ . . . ¶] All staff are expected to serve as role models for students by demonstrating positive, professional attitudes and respect toward each student and other staff members. Teachers shall use effective classroom management techniques based on clear expectations for student behavior." (*Id.*)

22. Board Policy No. 5121 sets forth the District's policy for examination, grading, and rating of student performance. (Exh. 22). The policy requires letter grades to be reflective of academic achievement. Students' letter grades are expected to directly measure students' knowledge and skills in the content area. The policy provides that in grades 7-12, each student is given a letter grade according to the student's performance on each course objective, as follows: "A" for excellent, "B" for very good; "C" for satisfactory; "D" for below average; and "F" for unsatisfactory. Students can also be graded as "P" for pass and "I/P" for incomplete pass.

23. Board Policy No. 5125 sets forth the District's policy for maintaining the confidentiality of student records. (Exh. 21.) The policy states, in part: "The Governing Board believes that it is useful and necessary to keep accurate, comprehensive records of each student's academic, physical, emotional and social development. Information about a student shall be used judiciously, always in ways that contribute to the student's welfare." (Exh. 21.) The school "shall establish safeguards to protect the student and the student's family from invasion of privacy." (*Id.*)

School Policies

24. Teachers and staff at Pomona High School are prohibited from transporting students off campus during school hours, but administrators are permitted to do so. Teachers and staff are prohibited from giving rides to students during school hours because of the school's potential liability if there is an accident or if students are brought to an off-campus location and left unsupervised during school hours. Teachers may not transport students in their personal vehicles unless they pass a background check and provide a copy of their insurance and driver's license. Typically, teachers who are allowed to transport students in

their personal vehicles are the coaches of sports teams. For field trips, there is a process for arranging student transportation and obtaining written permission from parents.

25. A lunch pass allows a student, who meets certain requirements, to leave campus during the school day. The student must be 18 years old, meet testing scores, and have approval from their parent, a counselor, and an administrator. However, simply because a student has a lunch pass does not mean the student can leave campus with a teacher. The teacher must have authorization from the school and the District, as discussed above.

26. Deanna Konop has been an assistant principal at Pomona High School since 2012. She has been employed by the District since 2004. Ms. Konop first met respondent in 2012. She oversaw the Science Department at Pomona High School where respondent was a teacher. Ms. Konop's testimony established that teachers at Pomona High School are prohibited from selling food in their classrooms. The school has a student store that sells food. All food sold on campus must meet nutritional guidelines. Student clubs, with approval from ASB and Ms. Konop, are permitted to sell food as a fundraising activity for the club. The items sold must be approved by ASB and Ms. Konop. When a student club is given authorization for food sales, the authorization is only for specified school events (e.g., Food Carnival, Club Rush, Homecoming) and for specified days and time periods. Ms. Konop emphasized that the authorization to sell food is given to the club, not to individual teachers. It is primarily the student-members of the club that do the selling. The club may sell food before and after school, and during lunch and passing periods. No sales are permitted during class time.

Respondent's Classroom

27. The school day at Pomona High School consisted of six periods. Teachers had five content periods and one non-content period. Respondent's non-content period was fourth period. His first period class consisted of English-learner students.

28. The Commission heard testimony from many witnesses who were students in respondent's classes at Pomona High School during the relevant school years. The students described respondent as relating well to his students and referred to him as "Mr. I." Many of the students described respondent as "strict" and a "good teacher." Many of the students liked respondent's classes. Some students went to respondent for advice beyond the lessons in respondent's class, such as advice for college and personal and family issues. Some students viewed respondent as a father figure. Many students would spend the lunch period in respondent's classroom, which he allowed. Although other teachers allowed students in their classroom during the lunch period, many students chose respondent's classroom. They described respondent as funny and friendly. They felt they could approach him about all topics. Respondent was described as being able to relate to students "at their level." Respondent's manner of interacting with students made him a polarizing figure. Some of the students reacted positively to his teaching style, while other students were offended or felt uncomfortable by some of his jokes and comments. However, those students who were

offended or felt uncomfortable by respondent's comments or conduct did not complain to school administrators about it.

29. Respondent's classroom had a sink, which respondent used to wash his hands and the dishes he used for his breakfast or lunch. When he washed his hands, respondent used towels to dry his hands; however, he also dried his hands on the backs and shoulders of the students. Students would wash respondent's dishes in exchange for serving formal detention or to get back their cell phone that respondent took away from them during class. Respondent's classroom also had a stockroom and a refrigerator, where respondent stored food.

2013-2014 School Year

Directives Given to Respondent

30. On September 27, 2013, Principal Fasting held a meeting with respondent to discuss allegations by students that respondent engaged in inappropriate conduct in the classroom.³ During the meeting, Principal Fasting reviewed the students' allegations with respondent and allowed him to respond to the allegations. On October 1, 2013, respondent was placed on paid administrative leave while the District and the school site investigated the students' allegations. (Exh. 2.) When the investigation was completed, Principal Fasting prepared a Conference Summary memorandum dated October 15, 2013 (2013 Conference Summary), which summarized the students' allegations, respondent's response to the allegations, and the discussion between Principal Fasting and respondent during their September 27, 2013 meeting. (Exh. 4.) Respondent was provided a copy of the 2013 Conference Summary by Principal Fasting on October 16, 2013, which respondent signed to acknowledge his receipt of the document on that date.

31. The 2013 Conference Summary directed respondent as follows:

Effective immediately, you are directed to:

1. Cease using the term sucky, sucky, suck or any other derivation of the word suck.
2. No use of profanity for any reason but not limited to fuck, shit, bitch, or big dick.

³ In making its decision in this dismissal proceeding, the Commission did not consider the specific allegations of inappropriate conduct that were the subject of the September 27, 2013 meeting between Principal Fasting and respondent. The District's evidence was insufficient to establish that the underlying allegations occurred within four years of the September 20, 2017 Notice. (Ed. Code, § 44944, subd. (b)(2)(B).)

3. Not share personal information which is sexual in nature or may be considered sexual in nature.

4. Refrain from physical contact of any type with students, including but not limited to touching students on the shoulder or buttocks.

(Exh. 4.)

32. The 2013 Conference Summary warned respondent that his failure to follow the above directives could result in further disciplinary action, including suspension without pay and/or termination from employment.

33. As of the 2013-2014 school year, respondent had been advised of the school policy regarding food sales by student clubs (discussed in Finding 26, above). Ms. Konop had spoken with respondent in November 2012, advising him that he was not permitted to sell food without ASB approval. In the 2013 spring semester, Ms. Konop sent an email and spoke to the entire teaching staff about the school policy for food sales and advised the teaching staff that if they wanted to sell, they had to form a club and get items approved by ASB. She also spoke with respondent in his classroom about this policy. In August 2013, at the start of the 2013-2014 school year, Ms. Konop had a conversation with respondent to remind him he was not allowed to sell items on campus without ASB approval. During this conversation, respondent spoke with Ms. Konop about forming the Science Club. The club constitution for the Science Club was completed in October 2013, and the club was assigned a week during the 2013-2014 school year to sell food.

Charge 5

34. It was established, as alleged in Charges 5a, 5d, 5e, 5h, and 5i, that, notwithstanding the directives given in the 2013 Conference Summary, and Ms. Konop's directives regarding food sales, respondent engaged in inappropriate conduct as follows. Respondent washed his hands in the classroom sink and dried his wet hands on students' backs and shoulders. He told racial jokes about Mexicans and referred to Mexicans as "beaners." He told male students who were misbehaving, "I will shove this up your ass," referring to his penis. He sold food to students in his classroom. Respondent used profanity, including "ass," "bitch," "fuck," mother fucker," "shit," "bullshit," and "nigger," and he continued to use the phrase "sucky sucky." The District's evidence was insufficient to establish the allegations of Charges 5b, 5c, 5f, 5g, 5j, 5k, and 5l.

35. The District presented the testimony of Y█ D., who was a ninth grade student in respondent's biology class for the 2013-2014 school year. The Commission found Y█ D.'s testimony was credible. Her testimony established that respondent engaged in inappropriate conduct, as alleged by the District. That testimony, however, did not establish Y█ D. was inherently biased against respondent. She also provided testimony that reflected favorably on respondent. For example, she described respondent as a teacher who related well to students, she liked respondent's class, and respondent encouraged her to learn.

She also recounted that she chose to spend the lunch period in respondent's classroom, even though other teachers' classrooms were also available for students to spend lunch. The Commission also found Y [REDACTED] D.'s testimony credible because it was consistent with the testimony of students from respondent's classes in subsequent school years (discussed below).

36. Respondent presented testimony by three of his former students from the 2013-2014 school year. R [REDACTED] B. was a tenth grade student in respondent's biology class. K [REDACTED] H. and S [REDACTED] M. were both twelfth grade students in respondent's anatomy & physiology class. K [REDACTED] H. was also respondent's teacher's assistant for his fifth period biology class. These three former students provided testimony that contradicted Y [REDACTED] D.'s testimony. For example, they testified that respondent did not make mean, sexual or inappropriate jokes; he did not sell food in class; he did not use profanity or the phrase "sucky sucky"; he did not dry his wet hands on students; and he did not refer to Hispanics as "beaners." The Commission found, however, that the testimony of respondent's three student witnesses was not sufficient to rebut Y [REDACTED] D.'s testimony. K [REDACTED] H. and S [REDACTED] M. were in respondent's anatomy class, not his biology class. K [REDACTED] H. was respondent's teaching assistant for his fifth period biology class, but no evidence was presented that Y [REDACTED] D. was in that class. No evidence was presented that R [REDACTED] B. was in the same biology class as Y [REDACTED]. Further, unlike Y [REDACTED]'s testimony, the testimony of respondent's three student witnesses was strikingly inconsistent with the testimony of students from respondent's classes in subsequent school years (discussed below).

37. Regarding Charge 5a, respondent admitted that he dried his wet hands on students, by patting his hands lightly on students' shoulders.

38. (A) Regarding Charges 5i and 5d, respondent admitted that, during the 2013-2014 school year, he said "fuck," "shit," and "ass." He testified that he said "fuck" when he hurt his finger while moving a table and "shit" when he hit his leg on something. He also said "fuck" after making a mistake on his computer. He testified that he does not say "fuck" all the time; it just happens in the heat of the moment. Respondent explained that he uses "fuck" and "shit" not as profanity, but as academic vocabulary, especially for English-learner students. For example, he used "fuck" to explain intercourse and copulation, and he used "shit" to explain feces. Respondent admitted he used the word "ass" to tell students who were misbehaving in the lab with a scalpel, "stop being an ass." Respondent denied saying "mother fucker" or "bitch. Respondent denied saying "beaner." He claimed that the word came up in class because students said it, and he told them to stop saying it. Similarly, respondent contends he heard students say "nigger" in class and told them to stop. The students told him they were saying "nigga," not "nigger." According to respondent, students would ask each other, "what's up my nigga?"

(B) Respondent denied that he used the phrase "sucky sucky" or that he told Principal Fasting that it is a common expression used in Nigeria, as documented in the 2013 Conference Summary. (Exh. 4.) Respondent contends he said, "we suck, we suck," which the students mistook for "sucky sucky." He explained, for example, that if the class did

poorly on a test, he would tell the students "we suck as a class." Respondent admitted he used the word "suck" but he did not say "sucky sucky." Respondent also said "we suck" when the class returned on Monday after the Raiders football team lost a game over the weekend.

(C) The Commission finds that respondent's testimony and explanations do not mitigate or excuse his use of inappropriate language and profanity in the classroom. His denial of using the phrase "sucky sucky" was not credible and was inconsistent with his prior statements to Principal Fasting documented in the 2013 Conference Summary.

39. The District's evidence established that, during the 2013-2014 school year, respondent sold food to students in his classroom. According to Y█ D., respondent sold burritos, soda, ice cream and water to students during the first few months of the 2013-2014 school year. Later on, respondent told the class he was getting in trouble for selling food in class, and then he rarely sold food after that. Y█ D. felt that when respondent sold food in class, he "did it out of his heart." She explained that respondent sold food to students who begged him for food. She noted that if a student was "really hungry," respondent would just give the student the food.

40. Daniele Moatakef has been employed by the District for 15 years. She has been an Assistant Principal at Pomona High School for the past six years. Ms. Moatakef testified credibly regarding one occasion when she saw respondent selling food in his classroom during the 2013-2014 school year. Ms. Moatakef was on a walk-through of respondent's classroom with Principal Fasting and Ms. Konop when she observed students exchanging money for chips with respondent. Ms. Moatakef told Ms. Konop to address the situation with respondent. According to Ms. Moatakef, teachers are never allowed to sell food in the classroom. The school has a student store that sells food. If a teacher is involved with a club, there is paperwork and an ASB process to approve the food items sold and where the food is sold. Ms. Moatakef testified that a teacher is not allowed to sell food on campus without approval, even if the student begs the teacher for food.

