

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
AND THE OFFICE OF ADMINISTRATIVE HEARINGS
OF THE STATE OF CALIFORNIA

In the Matter of the Dismissal of:

JOSE MARTINEZ (EN 536399)
A Permanent Certificated Employee,

Respondent.

OAH No. 2011110670

DECISION

This matter was heard on March 5, 7, 8, and 30, June 15, and October 8, 2012, in Los Angeles, California, before the Commission on Professional Competence (Commission). The Commission consisted of Gelane Cameron, Virginia Escobar, and Howard W. Cohen, Administrative Law Judge with the Office of Administrative Hearings, State of California, who presided.

The Los Angeles Unified School District (District) was represented by Jefferey E. Stockley, Attorney at Law with Liebert Cassidy Whitmore.

Jose Martinez (respondent) appeared and was represented by Richard J. Schwab, Attorney at Law with Trygstad, Schwab & Trygstad.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on October 8, 2012.

The Commission on Professional Competence considered the matter in executive session. After due consideration of the entire record herein, the Commission makes the following factual findings, legal conclusions, and order.

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Vivian Ekchian in her official capacity as Chief Human Resources Officer for the District.

2. Respondent is a permanent certificated employee of the District, presently on unpaid leave status.

3. On November 1, 2011, the District gave notice to respondent of the Accusation and Statement of Charges that had been filed with the District Board of Education (Board) and of the Board's intention to dismiss respondent. The District also provided respondent with notice of immediate suspension under section 44939. Respondent thereafter requested a hearing.

The District's Charges Against Respondent

4. In the Accusation and Statement of Charges against respondent, the District alleges that it has cause to immediately suspend and dismiss respondent from his employment as a permanent certificated employee of the District for:

- a. Unprofessional conduct, under Education Code section 44932, subdivision (a)(1);¹
- b. Immoral conduct, under sections 44932, subdivision (a)(1), and 44939;
- c. Evident unfitness for service, under section 44932, subdivision (a)(5);
- d. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing him, under section 44932, subdivision (a)(7); and
- e. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939.

5. The District alleges that between October 1, 2009, and December 18, 2009, respondent touched six-year-old student, C [REDACTED] L.,² on her buttocks, in her vaginal area, and on her leg inside her pants or over her clothing on multiple occasions while in the classroom.

6. The District alleges that between September 14, 2009, and December 18, 2009, respondent used physical contact as a means of reward or to acknowledge or guide his students, touching or patting them on the head, hand, or back.

¹ All statutory references are to the Education Code, unless otherwise specified.

² To maintain confidentiality, this decision identifies students and their parents by their first name and the first initial of their surname.

7. The District alleges that between October 1, 2009, and December 18, 2009, respondent remained alone in a classroom with the student, C [REDACTED] L.

The 2009-2010 School Year

8. In the 2009-2010 school year, respondent taught first grade at Wilshire Park Elementary School (Wilshire Park). Respondent has worked for the District in various capacities for 30 years, first as a student aide, then as a teaching assistant while he attended college. For the last 17 years, since 1995, respondent has worked for the District as an elementary school teacher, teaching K-3 as well as special education classes. He has a master's degree in education, and has a multiple subject credential and a cross-cultural language and development (CLAD) credential. No evidence was submitted of a prior history of discipline against respondent.

9. On the morning of January 12, 2010, C [REDACTED] L., a six-year-old girl who was one of respondent's first grade students, told respondent that another student was bothering her at morning recess. In the presence of his teaching assistant, Tywanya Hill, respondent spoke to both girls, found that each had been at fault, had them apologize to each other, and told them to be friendly and respectful to each other.

10. At lunchtime on the same day, C [REDACTED] L. went to the principal's office. She was crying and said that she wanted the school staff to call her mother to take her home because respondent had been talking to her in a loud voice. Isabel Defaee, an administrative assistant, tried to calm C [REDACTED] L. C [REDACTED] L.'s mother, T [REDACTED] C., was called. Defaee testified at hearing that C [REDACTED] L. had separation anxiety in kindergarten and in first grade; she would cry and scream excessively and cling to her mother and her aunt. She would also cry and scream while in class almost daily, which, Defaee said, was unusual for a first grader.

11. While waiting for T [REDACTED] C. to arrive, Enrique Franco, who has been the principal at Wilshire Park since 2006, went to respondent's classroom to discuss C [REDACTED] L. Respondent described his conversation with C [REDACTED] L. and told Franco that C [REDACTED] L. had been crying and rubbing her eyes since recess ended at 10:30 a.m., though respondent had told her there was no need to cry and that everything had been resolved.

12. T [REDACTED] C. arrived at the principal's office; she was very angry. Franco explained, with Defaee's assistance, that respondent had not done anything to warrant T [REDACTED] C.'s anger and that both girls had been corrected, not just C [REDACTED] L. He also explained that other children were having trouble adjusting to being back in school after winter vacation. T [REDACTED] C. remained upset, and respondent was brought in to discuss what had happened. Respondent said that he had not shouted at C [REDACTED] L., and that he had told her to stop crying, that everything was fine. T [REDACTED] C. was still not satisfied. Franco offered to transfer C [REDACTED] L. to the classroom of another teacher, Julie Medina.