41. At this hearing, respondent admitted that he sold food to students during the four school years at issue. According to respondent, Ms. Konop explained to him that the proper way to sell food was to form a club, which he did (i.e., the Science Club) in the 2013-2014 school year. Respondent testified that he started the Science Club so that he could raise money to buy animal specimens and utensils (e.g., forceps and scalpels) for dissections performed by students in his classes. After the Science Club was formed, respondent understood that he could sell food before school, after school, and during lunch and break times, but he was not allowed to sell food during instructional time. He also understood that money from food sales had to be spent on the students. Respondent testified that he sold food in his classroom when instruction was not going on. In addition to selling food, respondent testified he also gave food to students. Respondent testified the members of the Science Club voted on the items to be sold. Respondent testified the Science Club sold Hagen-Daz ice cream (from Costco), chips (from Smart N Final), chimichangas, water, Gatorade, and Cup O' Noodles. The food was stored in the stockroom of respondent's

classroom, where he also had a refrigerator. He testified that none of the money from the food sales was retained for his personal use.

42. The Commission finds that respondent engaged in inappropriate conduct by selling food to students during the four school years at issue in this proceeding. The District's evidence established that authorization or approval by ASB and Ms. Konop for food sales on campus is given to the student club, not individual teachers. Further, the evidence was clear that authorization for a student club to sell food allowed the club to sell only during designated days and times assigned to the club. Here, respondent was routinely selling food that he stored in the stockroom of his classroom. It appears to the Commission that respondent formed the Science Club as a pretext so that he could continue to sell food to students in his classroom. Respondent's explanation that he formed the Science Club to raise funds to buy animal specimens and utensils used to teach dissection in his biology and anatomy classes was not convincing. The Commission finds that funding to purchase specimens and utensils for teaching dissection is a budgeting matter that is more appropriately addressed through the school's administration, similar to funding of student textbooks, and not by fundraising activities of a student club. The school and the District are responsible to address funding issues related to purchasing materials necessary to teach the curriculum.

2014-2015 School Year

Student Witnesses

43. B [REDACTED] G. was a ninth grade student in respondent's biology class in the 2014-2015 school year. She was also an eleventh grade student respondent's anatomy & physiology class in the 2016-2017 school year. D [REDACTED] O. was a twelfth grade student in respondent's anatomy & physiology class during the 2014-2015 school year. B [REDACTED] G. and D [REDACTED] O. each testified credibly regarding their experience in respondent's classes during the 2014-2015 school year. Although they testified regarding inappropriate conduct by respondent in the classroom, they also testified to matters that reflected favorably on respondent. Neither of them demonstrated an inherent bias against respondent to affect their credibility.

Charges 6 and 7

44. It was established, as alleged in Charge 6, that during the 2014-2015 school year, despite the District's previous warnings and directives regarding procedures for approval to sell items to students for fundraising and the legal restrictions on selling food to students, respondent continued to sell food to students in direct violation of the District's prior directives, the school's nutrition laws, and applicable fundraising regulations. Testimony by B [REDACTED] G. and D [REDACTED] O. established that respondent sold food in their respective classes during the 2014-2015 school year.

45. It was established, as alleged in Charge 7, that during the 2014-2015 school year, respondent encouraged students to be dishonest if they were asked where they acquired the food he sold to them, telling the students to say they brought it from home or something to that effect. According to B█████ G., the students knew not to say that respondent sold them food because teachers were not allowed to sell to students. B█████ G. testified that respondent encouraged students to keep it to themselves that he had sold them food.

Charge 8

46. It was established that during the 2014-2015 school year, respondent continued to engage in inappropriate conduct, despite prior directives, as alleged in Charges 8a through 8e and Charges 8i through 8m. The District's evidence was insufficient to establish the allegations of Charges 8f, 8g, and 8h.

47. (A) During the 2014-2015 school year, respondent engaged in inappropriate conduct, despite prior directives, as follows. Respondent washed his hands in the classroom sink and dried his wet hands on students' backs and shoulders. He hugged female students and male students. Respondent told racial jokes and made racial comments about all races, not just one group. He also told gay jokes and teased students about being gay. For example, when a student wore a shirt that said "GAP" (the name of the clothing store), respondent joked that it meant "gay ass person." Respondent also told sexual jokes and joked that he was hiding pornography on his classroom computer. Respondent joked about his ass and used the phrase "fuck you in the ass."

(B) Respondent's inappropriate conduct also included the following. He used profanity during class and towards students including, but not limited to, "fuck," "fuck you," "asshole," "bitch," and "broke asses." He frequently used the phrase "sucky sucky" and to such an extent that Diego O. thought "sucky sucky" was respondent's catch phrase. Respondent made comments about his penis. He joked about his "big penis." He also talked about penis enlargement and how a penis can be stretched out a certain way; the comment had no relation to a class lesson. Respondent talked about how he liked "big boobs" in women, and also talked about his wife's body and her big boobs. Respondent commented on the physical appearance of women and female students. For example, he complimented female students' appearance and told them they were "looking good today" or he called them "beautiful." Respondent asked students about their relationship (dating) status. During instructional time, respondent used the classroom computer to show photos and videos of his family or when he was on vacation, none of which was related to a class lesson. Diego O. testified that respondent showed his personal photos and videos on one or two occasions.

48. The Commission found that no mitigation or excuse was established for respondent's inappropriate conduct described above. For example, there was no excuse for his use of profanity and inappropriate language in the classroom or his offensive jokes and comments. Respondent testified that he showed pictures of his family to his classes as a way to connect with his students. He showed pictures of his family on vacation and pictures of his family who live in Nigeria. Of the 55 minute class period, he estimated that he spent up

to seven to 10 minutes showing his personal pictures. He showed his personal pictures one to two times per month. The Commission found that respondent's display of personal pictures was not an appropriate use of instructional time, even if the purpose was to connect with his students. Respondent testified that he hugged students sideways, not face-to-face. He hugged female students and male students, but not often. Because respondent had been directed to refrain from any physical contact with students, the hugs were still inappropriate whether they were face-to-face or sideways.

Charge 9

49. It was established that during the 2014, 2015 school year, respondent failed to exercise good judgment in the performance of his duties and failed to maintain appropriate professional boundaries with students, when he provided rides to students in his personal vehicle without school or parental permissions or notifications, as alleged in Charges 9a, 9b, and 9c.

50. (A) On April 30, 2015, respondent left the staff parking lot at lunch time with four female students in his personal vehicle, and he returned to campus near the end of the lunch period without the female students. A campus security officer, Tiawan Hemmans, had observed respondent's conduct and radioed Principal Fasting when he saw respondent return to campus alone. Upon receiving the radio call from security officer Hemmans, Principal Fasting contacted respondent in his classroom, where he was starting to teach his class. Respondent identified the four female students and told Principal Fasting he had dropped them off at the Wingstop restaurant, which was located in a nearby shopping mall, a part of which bordered the north side of the campus. Principal Fasting went to the restaurant but did not find the four students there. The students' parents were notified and asked to call their students on their cell phones to determine their locations. The four students returned to campus near the end of the class period that followed the lunch period, after receiving phone calls from their parents and friends that the school was looking for them. The four students confirmed to Principal Fasting that respondent dropped them off at the mall for lunch but did not give them a ride back to school.

(B) Principal Fasting spoke with respondent after school on April 30, 2015, regarding the incident with the four students. During that conversation, respondent's response to the situation was "what's the problem," "what's wrong," "I don't see a problem," and "I just drove them to get lunch." Principal Fasting explained some of the possible scenarios that could occur by providing rides to students during school hours, and how respondent's situation became more precarious because he left the four students at an off-campus location unsupervised during school hours. Principal Fasting strongly advised respondent to refrain from providing rides to students, especially during school hours.

(C) Respondent does not dispute that he drove the four students in his personal vehicle to the Wingstop restaurant and returned to campus without the students. He admitted that he did not have authorization from the administration to drive the students off campus. Respondent testified that the four students asked him for a ride as he was leaving his

classroom to pick up his lunch at Wingstop, which he had ordered on the phone. He testified the students showed him they had a pass. Respondent explained he did not wait for the students to get their lunches because he did not want to be late coming back from lunch and leave the students in his next class waiting outside the classroom.

(D) Respondent's explanations do not mitigate or excuse his conduct. No evidence was presented to corroborate respondent's claim that the four students had lunch passes. Even assuming, arguendo, the students had lunch passes, the lunch passes would not authorize respondent to drive the students off-campus in his personal vehicle. Respondent needed authorization from the school and the District, which he admitted he did not have. Respondent's justification for leaving the four students at the restaurant was that he did not want to be late for his next class. His statements to Principal Fasting that he saw no problem with his conduct are concerning because they reflect a failure to appreciate and understand the obligation of the school and its teachers to provide supervision of students during the school day. Respondent left four female students at an off-campus location unsupervised during the school day. Respondent admitted that he "exercised poor judgment in transporting the four female students and leaving them at the 'Wingstop' restaurant so they could receive their food order." (Respondent's Brief, p. 6.)

51. (A) On May 11, 2015, respondent attempted to transport a male student off campus in his personal vehicle during lunch. The male student was G [REDACTED] A. Respondent attempted to drive his car from the staff parking lot with G [REDACTED] A. as a passenger. Security officer Hemmans saw respondent and the student get into the car and start driving to leave the parking lot. Hemmans radioed Principal Fasting of the situation. At Principal Fasting's direction, security officer Hemmans closed the exit gate of the parking lot and prevented respondent's car from leaving and told G [REDACTED] A. to exit the vehicle and remain on campus. The next day, on May 12, 2015, Principal Fasting spoke with respondent and directed him that he was not to provide transportation to students during school hours.

(B) Respondent and G [REDACTED] A., the male student, both testified that respondent was not attempting to drive G [REDACTED] A. in his car. Rather, both testified that they went to respondent's car in the staff parking lot to retrieve G [REDACTED]'s project for his Spanish class. They both testified that G [REDACTED]'s father met respondent in the staff parking lot and dropped off G [REDACTED]'s project with respondent, and respondent placed the project in his car. Respondent and G [REDACTED] A. testified they were going to respondent's car at lunch time to retrieve the project when they were approached by security officer Hemmans. G [REDACTED] A. testified he did not go inside respondent's car; respondent grabbed his project and gave it to him. Respondent testified G [REDACTED] A. may have stepped in or leaned into his car to get the project. Both G [REDACTED] A. and respondent testified the car never moved from the parking lot. However, the Commission finds Hemmans' testimony to the contrary to be more credible, as he displayed a more credible and sincere demeanor. Respondent explained he did not take G [REDACTED]'s project to his classroom because of its size and there were already too many things in respondent's classroom and stockroom. Respondent estimated the size of the project was approximately three feet by three feet.

(C) Principal Fasting testified that, during his conversation with respondent regarding the incident with G [REDACTED] A., respondent stated he knew G [REDACTED]'s family and the family gave him permission to give rides to G [REDACTED]. He also identified G [REDACTED] as a student he gave rides to school. At this hearing, G [REDACTED] testified it was "not true" that his parents gave respondent permission to give him rides. G [REDACTED] testified he had an off campus pass during his senior year (i.e., the 2014-2015 school year). He testified that the only times he left campus with respondent was during his freshman year.

(D) The Commission finds that the explanation of the May 11, 2015 incident proffered by respondent and G [REDACTED] A. was not credible. The more persuasive explanation is that respondent attempted to give G [REDACTED] A. a ride at lunch time in his personal vehicle, even though he had been advised 11 days earlier (on April 30, 2015) that he was not to give rides to students during school hours. Even assuming, *arguendo*, that respondent and G [REDACTED] A. went to respondent's car in the staff parking lot to retrieve G [REDACTED]'s project, respondent showed poor judgment in agreeing to accept delivery of G [REDACTED]'s project in the staff parking lot and then going to his car at lunch time with the student to retrieve the project. The project could have been left in the main office, which was a logical place for the parent to drop off the project. No credible evidence was presented as to why the project could not have been left in the main office. Further, respondent could have taken the project to his classroom, which has a stockroom, instead of storing the project in his car.

52. Respondent was issued a Letter of Reprimand dated May 13, 2015, for the incidents on April 30, 2015, and May 11, 2015. (Exh. 5.) The Letter of Reprimand served as a warning regarding his conduct providing rides to students during the school day without school or parental permissions or notification. The Letter of Reprimand included a directive that, effective immediately, respondent was to not provide transportation in his personal vehicle to any students during school hours. Respondent received a copy of the Letter of Reprimand on May 18, 2015. No evidence was presented of respondent engaging in similar conduct subsequent to the May 13, 2015 Letter of Reprimand.

2015-2016 School Year

Student Witnesses

53. The Commission heard testimony from witnesses who were students in respondent's classes during the 2015-2016 school year. K [REDACTED] L.C., L [REDACTED] C., E [REDACTED] M., and F [REDACTED] M. were 11th grade students in respondent's anatomy & physiology class.⁴ These 11th grade students graduated from Pomona High School in 2017. Y [REDACTED] P.M. and D [REDACTED] L. were 9th grade students in respondent's biology class. The evidence did not specify whether any these six students were in respondent's class during the same class period. The Commission found the six students, generally speaking, testified credibly regarding their observations and experiences as students in respondent's classes. They

⁴ K [REDACTED] L.C. and L [REDACTED] C. were called as witnesses by the District. E [REDACTED] M. and F [REDACTED] M. were called as witnesses by respondent.

appeared to put forth their best efforts to answer questions in a truthful and straightforward manner.

Charge 10

54. It was established, as alleged in Charge 10, that respondent told his students at the beginning of the 2015-2016 school year that he joked around a lot and told them, "if you are going to get offended, please leave my class" or words to that effect. By this conduct, respondent improperly circumvented his responsibility to establish and maintain a learning environment that was physically, intellectually, and emotionally safe, and put the responsibility on students to either endure the environment or leave his class.

55. Respondent admitted that he told the students he told jokes sometimes, his jokes may not be funny, but it was "all for a good mood." Respondent denied that he told students not to be offended by his jokes, but that denial is inconsistent with evidence of his deposition testimony where he admitted that he probably told students not to be offended by his jokes. Respondent also denied telling students they should leave the class if they were going to be offended by his jokes. The Commission finds that denial was not credible because it is inconsistent with a similar announcement he made to his classes at the start of the following school year (i.e., 2016-2017) that students should leave "if they can't take jokes." (See Findings 84-85, below.) The totality of the evidence supports a reasonable inference that respondent made similar announcements in both school years.

Charge 11

56. It was established, as alleged in Charge 11, that during the 2015-2016 school year, before making inappropriate racial or ethnic remarks, respondent asked if anyone in the class was of the race or ethnicity he was about to disparage, and then proceeded with his inappropriate remarks. For example, Y [REDACTED] P.M., a ninth grade student in respondent's biology class, testified credibly that respondent told racial jokes about Mexicans and Muslims and would ask if there were any Mexicans or Muslims in the room before telling the joke. Respondent denied that he told racial jokes or made derogatory statements about racial groups. The denial was not credible and easily refuted by the overwhelming student testimony to the contrary.

Charge 12

57. It was established that during the 2015-2016 school year, respondent engaged in inappropriate conduct, despite prior directives, as alleged in Charges 12a through 12k.

58. It was established, as alleged in Charge 12a, that respondent washed his hands in the classroom sink and dried them on students' backs and shoulders. Respondent dried his hands on students every day. One student, L [REDACTED] C., testified she felt uncomfortable when respondent dried his hands on her back. Respondent admitted that he dried his hands on students by lightly patting his hands on their shoulders.

59. It was established, as alleged in Charge 12b, that respondent hugged female students and also hugged male students. Respondent's testimony that he hugged boys and girl sideways, not face-to-face, did not mitigate or excuse his conduct. He was given a directive to refrain from any physical contact with students.

60. It was established, as alleged in Charge 12c, that respondent told racial jokes and made racial comments about Mexicans and Muslims. Respondent denied the allegation.

61. It was established, as alleged in Charge 12d, that respondent regularly used profanity while providing instruction and towards students, including "mother fuckers," "fuck," the N-word, "shit," "broke ass," "ass," and "bitch." It was also established that respondent used the phrase "sucky sucky," which students thought referred to penis sucking and oral sex. K [REDACTED] L.C. testified that respondent said "come over and sucky sucky," which he thought meant sucking respondent's penis as a joke. Y [REDACTED] P.M. thought "sucky sucky" referred to penis sucking. L [REDACTED] C. testified respondent's use of profanity made her feel "a bit uncomfortable." At this hearing, respondent testified that he used profanity to explain content in his classes (e.g., "fuck" to describe copulation between two animals) but he denied using profanity maliciously or in a humorous way. E [REDACTED] M. testified that respondent used profanity but "not intentionally," such as, for example, when respondent said, "shit" after hitting his foot on something.

62. (A) It was established, as alleged in Charge 12e, that during instructional time, respondent used the classroom computer to show personal pictures unrelated to the class lesson, talked about his personal life, and talked on the phone to his wife and others. This finding was established by the student-witness testimony.

(B) Y [REDACTED] P.M. testified that respondent showed pictures and videos that had nothing to do with the biology class. For example, respondent played videos of songs from YouTube (e.g., a music video by singer Celia Cruz). D [REDACTED] L. similarly testified that respondent used the computer to show photos and videos to the class unrelated to biology. Y [REDACTED] P.M. and L [REDACTED] C. testified that respondent often took phone calls during class. According to Y [REDACTED] P.M., the phone calls lasted 15 to 20 minutes and students did class work while respondent was on the phone. E [REDACTED] M. and F [REDACTED] M. testified that respondent talked about his family in class. He was a "proud dad" who spoke favorably about his children and his wife.

(C) Respondent testified that he used the classroom computer to play music during class. He played a song by singer Celia Cruz during class, while the students were working, because the students asked him to play music. He testified that, since 2013, he played music during class "many times." He estimates that, in one semester, he played music during class 15 times. He said it was common to play music in his first period class while the students were working. Respondent testified that no one from the District told him he was not allowed to play music during class.

(D) Respondent testified that he talked to his students about his dating life in college because his students asked him about it. According to respondent, the students knew he was Muslim, there is a stereotype that Muslims don't date, so the students were curious. Respondent also spoke to his students about balancing work and fun in college. When students asked him about college, respondent told them that students in college must have a balanced life. He knew students who regretted that all they did in college was work and did not take time to have fun. Respondent denied that he told his students he was a "player."

(E) Respondent testified that, during the 2015-2016 school year, he showed short video clips and memes to the class, which he described as quick and funny. He testified that some of the videos were related to a class lesson, and some were not. He testified that he showed the funny videos on Mondays. He did not show any videos with sexual content.

63. (A) It was established, as alleged in Charge 12f, that respondent discussed inappropriate subject matter, including partying a lot during college, being a "player," women he dated before marriage, and his sex life. It was not established, as alleged in Charge 12f, that respondent discussed drinking alcohol when he was away from work. This finding was established by the student-witness testimony.

(B) The District's witnesses testified credibly in support of Charge 12f. K [REDACTED] L.C. testified that respondent called himself a "player" and talked about partying in college and the women he used to date. L [REDACTED] C. testified that respondent talked about his girlfriends before he was married. Y [REDACTED] P.M. testified that respondent talked about his college life, that he did a lot of partying and was a "player," meaning that he dated multiple women. D [REDACTED] L. testified that respondent called himself a "player," which D [REDACTED] took to mean that respondent dated different girls.

(C) E [REDACTED] M., who testified as respondent's witness, testified that respondent spoke to him about college and shared his experiences. E [REDACTED] M. testified that respondent told him he had a lot of fun in college and told him about the girls he dated in college, but respondent did not tell him about drinking in college. F [REDACTED] M., who also testified as respondent's witness, testified that respondent talked about partying when he was in college, and also spoke about women he dated before he was married.

64. (A) It was established, as alleged in Charge 12g, that respondent disclosed to the entire class which students were not performing well. The evidence further established that respondent also disclosed to the class which students were performing well. However, it was not established, as alleged in Charge 12g, that respondent disclosed which students were not completing their work.

(B) K [REDACTED] L.C. testified that respondent's "famous kiss"⁵ was when a student got a perfect score, respondent gave the student a kiss on the cheek. K [REDACTED] L.C. also testified that respondent announced who did well and who did poorly in class. He did not tease students who did poorly; he just announced them. E [REDACTED] M. testified that if a student did well in class, respondent had the class applaud for the student. If a student did poorly, respondent told the student to see him after class. Y [REDACTED] P.M. testified that respondent announced grades in class. He announced the students who did well. Y [REDACTED] P.M. testified that the "famous kiss" was when respondent got close to a student's face and blew a kiss to the student. D [REDACTED] L. testified that respondent talked about students who did well and who did poorly.

(C) F [REDACTED] M. testified that if a student did well on a test, respondent would call them out and the other students clapped for them. Respondent also gave the student a chocolate Hershey's kiss. F [REDACTED] M. testified the "famous kiss" was when, as a joke, if a student did not do well on a test but still wanted a chocolate Hershey's kiss, respondent had the student come to the front of the class as if he were going to give the student the chocolate but, suddenly, would just pout his lips as if he was going to give the student a kiss. According to F [REDACTED] M., respondent never actually kissed the student. F [REDACTED] M. testified that respondent made a "kissy face" and pouted his lips, but he did not get close to students. Respondent made kissing noises. Students who did well got a chocolate Hershey's kiss. F [REDACTED] M. testified she and other students knew which students didn't score well based on talking to each other, not from respondent.

(D) Respondent testified that if a student did well, he recognized the achievement by having the other students clap for the student. Sometimes, respondent gave the student a candy bar or an ice cream. If the student continued to do well, respondent gave the student a certificate. If a student also showed improvement, he might also call the student's parent to report the improvement. Some of the recognition was in front of the entire class. Respondent testified that if a student did poorly, he did not announce that to the class. He passed the student a note to see him at lunch or afterschool. Respondent testified he did not shame students in front of the class. Respondent testified he had never been told that he was not allowed to recognize student achievement and performance in this manner.

(E) Respondent testified that he shared students' grades with the class. He projected the grades by student identification (ID) number. He also posted grades on the classroom door by student ID number. Respondent testified that he projected the grades every week, on Fridays. He posted the grades once a month or every two weeks. The students' names were never shown. Respondent testified he had never been told that he is not allowed to project or post grades by student ID numbers. He admitted he did not ask students ahead of time for permission to recognize their class performance or grades. He testified that it is a common practice in the teaching profession to recognize students who are doing well.

⁵ The Statement of Charges refers to respondent's "famous kisses" in Charge 19d, which pertains to the 2016-2017 school year.

(F) The Commission finds respondent acted inappropriately when he disclosed to the entire class which students were not performing well. Calling attention to students who are not performing well does not create a good learning environment. It is contrary to the Code of Ethics of the Teaching Profession, Principle I, subdivision (g), which provides, in part: "The educator works to stimulate the spirit of inquiry, the acquisition of knowledge and understanding, and the thoughtful formulation of worthy goals. In fulfilling these goals, the educator: . . . [¶] (g) Shall keep in confidence information that has been obtained in the course of professional service, unless disclosure serves professional purposes or is required by law." (Exh. 27, p. 255.)

65. It was established, as alleged in Charge 12h, that respondent told his students that he preferred women with large breasts and discussed other physical attributes that he found attractive in women. K█████ L.C. testified that respondent said he liked a "big ass" in women. Y█████ P.M. testified that respondent said he liked breasts and butts in women.

66. (A) It was established, as alleged in Charge 12i, that respondent told sexual jokes and made sexual comments. For example, stating words to the effect of "choke on these" to students while grabbing his testicles and penis. This finding was based on the credible testimony of the District's student-witnesses.

(B) K█████ L.C. testified that respondent made jokes about having porn on his computer and also talked about watching porn. Respondent also said, "sucky sucky," which K█████ L.C. thought was a joke about sucking respondent's penis. K█████ L.C. testified that respondent said "choke on these" while holding his testicles and penis. Y█████ P.M. testified that respondent said, "sucky sucky," which she thought referred to penis sucking. She testified that respondent commented that the penises of Black men were bigger than Asian men's penises, which he said were shorter. Y█████ P.M. testified respondent's comment made her feel disgusted. D█████ L. testified that respondent told students who used his computer, "don't look at my porn."

67. It was established, as alleged in Charge 12j, that respondent made comments about his penis. K█████ L.C. testified that respondent talked about the size of his penis. The comment was not related to any class lesson. Respondent also made a comment, "oh I'm hard," in reference to his penis.

68. It was established, as alleged in Charge 12k, that respondent talked about smoking marijuana. Y█████ P.M. testified that respondent said that he smoked weed (marijuana), but he did not say where he smoked it. She testified respondent, not the students, started the conversation about marijuana. D█████ L. testified that respondent talked about marijuana, which respondent referred to as "herbs." Respondent said, "I got herbs." Respondent did not talk about smoking herbs but did talk about having herbs when he went hiking.

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Charge 13

69. It was established that during the 2015-2016 school year, respondent engaged in disrespectful and demeaning conduct toward students in front of their peers, as alleged in Charges 13d, 13h, and 13i. However, no evidence was presented to establish that respondent engaged in the conduct alleged in Charges 13a, 13b, 13c, 13e, 13f, and 13g during the 2015-2016 school year.

70. It was established, as alleged in Charge 13d, that respondent called a student "broke ass." E█████ M. testified that respondent called him a "broke ass" after he spent all the money he earned from his job at Carl's Jr. to buy a motorcycle. E█████ M. was not offended by the comment and thought it made sense. E█████ M. was not aware of respondent calling other students "broke ass." The allegation in Charge 13d, that respondent called a female student "broke ass" because her family shopped at the 99 Cent Store, was not established by the evidence.

71. It was established, as alleged in Charge 13h, that respondent disparaged homosexual people and talked about them having sex. For example, respondent commented to the effect of: "Come over here and sucky sucky" to a student who was "being gay"; "Oh, you're gay"; and "Are you gay?" K█████ L.C. testified that respondent said, "come over and sucky sucky," and said jokingly "you're gay" or "are you gay?" D█████ L. testified that respondent said, "do you want to go back and sucky sucky?" which he thought referred to oral sex. D█████ L. testified that respondent called things "gay," for example, he would say, "oh, that's gay."

72. It was established, as alleged in Charge 13i, that respondent attempted to discourage students from being homosexual by making a comment to the effect that, if all the women were on one island and all the men were on another island, neither group would be able to reproduce. This finding is based on the credible testimony of Y█████ P.M.