13. On January 14, 2010, T [REDACTED] C. telephoned Franco and told him that C [REDACTED] L. did not want to go to school. Franco again offered to transfer her to Medina's classroom.

T ■■■ C. requested a transfer to Helen Kang's classroom instead, because C ■■■ L. would be able to hear respondent's voice in Medina's classroom, which was adjacent to and shared a door with respondent's classroom. Kang had been C ■■■ L.'s kindergarten teacher. Franco offered the services of the school's psychologist. T ■■■ C. then told Franco that C ■■■ L. said that respondent had removed a child's shoe, had sent children to the classroom next door to discipline them, had told a child he would be sent home, and had instructed the class to kiss one of the students. Franco agreed to transfer C ■■■ L. to Kang's classroom and to investigate.

14. Franco questioned respondent about C ■■■ L.'s allegations. Respondent's explanations, credibly repeated in testimony at the hearing, satisfactorily demonstrated that respondent had not engaged in misconduct with respect to those incidents. Franco directed respondent to contact the parents of the students involved and to explain the circumstances.

15. On January 20, 2010, C ■■■ L. arrived in Kang's class, accompanied by her aunt. She was crying, but eventually calmed down. In the afternoon, just before class was dismissed, C ■■■ L. came to the principal's office, crying and saying she wanted to go home.

16. On January 21, 2010, Franco and Kang met with T ■■■ C. and counseled her about the difficulties that some children have getting accustomed to being in school and requesting her support.

17. C ■■■ L. did not return to Wilshire Park.

18. T ■■■ C. testified that she was sometimes late bringing her daughter to school, and was frequently late picking her up after school. She testified that sometimes when she was late picking up her daughter after school, she would find the classroom door closed and her daughter in the classroom alone with respondent. She testified that in late 2009 and early 2010, C ■■■ L.'s behavior changed; she seemed fearful, had nightmares, and did not want to go to school. She said that respondent had yelled at C ■■■ L. backstage during the Christmas play in December 2009. She testified that, after C ■■■ L. had been transferred to Kang's classroom, C ■■■ L. told her that respondent had touched her buttocks. T ■■■ C. called the District. The District told her to file a claim with the police department, which she did.

19. C ■■■ L. testified at hearing. Her mother was allowed to accompany her while she was on the witness stand, by stipulation of counsel; she was crying and was unable to testify under those conditions. When her aunt replaced her mother on the stand later in the day, C ■■■ L. composed herself and testified competently. She testified that respondent had touched her from behind, under her underwear, once after school, in December 2009, that he had never touched her anywhere else that she did not like, and that he never touched her leg, pulled her hair, pushed her legs apart, or swung a chair at her. She testified that respondent lifted her blouse once, up to her stomach; she was wearing something under the blouse. She testified that that respondent had tried to staple her hand and that he had tried to push a bookshelf into her. She believes she told the police and Morrow the same thing. She

testified that she was never in the classroom alone with respondent, and that when respondent touched her buttocks and her “private area,” there were other children in the classroom but they did not observe it. She testified at first that respondent did not have an aide named Ms. Hagedorn in his classroom; subsequently she remembered Ms. Hagedorn, but denied that she was ever in the classroom after school. She testified that she did not remember an aide named Ms. Hill, and that she does not remember any adults other than respondent being in the classroom after school. She acknowledged that the door between respondent’s classroom and Medina’s classroom was open sometimes. She testified that respondent on one occasion opened the door to the girls’ restroom, looking for her; he did not approach the stalls. She testified that respondent was a mean teacher and that she did not like him, and that Franco was also mean.

20. Officer Munir Manjra, a Los Angeles Police Department officer assigned to the Wilshire Police Station, testified that T [REDACTED] C. and C [REDACTED] L. came to his desk on February 2, 2010. C [REDACTED] L. said her teacher had grabbed her buttocks once; she then changed that to twice. C [REDACTED] L. never said she was touched on her skin, only over her clothing, and that the incident took place in mid-December 2009. C [REDACTED] L. denied that respondent touched her anywhere else.

21. Officer Melissa Lynch, a Los Angeles Police Department investigator since November 2006, investigated C [REDACTED] L.’s charges. She interviewed Franco, who told her he had had no complaints from C [REDACTED] L. about respondent except after her dispute with another child. Lynch observed C [REDACTED] L. being interviewed on February 5, 2010; C [REDACTED] L.’s version of events was, for the most part, consistent with her testimony at hearing. Lynch interviewed T [REDACTED] C., who told her of C [REDACTED] L.’s nightmares and of the discussions with Franco. She interviewed respondent, who denied inappropriately touching C [REDACTED] L. or any student; he said he did pat children on the head or back, but never on the buttocks. He described the incident between C [REDACTED] L. and the other student, and said that C [REDACTED] L. cried frequently. He also said that other adults were with him in the classroom all day and after school. Lynch interviewed respondent’s aides, Tywanya Hill, Teresa Hagedorn, and Ms. Kim; all of them told her that they never saw respondent act inappropriately with any child. There was no physical evidence of sexual abuse. The District Attorney’s office and the City Attorney’s office declined to prosecute the matter. Lynch testified that the District Attorney’s office does not frequently decline to prosecute child sexual abuse matters.