Charge 14

73. It was established, as alleged in Charges 14a, 14c, 14d, and 14e, that during the 2015-2016 school year, respondent repeatedly engaged in conduct and made statements objectifying women, and demonstrating a lack of respect for women and gender equality. However, it was not established that respondent engaged in the conduct alleged in Charges 14b and 14f during the 2015-2016 school year.

74. (A) It was established, as alleged in Charge 14c, that respondent commented on the physical appearance of women and female students by saying, for example, "you look pretty today," "she's pretty," and describing some female students as having nice bodies. It was also established that respondent complimented male students on their appearance.

(B) K█████ L.C. testified that respondent complimented female students he thought were "pretty." K█████ also testified that respondent complimented male students on

their appearance. D [REDACTED] L. testified that respondent complimented female students on their appearance, calling them "pretty" or saying "that looks nice on you." He testified that respondent complimented both male and female students on their outfits. Y [REDACTED] P.M. testified that respondent commented on the appearance of female students, specifically, if they worked out and had a nice body shape. She felt respondent went over the line by commenting on the body shape of female students. She testified that respondent called female students "pretty" and he complimented a male student for having good looking shoes. Y [REDACTED] P.M. testified that, during a passing period, she saw respondent "checking out" Miss Jones (a school employee) by looking at her body up and down.

75. It was established, as alleged in Charge 14d, that respondent told students he was a "player" and commented to the effect that he "got all the girls" or "had so many girls." This finding is based on the student testimony establishing Charge 12f, above.

76. It was established, as alleged in Charge 14e(i), that respondent made sexist comments that communicated to his students, especially the female students, that he did not consider men and women to be equal. K [REDACTED] L.C. testified respondent talked about the roles of men and women, and stated his opinion that men and women were not equal. Y [REDACTED] P.M. testified that respondent talked about the roles of men and women, specifically, that women should cook and clean, and men should earn the money. Y [REDACTED] P.M. felt respondent should not say those things to students.

77. It was established, as alleged in Charge 14e(ii), that on one occasion in respondent's seventh period class, a female student (L [REDACTED] C.) took out a book to read after she finished taking notes; the book was from her English class. It was established that respondent told the student to put her book away and said words to the effect that reading was not going to get her anywhere. The student testified that respondent's comment made her feel small and sad; the student became emotional during this testimony. Respondent denied that he made the comment to the student. The Commission finds the student's testimony was credible and sufficient to establish this Charge. Respondent's comment to the student was inappropriate.

Charge 15

78. The District presented insufficient evidence to establish that respondent engaged in the conduct alleged in Charge 15 during the 2015-2016 school year.

Charge 16

79. It was established, as alleged in Charge 16, that on March 22, 2016, respondent instructed one student to hold the arms of another student behind the other student's back, while respondent reached into the front pockets of the other student's sweatshirt and removed the student's ear buds. Respondent held the ear buds as collateral for the two dollars the student owed for an ice cream respondent gave to him. When Principal Fasting discussed the incident with respondent, respondent expressed there was nothing

inappropriate about the incident. Respondent was issued a Letter of Reprimand dated March 24, 2016, which was based in part on the March 22, 2016 incident. (Exh. 6.)

80. Assistant Principal Konop testified credibly that a student came to her upset. The student reported that he was held by another student while respondent took his ear buds because respondent said he owed money for ice cream. After speaking with the student, Ms. Konop provided coverage for respondent's class and called him to her office. Respondent admitted that he had one student hold the other student, because the student owed him money, and he took the student's ear buds. Ms. Konop told respondent he could not engage in such conduct. When she asked respondent how he would feel if someone held his own child, respondent answered that if his child did something wrong, there would be nothing wrong with that. Ms. Konop perceived respondent's answer as indicating he did not see that he did anything wrong. Ms. Konop prepared the Letter of Reprimand. (Exh. 6.)

81. At this hearing, respondent admitted that he directed one student to restrain another student, and he took the student's earbuds because the student owed the Science Club two dollars for an ice cream. Respondent testified he was "being playful" with the student. He testified that if he wasn't being playful with the student, then his conduct was not respectful. The Commission finds that respondent's testimony that he was "being playful" did not excuse or mitigate his conduct with the student.

2016-2017 School Year

Student Witnesses

82. The Commission heard testimony from witnesses who were students in respondent's classes during the 2016-2017 school year, as follows:

Second period (anatomy): M [REDACTED] F.

Third period (anatomy): V [REDACTED] M., A [REDACTED] R., J [REDACTED] M., and E [REDACTED] M. (fall semester)

Fifth period (anatomy): A [REDACTED] R., A [REDACTED] M., Y [REDACTED] T., M [REDACTED] H.V., N [REDACTED] C.-T., Y [REDACTED] C., and B [REDACTED] G.

Unspecified class period: L [REDACTED] C. (one semester, anatomy), P [REDACTED] M. (fall semester, anatomy), and K [REDACTED] A. (biology).

83. The Commission's findings regarding Charges 17 through 35, set forth below, are based on the student-witness testimony taken individually and/or in combination.

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Charge 17

84. It was established, as alleged in Charge 17, that at the beginning of the 2016-2017 school year, respondent made an announcement to all of his classes, "I joke around a lot so if you can't take jokes, go see your counselor to get out of my class," and "if you are really emotional, you shouldn't take this class," or words to that effect. Testimony by the student-witnesses established that the message conveyed by respondent's announcement was that students should switch to another class if they would be sensitive to or offended by respondent making jokes, talking about "adult things," or using cuss words. Respondent testified that he told his classes that he tells jokes, the jokes may not be funny, but "it was all for a good mood" and they should not be offended. Respondent denied that he told his students that if they did not like his jokes, they should change to another class.

85. The Commission finds that respondent's announcement improperly circumvented his responsibility as a teacher to establish and maintain a learning environment that is physically, intellectually, and emotionally safe, and put the responsibility on the students to either endure the environment or leave the class. Y [REDACTED] T. did not think respondent was being fair because she was looking forward to taking anatomy & physiology because of her interest in becoming an emergency medical technician. N [REDACTED] C.T. thought it was unfair that students had to put up with respondent or leave the class, because she needed to take the class, even if she was uncomfortable with respondent's jokes and comments. The Commission finds that respondent's announcement, when viewed in the context of prior directives given to him, was an attempt to avoid or preempt potential complaints about his vulgar and grossly inappropriate conduct.

Charge 18

86. It was established, as alleged in Charge 18, that during the 2016-2017 school year, respondent attempted to avoid potential complaints before making inappropriate racial and ethnic remarks by asking if anyone in the class was of the race or ethnicity he was about to disparage. Respondent then proceeded to make the inappropriate remarks. For example, J [REDACTED] M. testified that when respondent made racial jokes, he first asked if anyone in the class was a member of the racial group. Y [REDACTED] T. testified that respondent told racial jokes about Indian people, and asked if there were any Indians in the room before telling the joke. At this hearing, respondent testified he never told racial jokes or made any derogatory statements about racial groups. The Commission does not find respondent's testimony credible.

Charge 19

87. It was established that during the 2016-2017 school year, respondent engaged in inappropriate physical contact with students and failed to respect students' personal space, despite prior directives, as alleged in Charges 19a through 19e.

88. It was established, as alleged in Charge 19a, that respondent washed his hands and dried them on students' backs and shoulders.

89. It was established, as alleged in Charge 19b, that respondent hugged female students, but it was not established, as alleged by the District, that he often stated to the female students "you're the best thing ever" or words to that effect. At this hearing, respondent admitted that he hugged both female and male students, and that he hugged students side-ways, not face-to-face. The Commission finds that respondent's conduct was inappropriate regardless of whether the hug was face-to-face or side-ways.

90. It was established, as alleged in Charge 19c, that respondent kissed a male student on the cheek in his third period class. This finding was established by the testimony of J. M.

91. (A) It was established, as alleged in Charge 19d, that respondent frequently got very close to students and pretended he was going to kiss them, while saying words to the effect, "I am going to give them one of Mr. I's famous kisses." Testimony of the student-witnesses established that when a student scored a high grade on a test, or if it was the student's birthday, respondent would give the student his "famous kiss." The student-witness testimony described the "famous kiss" as follows: (1) respondent leaned into the student's face and personal space and made a smoochy face and pretended to kiss them; (2) respondent would move in close to the student as if he was going to kiss them, but then given them a chocolate instead; or (3) respondent gave the student a kiss on the cheek. At this hearing, respondent testified that his "famous kiss" was a way for him to recognize a student. He did not actually kiss the student, but only made a gesture putting his hand to his lips and throwing a kiss to the student. He would go around the class and throw a kiss with his hands. He never got close to a student and was two to three feet away from a student when he threw them a kiss.

(B) The Commission finds that respondent's "famous kiss," for the most part, did not involve an actual kiss on the cheek, but it did involve leaning in close to students, into their personal space, which some students found was not appropriate conduct for a teacher. The Commission finds it inappropriate for a teacher, in a classroom setting, to recognize student achievement by blowing kisses to students.

92. (A) It was established, as alleged in Charge 19e, that on August 25, 2016, respondent made physical contact with student J. A., which left visible marks on both sides of the student's torso. The incident occurred during class. Respondent and the student had a verbal exchange that led to the student getting up and leaving the classroom. The student went outside the classroom where two other male students were standing. Respondent followed the student outside the classroom. The verbal exchange with the student continued and then escalated to a physical altercation. Respondent called security and the student was brought to Assistant Principal Moatakef's office. The student claimed he was injured by respondent and he lifted his shirt and showed Ms. Moatakef pink marks where he claimed respondent grabbed him. Photographs appear to show marks suggesting

the student was grabbed on both sides of his mid-section. (Exh. 13.) The Pomona Police Department was called to the school to investigate the incident. The investigating police officer concluded that the incident was a mutual battery. Both respondent and the student were given the opportunity to press charges and both of them declined.

(B) At this hearing, respondent testified that he was engaging in self-defense when he and the student made physical contact. According to respondent, their chests bumped two times. When the student charged a second time, respondent claims he stretched his arms in front of him to maintain a safe distance from the student. Respondent held onto the student's rib area. Respondent claimed that when the student charged at him a second time, the student did so with a pencil in his hand. That claim, however, is not credible, as there was no evidence respondent ever claimed, prior to this hearing, that the student charged at him with a pencil in his hand. Respondent claimed he requested, but was never provided, training on dealing with combative or violent students.

(C) The Commission finds respondent failed to address the situation with student J [REDACTED] A. appropriately. Teachers are trained to handle situations involving students who are difficult or upset; they are taught strategies on how to diffuse a situation, establish command presence, and avoid conflict. Having a difficult student is not unusual. Respondent's claim he did not receive training on dealing with combative students does not mitigate or excuse his conduct. Given respondent's years of experience as a teacher, he can reasonably be expected to know general strategies and methods to diffuse, de-escalate and handle difficult situations in a school setting. The Commission finds respondent acted inappropriately by chasing after student J [REDACTED] A. when he left the classroom. The Commission finds respondent's physical contact with student J [REDACTED] A. was egregious, wholly unnecessary, and escalated the conflict.

Charge 20

93. (A) It was established that during the 2016-2017 school year, despite prior directives not to use profanity, respondent continued to use profanity during class and towards students, as alleged in Charges 20a, 20b, and 20c. Respondent regularly used "ass," "asshole," "bitch," "fuck," "nigger," "mother fucker," and "shit" when addressing students. He regularly referred to students as "broke ass" and "broke ass nigger." He referred to students as "mother fuckers" by saying, for example, "Get to work, mother fuckers."

(B) At this hearing, respondent testified that he used profanity to explain concepts in his classes. For example, he used the word "fuck" to explain intercourse to English-learner students. Similarly, he used the word "shit" when students did not understand the meaning of "feces." Respondent testified he did not use the word "fuck" as a profanity but instead used it for academic vocabulary, as a way to break the language barrier with English-learner students. Respondent testified he never used the term "broke ass." However, respondent's own witness, E [REDACTED] M., testified that respondent called him "broke ass." The Commission finds that respondent's testimony did not justify or excuse his use of profanity during class and towards students. The evidence established that respondent used

profanity during class and towards students on a regular basis, and not merely as "academic vocabulary" to teach English-learner students.

Charge 21

94. It was established, as alleged in Charge 21, that during the 2016-2017 school year, despite being explicitly directed to stop using the phrase "sucky sucky," the term "suck," or any derivation of the word "suck," respondent continued to use the phrase "sucky sucky" towards students on a consistent basis. Respondent frequently responded to requests from students by stating "you can go sucky, sucky" or words to that effect. For example, Y [REDACTED] T. testified that if a student asked to go to the restroom, respondent responded by saying "sucky sucky." Some students did not know what the phrase "sucky sucky" meant. Other students thought it was a sexual phrase, referring to sucking a man's penis. Respondent denied that he used the phrase "sucky sucky." Respondent's denial is not credible, when weighed against the overwhelming student testimony that respondent often used the phrase "sucky sucky." A student from a prior school year thought it was respondent's catch phrase because he used it so often. Respondent's denial is also inconsistent with his statement to Principal Fasting, documented in the 2013 Conference Summary, that "sucky sucky" was a common Nigerian phrase.

Charge 22

95. It was established that during the 2016-2017 school year, respondent demeaned and criticized other District employees to his students, as alleged in Charges 22a and 22b. However, no evidence was presented to establish the District's allegation in Charge 22c.

96. It was established, as alleged in Charge 22a, that respondent told his third period class that he did not like his colleague, Ms. Jones, and he wanted to fight her. But it was not established that respondent said, in reference to Ms. Jones, that he wanted to "beat her ass." V [REDACTED] M., A [REDACTED] R., and J [REDACTED] M. were students in respondent's third period anatomy & physiology class. Their testimony established that respondent told the class that Ms. Jones was the reason he no longer went to assemblies, he did not like Ms. Jones, and he called Ms. Jones a bitch. Their testimony also established that respondent did not have a good relationship with Ms. Jones, and he did not talk about her in a respectful way.

97. (A) It was established, as alleged in Charge 22b, that respondent told his students that the school's administrators did not like him and were trying to get him fired. However, no evidence was presented to establish the District's allegation that respondent told his students that the administrators were "always in [his] business."

(B) Respondent was disrespectful and resentful when he spoke about the administrators. He told his students that the administrators were "a bunch of bitches" and "mother fuckers" and they would not be able to kick him out. M [REDACTED] F. testified that respondent said other school employees did not like him, and he was disrespectful and

resentful when talking about other school employees. A [REDACTED] R. testified that, once or twice, respondent talked about other employees and said the front office lady did not like him. Y [REDACTED] T. testified that that respondent talked about other school employees and said Ms. Konop and Ms. Moatakef were a bunch of bitches. N [REDACTED] C.T. testified about an occasion when Ms. Moatakef came by the class while respondent was presenting a lesson. When Ms. Moatakef left, respondent told the class the administrators were mother fuckers and they won't be able to kick him out. Y [REDACTED] C. and B [REDACTED] G. testified that respondent said some of the staff didn't like him.

(C) At this hearing, respondent denied that he talked about administrators in a negative way in class. Respondent denied saying anything negative about administrators coming to his classroom.

Charge 23

98. It was established that during the 2016-2017 school year, respondent discussed private and/or confidential student information with other students, as alleged in Charges 23a, 23b, and 23c.

99. (A) It was established, as alleged in Charge 23a, that respondent discussed the incident between himself and J [REDACTED] A., a student from respondent's first period class, with all of respondent's other class periods. J [REDACTED] M. testified that respondent told students about the incident with J [REDACTED] A., including that J [REDACTED] A. made marks on himself and tried to blame respondent. N [REDACTED] C.T. testified that respondent spoke of an incident with a student from his first period class. Respondent accused the student of trying to kick him out of the District. Respondent said that if the incident was different, he would have kicked the student's ass.

(B) Respondent testified that he told his students about the incident with J [REDACTED] A. only after they brought it up, including naming J [REDACTED] A. as the student involved. Respondent merely confirmed what the students already knew, including that J [REDACTED] A was involved. Respondent claimed that he could not lie to his students.

100. It was established, as alleged in Charge 23b, that respondent regularly announced which students did the best on tests and had the highest grades in his classes. This finding was established by student-witness testimony. For example, M [REDACTED] F. testified she did well in respondent's class and he brought attention to her, which she did not mind. He also brought attention to other students who did well in class. J [REDACTED] M. and A [REDACTED] R. testified that respondent gave his "famous kiss" to students who scored well on a test. M [REDACTED] H.V. announced the grades of students who did well. N [REDACTED] C.T. testified that respondent talked about which students were doing well in class. Respondent testified that he announced in class which students did well on tests, but he did not ask students for permission to do so ahead of time. Respondent testified that it is common practice in the teaching profession to recognize students who are doing well.

101. It was established, as alleged in Charge 23c, that respondent discussed students who were not performing well and/or were going to fail his class. This finding was established by the testimony of M [REDACTED] F. and J [REDACTED] M.

Charge 24

102. It was established that during the 2016-2017 school year, respondent engaged in disrespectful and demeaning conduct toward students in front of their peers, as alleged in Charges 24b, 24c, 24f, and 24g. However, it was not established that respondent engaged in the conduct alleged in Charges 24a, 24d, and 24e.

103. It was established, as alleged in Charge 24b, that respondent repeatedly discussed his disdain for his first period, English as a Second Language class with his other class periods. Respondent frequently referred to the class as his United Nations class. He told his other classes that the United Nations class was dumb and the students were assholes; he hated and disliked the United Nations class; and he told his students that he voted for Trump so all the students in the United Nations class could get deported.

104. It was established, as alleged in Charge 24c, that respondent referred to a student with limited economic resources as "broke ass." K [REDACTED] A. testified that respondent referred to a student as "broke ass" when the student did not have money for food. It was not established, as alleged by the District, that the student's economic resources were "severely" limited or that respondent used "broke ass" as though it was the student's name.

105. (A) It was established, as alleged in Charge 24f, that respondent called students by various inappropriate nicknames, including "Ace Ventura," "Stud Muffin," "Vidal Sassoon," and "Fontucky." M [REDACTED] F. testified respondent called her "Stud Muffin" and that she did not care about the nickname he gave her. A [REDACTED] R. testified respondent used the nickname "V [REDACTED] S [REDACTED]" for a student whose name was V [REDACTED], and he used the nickname "Fontucky" for a female student who lived in Fontana. A [REDACTED] R. testified that both students were okay with the nicknames given to them by respondent. B [REDACTED] G. testified that respondent called a female student "Ace Ventura."

(B) At this hearing, respondent testified that he joked around with students and gave them nicknames when he liked a student's name. He noted that students called him "Mr. I." while pointing at their eye. Respondent used the nickname "Ace Ventura" for a student whose name was Ventura. He used the nickname "V [REDACTED] S [REDACTED]" for a student named V [REDACTED]. Respondent explained that he used nicknames to break the ice, to make friendships, and to get shy students to open up. Respondent testified that none of the students complained about the nicknames he gave them. Respondent testified he also used the nickname "Big Bird" for a big student who played football; "Stud Muffin" for a smart student; and "Butterfinger" for a football player who did not catch the ball.

106. It was established, as alleged in Charge 24g, that respondent told racial jokes and made racial comments. Y [REDACTED] C. testified that respondent talked about different races

and he referred to African-American people as "chocolate" and white people as "white chocolate." The District's allegation that respondent referred to light-skinned people as "vanilla" was not established by the evidence.

Charge 25

107. It was established that during the 2016-2017 school year, respondent discussed his personal drug use with his classes on a recurring basis, as alleged in Charges 25a through 25d. However, the District's allegation in Charge 25e was not established by the evidence.

108. It was established, as alleged in Charge 25a, that respondent described various occasions when he used marijuana. He told multiple classes that he smoked marijuana while hiking with other school employees, and he smoked on the weekends as an escape and to relax. It was established that respondent disclosed to students his intent to "smoke a big one when I get home" and "smoke a fat blunt" or words to that effect. However, it was not established that respondent said he would "have a cold drink" when smoking a big blunt at home. Respondent told his students that he smoked marijuana in his bathroom at home so his children would not see him smoking. Respondent talked about rolling blunts but did not show his students how to do it.

109. It was established, as alleged in Charge 25b, that during instructional time, respondent showed students digital images of himself when he was high, which he took in his bathroom mirror at home. Respondent zoomed in on the image to show the students how red his eyes were from using marijuana. Respondent told his students that he locked himself in his bathroom because his children came home while he was high. Testimony by student-witnesses established that respondent said the picture showed himself getting high on marijuana. The picture did not show respondent actually smoking. The students could tell respondent was high in the picture because his eyes were red, he was smiling, and there was lots of smoke.

110. It was established, as alleged in Charge 25c, that respondent advised his students that he had a medical marijuana card.

111. It was established, as alleged in Charge 25d, that respondent discussed with his students that he wanted to grow marijuana and start a marijuana business (dispensary) after he retired. This finding is based on the testimony of V [REDACTED] M., A [REDACTED] R., and J [REDACTED] M. The evidence was not sufficient to establish the District's allegation that respondent told his students he planned to sell marijuana to high school students because he already knew which students used it.

Charge 26

112. It was established that during the 2016-2017 school year, despite being directed on October 15, 2013, not to share personal information of a sexual nature with students, respondent continued to discuss personal sexual information and conduct with his

students, as alleged in Charges 26a, 26b, 26c, and 26e through 26m. The District's allegations in Charge 26d was not established by the evidence.

113. It was established, as alleged in Charge 26a, that respondent routinely disclosed to students that he really liked large breasts and pointed out other physical characteristics he found attractive in women.

114. It was established, as alleged in Charge 26b, that respondent regularly informed students of the physical attributes that he found attractive about his wife including: (i) he was attracted to his wife because of her big breasts and (ii) regularly commenting on his wife's physical characteristics. Respondent talked about his wife and said she was hot and had big breasts. Respondent also said he did not need porn because he had his wife.

115. It was established, as alleged in Charge 26c, that respondent discussed aspects of his sex life with his students. M [REDACTED] H.V. testified that respondent talked about having sex with his wife. V [REDACTED] M. testified that respondent told students he could not have sex often with his wife because of their children. Y [REDACTED] T. testified that respondent told students he did not need pornography because he had his wife, and also talked to students about getting a vasectomy.

116. It was established, as alleged in Charge 26e, that respondent commented to students that his wife did not need to get him a gift for any occasion because respondent already knew what he would be getting, implying that he would be getting sex. For example, B [REDACTED] G. testified that respondent said his wife did not need to give him a gift because she could pleasure him sexually.

117. It was established, as alleged in Charge 26f, that respondent told his students that his wife was a virgin when they got married. This finding is based on testimony by M [REDACTED] F. and N [REDACTED] C.T. However, it was not established that respondent told his students that he stayed with his wife because he wanted to take her virginity.

118. It was established, as alleged in Charge 26g, that respondent described himself as a "player" and as having been with a lot of women before he was married. This finding is based on student-witness testimony. For example, M [REDACTED] F. testified that respondent described himself as a "party boy" in college, drinking, and sleeping with women. V [REDACTED] M. testified that respondent talked about parties in college, women, and doing drugs. J [REDACTED] M. testified respondent said he was a "player," meaning that he dated multiple women, and also commented that college girls were "hot." According to A [REDACTED] M., respondent said he was a "player" in college and he smoked weed. Y [REDACTED] T. testified that respondent called himself a "player," which she took to mean that when he was younger, "the girls were all up on him." M [REDACTED] H.V. testified that respondent told students that when he was in college, girls wanted him because of how he was in bed (sexually). B [REDACTED] G. testified that respondent said he was a "player," which meant he dated several women at a time.

119. It was established, as alleged in Charge 26h, that respondent repeatedly discussed his prior girlfriends with his classes. It was not established that respondent discussed having dated women of various ethnicities. It was established by the testimony of Y [REDACTED] T. that respondent told his students he dated a rich older woman who bought him his first car. It was established by the testimony of M [REDACTED] F. and J [REDACTED] M. that respondent told his students that he dated a woman with one breast. But the evidence did not establish that respondent said he "fucked" a woman with one breast. According to the witness testimony, respondent "spoke" of a woman with one breast when recounting the multiple women he dated during his days as "a player." No evidence was presented to establish the District's allegations in Charge 26h(iii) and Charge 26h(iv).

120. It was established, as alleged in Charge 26i, that in referring to the classroom computer used to project images to the class, respondent alluded to having sexually explicit images saved in the same location as personal images he was displaying for students, by stating words to the effect "I can't let you see those photos" or "oh, those are pictures of my wife I can't show you." Testimony by Y [REDACTED] T. established that respondent made jokes and warnings about photos on the computer. He said he had private pictures of his wife and would scroll past them.

121. (A) It was established, as alleged in Charge 26j, that respondent commented to his classes about receiving pornographic emails in his personal email account when students were near his computer or when he received a new email alert. For example, respondent made comments to the effect "oh that's my porn" and "don't look at my porn."

(B) A [REDACTED] R. testified that respondent used the computer to show photos to the class. Respondent did not say what was on his computer, but told students, "I don't want to show you my porn." A [REDACTED] R. thought respondent was joking. J [REDACTED] M. testified that respondent joked about what was on his computer. Respondent said he might need to change his password because students might see something dirty or pornographic. A [REDACTED] R. testified that respondent showed photos from his computer but would say he can't scroll down because there are photos he can't show the class. A [REDACTED] thought he might have porn. Respondent did not say he had pornography. Many students thought he had porn on the computer. Respondent said in a joking way he can't scroll down because there were things that students shouldn't see. According to A [REDACTED], the students assumed it was porn.

(C) A [REDACTED] M. testified that respondent let students use the classroom computer. Respondent joked around with students using the computer and he would say don't go near the computer because you're going to see my porn. A [REDACTED] M. thought respondent was joking. M [REDACTED] H.V. testified that respondent joked about what was on his computer. He said there were inappropriate pictures or videos, which she thought meant porn. N [REDACTED] C.T. testified that respondent said there was porn on his phone, not on the computer. Y [REDACTED] C. testified that, when showing videos and images to the class from his computer, respondent said there were some pictures students were not allowed to see.

(D) At this hearing, respondent testified that, during lunch time, he is on the computer surrounded by three to five students. He would delete Spam emails from his District email account. Students asked why he deleted emails without opening them. Respondent told the students it might be pornographic material. Respondent testified he never showed pornography or pornographic materials in class.

122. (A) It was established, as alleged in Charge 26k, that, despite prior directives, respondent continued to make comments and references to the size of his penis. Testimony by M [REDACTED] F. and J [REDACTED] M. established that respondent made comments and references to Black men having larger penises than other men. J [REDACTED] M. testified that respondent said Asian men have small penises. She also testified that respondent talked about his penis and said it was "huge." According to A [REDACTED] R., respondent talked about his penis and would say "Shut the fuck up or I'll put it in your mouth." A [REDACTED] M. testified that respondent joked around with students, back-and-forth, and he would say his penis was bigger than the student's. Y [REDACTED] T. testified that respondent talked about his penis and would say words to the effect "mine is bigger than yours." M [REDACTED] H.V. testified that respondent compared his penis to two male students' penises and said that his penis was bigger than their's. N [REDACTED] C.T. testified that when respondent and two male students argued about whose penis was bigger, the class just sat and watched them argue.

(B) At this hearing, respondent testified that the two male students talked about their penises in class (i.e., whose was bigger). Respondent testified he did not talk about his penis with the two male students. Respondent testified that it was the students who brought up the racial stereotypes that Black men have large penises and Asians have the best brains. Respondent testified he did talk about penises and racial stereotypes. Respondent testified that, when the students brought up big Black penises and small Asian penises, he shut down that discussion. Respondent claimed he shut down any discussion that was offensive.

(C) The evidence did not establish the remaining allegations of Charge 26k, specifically subparagraphs (i) and (ii), and subparagraph (iv)(2), (4).

123. It was established, as alleged in Charge 26l, that respondent discussed with his students the possibility that he would need a rectal exam and stated that he wanted his "butt to stay a virgin" or words to that effect. V [REDACTED] M. testified that respondent told the class he did not want to have a rectal exam because he wanted to stay a virgin in that part of his body. B [REDACTED] G. testified that respondent said he did not want a doctor to examine his butt.

Charge 27

124. It was established that during the 2016-2017 school year, respondent regularly engaged in sexually explicit and implicit conversations and conduct during his classes, as alleged in Charges 27a, 27d, 27e, and 27f. The evidence was insufficient to establish that respondent engaged in the conduct alleged in Charges 27b and 27c.

125. It was established, as alleged in Charge 27a, that respondent engaged in vulgar commentary with students regarding "eating ass." J [REDACTED] M. testified that respondent explained and demonstrated "eating ass" as spreading the buttocks and placing his face between the cheeks. A [REDACTED] R. testified that if a student disrespected him, respondent would say, "oh, eat my ass." A [REDACTED] M. testified that respondent would joke around and ask students if they liked to "eat ass" or did they "eat ass." M [REDACTED] H.V. testified respondent spoke about "eating ass" and would say, for example, "imagine eating that ass." N [REDACTED] C.T. testified that respondent would say "eating ass" when talking to and joking around with two male students.

126. It was established, as alleged in Charge 27d, that during the fall semester, respondent showed a digital image of recent first ladies. However, it was not established, as alleged in Charge 27d, that the images shown included an image of Melania Trump naked. Respondent testified that he showed pictures of recent first ladies that he found on the internet, including pictures of Melania Trump. But he denied showing any picture of Melania Trump naked. The evidence was insufficient to refute respondent's testimony.

127. S [REDACTED] and M [REDACTED] were two male students in respondent's fifth period anatomy & physiology class. Respondent regularly joked around with S [REDACTED] and M [REDACTED]. It was established, as alleged in Charge 27e, that around the beginning of the second semester, respondent encouraged S [REDACTED] and M [REDACTED] to kiss one another in the middle of class. When it appeared that the two male students were going to kiss, respondent told them to stop so he could record it. Respondent stood directly in front of the two students and pretended to record the incident on his cell phone. Respondent testified he did not record the incident. The other students in the class were distracted and off-task during the incident. Some students took out their phones and recorded the incident. This finding was established by student testimony and the video recording of the incident (Exh. 17).

128. It was established, as alleged in Charge 27f, that during the 2016-2017 school year, respondent told students in his fifth period class, "Shut the fuck up before I stick my finger in your booty" or words to that effect.

Charge 28

129. It was established that during the 2016-2017 school year, respondent repeatedly engaged in conduct and made statements objectifying women, and demonstrated a lack of respect for women and gender equality, as discussed below.

130. It was established, as alleged in Charge 28a, that respondent frequently discussed the physical attributes he found attractive in women. M [REDACTED] H.V. testified that respondent talked about how women looked, mostly about their butts. She testified that respondent commented on students' moms by saying, "dang I hit that," which she thought meant respondent will have sex with the mom when her student graduates.

131. (A) It was established, as alleged in Charge 28b, that respondent commented to his classes about all the "hot" women he would want to have sex with if he was not married. For example, during his third period class, a woman visited respondent's classroom and took a photograph with him. Respondent then showed the class the photograph and made comments to the class about how he wished he could have sex with the woman and said words to the effect of "if I wasn't married . . ." V [REDACTED] M. was a student in respondent's third period class and witnessed this incident. Respondent took a photo with the woman and told her she was good looking and sexy. Respondent told the class he would "get with her" if he didn't have a wife.

132. It was established, as alleged in Charge 28c, that respondent discussed with his classes the physical characteristics about his wife that attracted him to her, namely her large breasts.

133. It was established, as alleged in Charge 28d, that respondent commented on the physical appearance of women and female students. This finding was established by the student-witness testimony. Jaclyn M. testified that respondent would say that women's bodies were "hot" and he also talked about students being "hot." Respondent made comments that specific female students "had a nice body." He also commented that Russian girls are hairy. A [REDACTED] R. testified that respondent said "fine ass mother fucker" about someone he was attracted to. Y [REDACTED] T. testified that respondent complimented female students on their appearance, stating they were "pretty" or had a "nice body." Y [REDACTED] T. testified that respondent stopped the class and asked a female student to stand up; respondent said she was "beautiful" and had her stand up and turn around. Most of the time, the female students stood up. Y [REDACTED] T. felt that respondent "checked out" the female students. M [REDACTED] H.V. testified that respondent made comments about students' moms, for example, "she's one sexy bitch" and "fine ass mother fucker." Respondent also made these comments about former students. The comments made M [REDACTED] H.V. uncomfortable. B [REDACTED] G. testified respondent said, "fine ass mother fucker." She does not remember who he was referring to.

134. Regarding Charge 28d, respondent testified that he compliments both male and female students about their appearance. He tells students who dressed nicely, "wow, you look good." If a student has new tennis shoes, he compliments them. He tells all students they "look nice." He may have said "pretty," "beautiful," and "handsome." He told one student that his girlfriend was beautiful.

135. It was established, as alleged in Charge 28f, that respondent made sexist comments and communicated to his students, especially the female students, that he did not consider men and women to be equal. This finding is based on the student-witness testimony. M [REDACTED] F. testified that respondent had traditional views of men and women, specifically, that men were the breadwinners and women should do the cooking. She did not agree with respondent's views. She testified that respondent did not expressly say that women were inferior to men, but he implied it. A [REDACTED] R. testified that one time respondent said women can't tell men what to do. J [REDACTED] M. testified that respondent made comments that women are weaker than men. She also testified that respondent said men are superior to

women, and men should work and women should stay home. Y [REDACTED] T. testified that respondent said men should go out and work and women should stay home and take care of the children and cook. Y [REDACTED] T. did not agree with respondent's view of the world. She wants to become a police officer. Y [REDACTED] C. testified that respondent said men should take care of women, and women should take care of the children.

136. It was established, as alleged in Charge 28g, that respondent made numerous comments during his second period class, objectifying and commenting on the physical appearance and attractiveness of the translator assigned to his first period class. M [REDACTED] F. was a student in respondent's second period class. She testified that respondent talked about the first period translator and said she was attractive.

137. It was established, as alleged in Charge 28h, that respondent told a student in his fifth period class that her "hips are too wide to run track." Y [REDACTED] T. was a student in the fifth period class. Y [REDACTED] T. testified that respondent made comments that a female student (D [REDACTED] L.) had wide hips, and wide hips were good looking. N [REDACTED] C.T. was another student in the fifth period class. N [REDACTED] C.T. testified that respondent told D [REDACTED] L., who ran track at the time, that her hips were too wide to run track. Respondent testified that, during a discussion about the pelvic area and hips, the female student told respondent she was a runner and asked respondent if she could beat a boy in a race. Respondent explained that females have hips that affect aerodynamics. Respondent told the student she can probably beat a boy in a race.

138. The District's evidence was insufficient to establish the allegation of Charge 28i that respondent showed a student a digital image of First Ladies that included Melania Trump naked.

139. It was established, as alleged in Charge 28j, that respondent had inappropriate discussions with students regarding his views on abortion. This finding is based on the testimony of the student-witnesses. For example, A [REDACTED] R. testified that respondent talked about his views opposing abortion. She recounted one time when respondent said that if his son got a girl pregnant, he would sue to prevent the girl from getting an abortion. N [REDACTED] C.T. testified that respondent said he was against abortion. Respondent said that if his daughter had sex, if she opened her legs for sex, she must leave her legs open to have the baby. N [REDACTED] felt respondent's comment showed no respect for his family. B [REDACTED] G. testified that respondent shared his views that he was against abortion.

140. Regarding Charge 28j, respondent testified that abortion is a topic in anatomy class that comes up twice in a school year, during the discussion about reproduction. Respondent denied that he shared his personal views on abortion with students. According to respondent, he would let the students argue a bit about abortion but then the class would move on. If students wanted to discuss the issue further, he told them they could see him after school.

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Charge 29

141. It was established that during the 2016-2017 school year, respondent inappropriately inserted himself into and commented on students' romantic and sexual relationships, as alleged in Charges 29b, 29c, and 29e. However, no evidence was presented to establish the allegations in Charges 29a and 29d.

142. (A) The evidence established that respondent inappropriately inserted himself into and commented on students' romantic and sexual relationships. For example, M [REDACTED] F. testified that respondent asked students about who they were going out with. M [REDACTED] M. testified that respondent talked to students about who they were going out with and he would imply that "he knows what they do" (i.e., making out, sexual intercourse) and he made motions and gestures with his hands. A [REDACTED] R. testified that, when students brought up which students were boyfriend-girlfriend and dating, respondent sometimes stopped the class and talked with them about dating. A [REDACTED] M. testified that respondent commented to a male student in her class that his girlfriend was too good for him. A [REDACTED] M. testified that respondent asked her, "Is he your boyfriend?" She also testified that respondent asked a female student who was a lesbian if she "ate out her girlfriend yet."

(B) M [REDACTED] H.V. testified that respondent asked students about who they were dating. He asked M [REDACTED] H.V. if she was dating a student from his first period class, or he asked her questions about her love life, how long she was dating someone, if she lost her virginity. Respondent's questions made her feel uncomfortable, because he asked her those questions in front of other students. M [REDACTED] H.V. testified that students sometimes, by themselves, talked to respondent about who they were dating. Respondent would engage them in conversation if they did. B [REDACTED] G. testified that, a couple of times, respondent asked students about their sex lives.

(C) Regarding Charge 29, respondent testified he would talk to students about their relationship status only if they brought it up. He denied asking students if they were dating. Respondent testified that he would make the comment "cute couple" when students introduced themselves to him that they are dating. Respondent testified that he did not talk to students about their sex lives. Students would try to bring it up, but respondent would stop them. He would tell them, "remember abstinence." He would tell them he did not want to hear it. He testified that he never asked students if they lost their virginity. He testified he did not ask a female student if she engaged in sexual acts with her girlfriend.

Charge 30

143. It was established, as alleged in Charge 30a, that during the 2016-2017 school year, respondent made female students feel uncomfortable by leering at their bodies and/or the bodies of their female classmates. Respondent also failed to maintain appropriate personal space between himself and female students. No evidence was presented to establish the allegation in Charge 30b.

144. It was established, as alleged in Charge 30a, that respondent approached a female student who was wearing a necklace with her name on it and a low-cut shirt. Respondent got extremely close to the female student as he was looking at her "necklace" for an extended period of time. The student believed respondent were looking at her breasts and the interaction made her feel uncomfortable. This finding is based on the testimony of Y [REDACTED] T. She testified that when she wore a necklace with a gold chain and a low-cut blouse, respondent leaned in and put his elbows on her desk and lifted the necklace off her chest. This made Y [REDACTED] feel "very uncomfortable." B [REDACTED] G. testified she was not comfortable with how respondent behaved with female students and he did not respect their personal space.

Charge 31

145. It was established that, during the 2016-2017 school year, respondent made degrading and demeaning comments and engaged in offensive conduct regarding sexual orientation and gender identity, as alleged in Charges 31c through 31h and 31j. However, no evidence was presented to establish the allegations of Charges 31a, 31b, 31i, and 31k.

146. It was established, as alleged in Charge 31c, that respondent asked students who were lesbians "who is the guy [in their relationship]?" or words to that effect. J [REDACTED] M. testified that respondent asked a gay couple in the class which one is the guy and which one is the girl. He also teased them about being gay.

147. (A) It was established, as alleged in Charge 31d, that respondent searched a female student's Facebook page to investigate whether she was gay and to find pictures of the student's girlfriend. The evidence established that, during instructional time, respondent went on Facebook using the classroom computer. He had asked a student to show him how to block "friend requests" from his Facebook page. The student went on her Facebook page to show him, but then respondent started going through the student's profile and looking for pictures of the student's girlfriend. The student's Facebook page was projected to the class as respondent looked for pictures of her girlfriend.

(B) Respondent testified that he went on Facebook so a student could show him how to block "friend requests." The student went on her own Facebook page to show him how to block "friend requests." Respondent testified he never went through pictures of the student's girlfriend on her Facebook page.

148. It was established, as alleged in Charge 31e, that respondent referred to pairs of students as "lovers," and asked two students if they were "lovers." But the evidence was insufficient to establish that the students who respondent called "lovers" were same sex students.

149. It was established, as alleged in Charge 31f, that respondent made statements to two male students to the effect of "you mother fuckers are gay" and "stop being gay."

B [REDACTED] G. testified that respondent joked around with two male students, S [REDACTED] and M [REDACTED], about being gay and told them to "stop being gay."

150. It was established, as alleged in Charge 31g, that during class time, respondent answered a telephone call from a salesperson on a speaker phone. The call was about respondent winning a trip. Respondent made a joke of the call and asked questions about the trip pretending to be a gay man. Respondent spoke with the salesperson and gave false answers. Respondent asked the salesperson, "can I take my boyfriend with me?" Respondent denied that he answered a call during class time pretending to be a gay man.

151. It was established, as alleged in Charge 31h, that when a female student, V [REDACTED] M., received a text message on her phone during class, respondent loudly asked her if the message was from her boyfriend, even though he knew the student had a girlfriend. It was not established by the evidence whether the student was embarrassed or made to feel uncomfortable by respondent's comment.

152. It was established, as alleged in Charge 31j, that respondent said words to the effect "it would be hot if two girls kissed." J [REDACTED] M. testified that respondent said he wanted hot lesbian girls to make out because it's hot. Respondent said he wanted all lesbian girls to make out.

Charge 32

153. (A) It was established that during the 2016-2017 school year, respondent exposed his students, who are minors, to sexually explicit, graphic material without parental notification or permission, or educational necessity. The evidence established that respondent showed students graphic images of worms coming out of a man's penis (Charge 32a); graphic images of someone defecating balloons filled with drugs or having the police remove drugs hidden in a man's anus (Charge 32b); a sexually explicit video about men looking up a woman's skirt while she was on a ladder (Charge 32c); graphic images of jiggers removal (Charge 32d); and a video of woman confessing to a man pretending to be priest, the man comforts the woman and later emerges without his clothes, with the punchline being that the man took advantage of the woman (Charge 32e).

(B) In addition, it was established that respondent also showed videos of a girl doing a cartwheel while not wearing underwear and thereby exposing her private parts; a video from China showing dogs being abused, skinned, and getting their heads chopped off; a viral video showing someone stealing a lady's phone; and, on one occasion, when talking about a disease, respondent showed a video of a man with the disease on his foot.

154. (A) Respondent testified that he showed the class a video of a penis with jiggers as part of a class lesson on venereal disease. Respondent testified jiggers is a disease common in tropical countries, such as East Africa, Asia, Brazil, and Nigeria, West Africa. He showed the video because he got malaria during a visit to Nigeria. He was treated at Kaiser for two weeks, and got the idea to teach about diseases in Nigeria. He thought jiggers

would be a disease the students would remember. Respondent testified he got the jiggers video from YouTube. Respondent admitted that jiggers is not on the class syllabus, but he justified teaching jiggers because diseases are part of the curriculum and jiggers is a disease. Respondent testified he has to decide what is best to teach the students that is also meaningful.

(B) Respondent denied showing videos with sexual content. He denied showing a video of a woman climbing a ladder while a man looked up her skirt. He denied showing any video of drugs being removed from a person's anus. Respondent denied showing a video with worms coming out of the penis; he claimed the video showed the worms coming from the skin around the genitalia. Respondent denied showing a video of dogs being abused and killed. Respondent testified he showed videos showing dead animals. He explained that, before dissection, he talked to the class about the ethical treatment of animals (e.g., cats, rats, frogs, pigs), and that dead animals must be treated ethically.

(C) The Commission finds that respondent engaged in inappropriate conduct by showing sexually explicit and graphic images and videos to his students. The Commission notes that, as a general matter, children nowadays tend to be attracted to "extremes." Here, respondent selected extreme videos and images for their shock value, so he could look "cool" in front of his students. The videos and images that respondent selected to show to his classes were unrelated to the curriculum. The fact that some students may have been entertained or enjoyed the videos and images did not mitigate or excuse respondent's inappropriate conduct.

Charge 33

155. It was established that during the 2016-2017 school year, respondent failed to utilize instructional time to maximize students' educational benefit. It was established, as alleged in Charge 33a, that respondent regularly took telephone calls from his wife and others during instructional time, but it was not established by sufficient evidence that he had those conversations on a speaker phone. It was established, as alleged in Charge 33b, that respondent spent instructional time showing personal photographs and non-educational videos and memes from his personal accounts and devices, including pictures and videos of his friends, family, and trips, but it was not established by sufficient evidence that he spent an "excessive amount" of instructional time doing so.

156. Respondent admitted that he took phone calls during class. He told his classes that he might receive phone calls from his children's school, his wife, his doctor, or someone from Nigeria, but he would not answer calls from anyone else. Respondent estimated that, during the semester, he took phone calls in class about nine times, with each call lasting 30 seconds to one minute.

157. Respondent used the classroom computer to show photographs, pictures, videos, and memes, to the class. He showed photos of his family to the class as a way to connect with his students. He showed photos of his family on vacation or photos of his

family in Nigeria. When he returned from vacation, the students asked to see his pictures. Respondent estimated he would show his personal photos one or two times in a given month. When he showed vacation photos, he would tell the class what he did on vacation and describe the activity. The class period was 55 minutes. Of that time, respondent estimated he spent between two minutes to up to 10 minutes showing pictures to the class.

Charge 34

158. It was established, as alleged in Charge 34 that, during the 2016-2017 school year, respondent's academic expectations were not applied equally to all students, in that respondent modified assignments and academic expectations for students involved in athletics by giving those students additional time to complete their assignments and demonstrate their academic achievements.

159. Respondent gave student-athletes additional time to complete assignments and rescheduled tests for them. Y [REDACTED] T. testified that respondent gave preference to athletes in class when their sport was in season, for example, by giving them extra time to complete their work or allowing them to take a test on another day. Although respondent's preferences were mostly for athletes, Y [REDACTED] T. testified that she received an extension to take a test because of her participation in a police program, but she was an exception. B [REDACTED] G. testified that respondent gave extra credit to students for their performance as athletes. B [REDACTED] G. played soccer in her freshman year, which was the 2014-2015 school year, and received extra credit in respondent's class because she scored a goal. She testified that other students besides athletes could earn extra credit in respondent's class.

160. Respondent testified he offered extra credit to athletes as well as other students. For example, for students who represented the school in a good way (e.g., mock trial, ASB, etc.), he would give those students extra time. Even so, the Commission finds that respondent modified assignments and academic expectations primarily for students involved in athletics.

Charge 35

161. It was established, as alleged in Charge 35, that, during the 2016-2017 school year, respondent promised students extra credit in exchange for donations to "Pennies for Patients." Donations were collected in students' fourth period classes. The fourth period class that collected the most donations received a prize, for example, a pasta lunch for the entire class. It was established that respondent told his students he was soliciting donations from all of his class periods because he did not have fourth period class but still wanted to collect the highest amount of donations as he had in past years.

162. Respondent offered extra credit to students for other things beyond making donations to "Pennies for Patients." The evidence established that respondent also offered extra credit to students for donating items they were no longer using, such as old cell phones, clothes, and shoes. Respondent sold the donated items in Nigeria. Respondent also offered

extra credit to students who came to Saturday School. He testified that he gave the extra credit to encourage the students to attend Saturday School so he could give them extra help. He did not give extra credit points to students who attended Saturday School in order to make up absences. Respondent testified that teachers who worked Saturday School got paid so long as 15 students showed up.

163. The Commission finds that respondent offering students extra credit for donations of cash or items was inappropriate and violated District policies.

Testimony of Darren Knowles

164. Darren Knowles testified at the hearing. Mr. Knowles has been employed by the District since 1993. He is familiar with the community and surrounding area. He has been the Assistant Superintendent for Human Resources since 2012. His duties in that position include, among others, being responsible for labor relations, employee discipline, and hiring classified employees. Before becoming Assistant Superintendent in 2012, Mr. Knowles taught middle school and alternative education, and has also been an assistant principal, coach, and principal. The Commission found Mr. Knowles' testimony credible and persuasive.

165. Mr. Knowles has known respondent since 1997, when they worked together at John Marshall Middle School. In 2002, respondent was transferred to Simons Middle School, where Mr. Knowles was the principal and one of respondent's supervisors.

166. (A) During the 2013-2014 school year, Mr. Knowles, as Assistant Superintendent, was made aware of concerns regarding respondent's conduct at Pomona High School, specifically, that respondent made inappropriate comments in the classroom. Principal Fasting sent Mr. Knowles the 2013 Conference Summary (Exh. 4). Mr. Knowles explained that respondent's comments, as reported, were concerning to the District. A teacher is responsible for maintaining a suitable learning environment in the classroom. It is not appropriate for a teacher to befriend students at their level. If students bring up inappropriate topics, it is not appropriate for the teacher to engage the students on the inappropriate topic. Based on his experience as a middle school teacher, Mr. Knowles testified that students test boundaries.

(B) Mr. Knowles attended a meeting with respondent, his union representative Mike Hernandez, and Ms. McCullough. The purpose of the meeting was to discuss the District's concerns regarding respondent's inappropriate conduct. During the meeting, respondent explained that the phrase "sucky sucky" was a cultural saying used in Nigeria, and he did not use it in a sexual way. Mr. Knowles understood that respondent used the phrase "sucky sucky" in a sexual manner. Mr. Knowles did not feel respondent was being honest in this explanation.

(C) During the meeting, as stated in the 2013 Conference Summary, respondent was given clear directions, which were reinforced during the meeting.

167. In March 2017, Mr. Knowles was made aware of other concerns regarding respondent. There was a parent complaint and a student reporting to Principal Fasting about respondent's behavior and comments in class. The vast majority involved inappropriate language. The District placed respondent on administrative leave pending the completion of its investigation. At that time, the site administrators at Pomona High School interviewed students. The District became aware of the severity of respondent's comments in the classroom, which it was not previously aware of. The District called its legal counsel at that point.

168. Mr. Knowles explained that the District did not issue respondent a 45-day notice for unprofessional conduct or unsatisfactory performance under Education Code section 44932. The District did not issue respondent a 45-day notice because, after interviewing students and reading witness statements, the District found respondent's conduct was "atrocious." Mr. Knowles believes that respondent persistently violated prior directives over time, he does not have the proper temperament to teach in the District, and he is not fit to teach. Mr. Knowles does not believe respondent will correct his inappropriate behavior. The District has given respondent the opportunity to correct his conduct. Mr. Knowles considered the overwhelming number of students reporting that respondent makes inappropriate comments (many of the students like respondent), respondent's denial that he said the comments, respondent's failure to be truthful with Mr. Knowles, and respondent's opportunity to correct the behavior in 2013 but failure to do so. Mr. Knowles reviewed the totality of the charges and concluded that respondent violated numerous District and school policies.

169. Mr. Knowles testified that the nature of respondent's conduct affected students in many ways. For example, some students laughed and thought respondent's off-handed comments were funny; at the same time, the comments traumatically impacted other students. Overall, the teacher sets the standard of behavior for students and is responsible for maintaining a suitable learning environment. Mr. Knowles' opinion is that there will be a negative impact if respondent is returned to the classroom. When teaching children, a teacher must maintain a suitable learning environment. After warnings, no corrections, and no acceptance of responsibility for his conduct, the District's position is that respondent's inappropriate behavior will continue.

Testimony of Krystana Walks-Harper

170. Krystana Walks-Harper has been employed by the District for 28 years. She has been the Director for Pupil and Community Services for the past three years. Her duties include being responsible for the social welfare of students, parent education, how parents' concerns relate to services, and providing community services to families. Ms. Walks-Harper is familiar with the community. Ms. Walks-Harper has been a teacher and principal at the elementary and secondary levels. She worked 15 years as an administrator. She has a bachelor's degree in psychology, a master's in education, an administrative services credential, and a doctorate in education. She is trained in how to maintain a healthy environment for students. The Commission found Ms. Walks-Harper's testimony credible, well-reasoned and persuasive.

171. Ms. Walks-Harper does not know respondent. During the 2016-2017 school year, Ms. Walks-Harper met with both parents of a female student (D [REDACTED] L.) who expressed concern about respondent's comments in the classroom which his daughter shared with him. The parent reported to Ms. Walks-Harper that respondent's comments were about sexual behavior, comments about students being "hot," girlfriend is "hot," students' hips, comments about genitalia, and use of the teacher's penis. Ms. Walks-Harper testified she had never received complaints like this before. Ms. Walks-Harper's immediate reaction was surprise, and then concern for the students. In her opinion, this type of teacher is dangerous to students. The comments breach the trust between teacher and students.

172. Ms. Walks-Harper met with both parents, the female student, and the student's sibling. During the meeting, the student's demeanor appeared embarrassed and reticent as she shared the information. After the meeting with the student and her family, Ms. Walks-Harper sent an email to the District's Human Resources office and the site administrator. The email set forth the comments that were shared by the female student and her parents. (Exh. 14, p. 56.) Ms. Walks-Harper also sent a report to the Department of Child and Family Services (DCFS) because she is a mandated reporter. The conduct she reported was that the teacher made comments that caused students emotional harm and were abusive. After making the DCFS report, Ms. Walks-Harper took no further action on the matter.

173. Ms. Walks-Harper prepared an email that summarized respondent's inappropriate comments, as reported by student D [REDACTED] L. Ms. Walks-Harper noted that respondent reportedly told D [REDACTED] L. that her hips are too wide to run track and that she has a nice body; he told another student that the student's girlfriend was "hot"; he discussed sexual behavior of animals and of people; he said he was lucky because he has a large penis; he showed students a picture of himself where he described himself as high; he told another student, "Shut the fuck up before I put it (referencing his penis) in your mouth." He referred to ladies in the office as "those bitches"; he referred to two female students as lovers and encouraged them to kiss one another; he used gang letters; and he discussed pornography in class. (Exh. 14.)

174. Ms. Walks-Harper's opinion is that the teacher's comments impact safety. Students expect a trusting relationship with their teacher. These comments make students uneasy and make it hard to focus on their studies. It can be a form of trauma. The fact that some students laugh at the teacher's comments does not make the comments less traumatic because laughing can indicate discomfort. The situation is not mitigated if the teacher directs the comments to a few students. Other students may be traumatized. In Ms. Walks-Harper's experience, high school students do not have the maturity to discern what is appropriate and not appropriate. In her experience, students do not make complaints or reports against teaching staff for various reasons, including peer pressure or fear of being labeled a tattle-tale or snitch. In addition, students with family members who are undocumented may hesitate to come forward. Also, some cultures presume that the teacher is always correct. Families assume what happens in school is okay. The families trust the school, which discourages a family from coming forward.

175. Ms. Walks-Harper's opinion is that the comments by respondent that were reported to her do not fulfill the California Teaching Standards. A teacher must maintain a safe learning environment. Ms. Walks-Harper testified that a line was crossed with these comments. Based on her experience, if a teacher engages in this type of conduct year after year, the teacher cannot be rehabilitated. The California Teaching Standards requires that a teacher maintain a safe learning environment. If this teacher continues in the classroom, the student and the District are left uncertain as to what may happen.

Other Findings

176. The Commission finds respondent has not accepted responsibility for his conduct. He seemed to have an excuse for everything. His excuses, however, did not mitigate or justify his inappropriate conduct. For example, he denied making racial comments and instead claimed that it was the students who made the comments and he put a stop to them. Respondent's justification that he talked about certain topics because the students brought them up (e.g., abortion) fails to recognize the boundaries of the student-teacher relationship. Just because a student raises the topic doesn't mean respondent, as teacher, is required to respond, particularly to topics that are not within his subject matter area.

177. Ms. Moatakef testified that respondent's conduct impacted the relationship between students and staff. The school was divided into two camps. One camp loved respondent and saw him as a role model. The other camp viewed him less favorably. Ms. Moatakef testified that many students came to see her about respondent's conduct in class, but she was not aware of those students making formal complaints against respondent. Her impression was that students were scared that their grades might be directly affected if they said anything.

178. Many of the student-witnesses who testified about respondent's inappropriate conduct acknowledged that they did not make any formal complaint against respondent. The lack of formal complaint, however, did not diminish the credibility of their testimony. As explained by Ms. Walks-Harper and Ms. Moatakef, students may be reluctant to make a formal complaint against a teacher for many reasons as stated above.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944⁶ and Factual Findings 1-4.

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⁶ All further statutory references are to the Education Code unless otherwise indicated.

2. The District has the burden of proof in this matter and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. Under Education Code section 44932, the grounds for dismissal alleged by the District against respondent are for immoral conduct [subdivision (a)(1)], dishonesty [subdivision (a)(4)], evident unfitness for service [subdivision (a)(6)], and persistent violation of or refusal to obey school laws or reasonable regulations [subdivision (a)(8)].

4. It is settled that the trier of fact—in this case the three members of the Commission—may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence." (*Kearl v. Board of Medical Quality Assurance*, 189 Cal.App.3d 1040, 1052.)

Immoral Conduct

5. Grounds exist for respondent's dismissal, pursuant to section 44932, subdivision (a)(1), for immoral conduct. (Factual Findings 12-178.)

6. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

7. The Commission finds that respondent engaged in immoral conduct by reason of his regular use of profanity, his inappropriate comments and language, including comments of a sexual nature, and his offensive and disparaging remarks related to race, gender, and sexual orientation. The Commission also finds respondent engaged in immoral conduct by the inappropriate and graphic videos and images he projected his classes, such as videos of dogs being abused or killed and the removal of drugs hidden in a man's anus, none of which were related to any class lesson.

Dishonesty

8. Grounds exist for respondent's dismissal, pursuant to section 44932, subdivision (a)(4), for dishonesty. (Factual Findings 12-178.)

9. Dishonesty "connotes a disposition to deceive" and "necessarily includes the element of bad faith." It means "fraud, deception, betrayal, faithlessness," and "denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Midway School District v. Griffith* (1946) 29 Cal.2d 13.)

10. The Commission finds that respondent engaged in dishonesty by his conduct and in his statements to school administrators and in his testimony to the Commission. He engaged in dishonesty by telling students to conceal that they purchased food from him if asked by school officials. Respondent was dishonest regarding the incident with G [REDACTED] A. by claiming he was merely retrieving the student's project from his car, and not attempting to drive the student off campus, and that he had permission from his parents to give him rides. Respondent was also dishonest to the Commission when he testified that the four female students he drove to a nearby mall showed him a lunch pass. He was also dishonest to the Commission by claiming, for the first time at the hearing, that J [REDACTED] A. charged at him with a pencil in his hand. Respondent engaged in dishonesty in denying that he uses the phrase "sucky sucky" or that he told Principal Fasting it was a common Nigerian expression.

Persistent Violation of School Laws and Regulations

11. Grounds exist for respondent's dismissal, pursuant to section 44932, subdivision (a)(8), for persistent violation of school laws and regulations. (Factual Findings 12-178.)

12. (A) In *Governing Board of Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82, the court stated: "The word 'persistent' is defined by lexicographers as 'refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.' (Webster's New World Dict. (College ed.); see Webster's Third New Internat. Dict.) And in the judicial decisions of this, as well as other states, the word has been interpreted to mean 'continuing or constant.' [citations omitted]."

(B) The court in *Seaman* further explained that "a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (g) of section 13403 [now section 44932, subdivision (a)(8)]. The subdivision pertains to unintentional as well as intentional transgressions, and hence the Legislature, apparently to allow opportunity for a correction, has decreed that a single violation is not sufficient to warrant dismissal; 'it is the persistent disregard' of school rules that the subdivision is designed to regulate." (28 Cal.App.3d at 84 [citation omitted].)

13. In this case, the preponderance of the evidence established that respondent engaged in a persistent violation of the District's policies and school rules. (Factual Findings 17-26, 30-33, 34-163.)

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Evident Unfitness for Service

14. Grounds exist for respondent's dismissal, pursuant to section 44932, subdivision (a)(6), for evident unfitness for service. (Factual Findings 12-178.)

15. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) 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." (*Id.*)

16. In this case, the Commission is persuaded that respondent's misconduct is caused by a defect in temperament and non-remediable. Respondent engaged in conduct that violated the directives and counseling he had been given. He continued to have physical contact with students by drying his wet hands on students and hugging students. He continued to use profanity, make sexual comments, and use the phrase "sucky sucky." He shared personal information of a sexual nature with students. Respondent's attempt to give a ride to G [REDACTED] A. on May 11, 2015, was in violation of the directive given to him after he drove four female students off-campus on April 30, 2015. He continued to sell food to students in his classroom, despite having been counseled on the proper procedures for obtaining ASB and administration authorization for food sales. Respondent has been given multiple opportunities to address his misconduct and correct his behaviors. His continued and repeated failure to comply with his supervisors' directives leads to no other conclusion that his misconduct will not be corrected if given additional notice and opportunities to do so.

Morrison Factors

17. Cause for discipline against a teacher must relate to his fitness to teach within the meaning of the factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. Here, the Commission has found cause exists to dismiss respondent based on immoral conduct, dishonesty, evident unfitness for service, and persistent violation of school rules. With regard to those causes for dismissal, the Commission considered all the factors suggested by *Morrison* and compared them to the facts established above. Not all *Morrison* factors need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. "When the camel's back is broken we need not weigh each straw in its load to see which could have done the deed." (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

18. The *Morrison* case sets forth the following factors for determining a teacher's fitness to teach: (1) the likelihood that 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 certificate held by the teacher; (5) extenuating or aggravating circumstances surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood that the conduct in question will recur; and (8) the extent that discipline will cause an adverse chilling impact on the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at 229.) The *Morrison* factors apply as follows:

(A) The likelihood the conduct may adversely affect students or fellow teachers. Respondent's conduct adversely affected students, teachers and administrators. Some students were offended and made to feel uncomfortable by respondent's comments and conduct. Respondent's conduct created divisions among students, between those who liked respondent's teaching style and those who felt uncomfortable and offended but were too timid or afraid to make a formal complaint. Respondent disparaged teachers and administrators in front of his students, thereby undermining their authority with students. For students who saw respondent as a role model, they were emboldened to imitate and repeat his inappropriate conduct and language. Respondent's conduct undermined the school's efforts to maintain a positive culture and climate for all students and staff.

(B) The degree of such adversity. Respondent's conduct caused great adversity to those students who were offended, made uncomfortable, or negatively impacted by his conduct. His conduct caused minimal adversity, if at all, to the students who viewed his conduct favorably. Respondent's conduct caused great adversity to administrators and other employees whose authority with students was undermined by his inappropriate and demeaning comments to students about them.

(C) The proximity or remoteness in time of the conduct. Respondent's misconduct at issue was recent, having occurred during the approximate period of 2013 through 2017.

(D) The type of teaching certificate held by the party involved. Respondent holds the credential authorizing him to teach biology and anatomy & physiology at Pomona High School.

(E) The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. The Commission finds there were no extenuating circumstances for respondent's misconduct. For example, there is no excuse or justification for respondent's repeated and regular use of profanity and vulgar language and comments during classroom instruction or his interactions with students. The Commission finds that respondent's excuse that he uses profanity as academic vocabulary to teach class concepts is not convincing. The Commission finds there are aggravating circumstances surrounding respondent's misconduct. As a defense, respondent repeatedly claimed in this proceeding that he did not know, or was never told, that his conduct was not permitted or inappropriate. The Commission is not persuaded by that defense. Respondent has worked as a teacher since 1995. He has lived in the United States since 1986. With that background, respondent should know that, for example, using profanity and making racial and sexual comments, are not acceptable

behavior for a classroom teacher. The District counseled and advised respondent when his behavior and conduct was inappropriate and unacceptable. Yet, respondent continued to engage in the inappropriate and unacceptable conduct.

(F) The praiseworthiness or blameworthiness of the motives resulting in the conduct. The Commission finds there is evidence that respondent had praiseworthy motives behind his conduct. The Commission believes that, for the most part, respondent was not intentionally trying to harm students. He appears to have a sincere desire to relate to and connect with his students. The problem is that respondent focused on relating to students at their level instead of relating to them as their teacher and authority figure. Respondent acted and conducted himself with his students as if he were another student, rather than as their teacher. He ingratiated himself with students who had a favorable view of his teaching style and antics, but alienated those students with a less favorable view. By his conduct, respondent undermined his ability to create a positive learning environment for all the students in his classes.

(G) The likelihood of recurrence of the questioned conduct. Respondent's conduct at issue is likely to recur. Warnings and directives from school administrators have not helped in the past. Under the circumstances, the Commission believes there is more than a remote possibility that respondent would continue to engage in the same type of misconduct if he is allowed to return to a classroom.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. Not applicable.

19. Based on the above *Morrison* factors, the Commission finds that respondent's misconduct demonstrates he is unfit for service as teacher in the District.

Disposition

20. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 222.)

21. Based on the foregoing, the unanimous decision of the Commission in this case is that respondent shall be dismissed from employment with the District.

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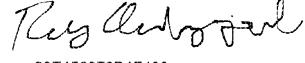
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ORDER

Respondent Oseni Iriafen shall be dismissed from employment with the Pomona Unified School District.

September 12, 2018

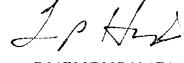
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RAY ANDRZEJEWSKI
Commission Member

September 13, 2018

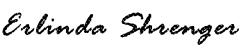
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TOM HOOD
Commission Member

September 13, 2018

DATED: _____

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ERLINDA G. SHRENGER
Administrative Law Judge
Office of Administrative Hearings