22. Dr. Jeff Sugar, a child psychiatrist on the faculty at USC, testified as an expert witness for the District. Dr. Sugar testified that no definitive conclusions can be drawn about whether abuse actually occurred merely from the fact that a child delays reporting or incrementally reports alleged abuse.

23. Rosa Morrow works at the Stuart House, a program of the Rape Treatment Center at UCLA-Santa Monica Medical Center, where she provides therapy to children alleging sexual abuse. She has a master’s degree in marriage and family therapy and is a licensed marriage and family therapist. Morrow became Catheryn L.’s therapist after a referral from law enforcement. Morrow saw Catheryn L. for 17 weekly sessions in 2010;

C [REDACTED] L. also missed about six sessions. C [REDACTED] L. presented with fear and anxiety about going to school, temper tantrums, and nightmares, but improved during treatment, especially after she changed schools. C [REDACTED] L. told Morrow that respondent had pulled her legs apart and touched her vaginal area, and that he had pulled her hair; she did not say that respondent had tried to staple her hand or push a shelf at her. C [REDACTED] L. told her she was happy because she now had a female teacher. Morrow last treated C [REDACTED] L. in about January 2011, when she determined that C [REDACTED] L.'s symptoms had been alleviated. She did not perform any psychological testing on C [REDACTED] L., nor did she refer her for testing. She did not know whether C [REDACTED] L. experienced separation anxiety at school prior to having respondent as her teacher, and conceded that it would be important to know that information in diagnosing and treating C [REDACTED] L. Although she testified that C [REDACTED] L.'s symptoms were consistent with those of other children she had treated for sexual abuse, she also testified that frequent crying and temper tantrums could be symptoms of separation anxiety.

24. In May 2011, Detective Ray Jordan of the Los Angeles Schools Police Department investigated this matter for the Investigations Unit of the District's Employee Relations Section. Jordan reviewed the records of other investigators and interviewed respondent, Franco, other Wilshire Park teachers, and respondent's classroom aides, among others. Franco said he was shocked by the allegations, that respondent had not had any prior discipline problems and is a great teacher, and that C [REDACTED] L. could be a "handful" and frequently screamed and cried; when she did, her mother always took her side. Respondent denied all allegations of wrongdoing. His aides said there was almost always another adult in the classroom with respondent; all spoke highly of respondent, said he was a fun teacher and well-liked, and said they had never seen him act inappropriately. Jordan noted that detectives had interviewed 19 of respondent's first grade students. All of them spoke highly of respondent, and all denied that respondent ever touched anyone inappropriately; when students would hug respondent, he would say "that's enough" and they would let him go.

25. Mary Catherine Campbell, who supervises 30 elementary school principals for the District, was involved in the decision to seek to terminate respondent's employment. She reviewed the investigative documents, discussed the matter with District administration members, and proceeded toward dismissal in order, she testified, to protect student safety. She interviewed Franco, who had a high opinion of respondent. She did not interview any students or classroom aides, and does not remember interviewing respondent.

26. Respondent testified that he never inappropriately touched C [REDACTED] L., that he never touched C [REDACTED] L.'s buttocks, legs, or vaginal area, that he never tried to staple her hand or push a bookshelf toward her, and that he never went into the girls' bathroom. He never tried to spread C [REDACTED] L.'s legs, or pull her hair. He testified that he never touched students inappropriately, but patted them on the head or back in order to acknowledge them. He testified that he was never alone with students in his classroom, and that at least one of his classroom aides, including his sister, Maria Teresa Hagedorn, was present before, during, and after class. His was the classroom closest to the administration office. His doors were always unlocked and open. There was an unobstructed view into his classroom through four

large windows. Julie Medina taught in the adjacent classroom; she would often enter respondent's classroom through a connecting door that remained ajar to discuss the day's lesson, before and after class. Other teachers entered his classroom almost daily. School administrators would enter his classroom unannounced, and parent would visit as well.

27. Respondent testified that after the altercation between C [REDACTED] L. and the other girl, he learned that they had each hit the other. He had them both apologize, but C [REDACTED] L. was upset about having to apologize and kept sobbing and rubbing her eyes until lunchtime. That afternoon, Franco called respondent into the office to discuss the matter with T [REDACTED] C. Respondent testified that T [REDACTED] C. was very distraught and would not accept respondent's explanation of the morning's events; she wanted C [REDACTED] L. moved out of respondent's classroom because, she said, respondent was mean and spoke to the children in a loud voice.

28. In all essential details, respondent's version of the events at issue was corroborated credibly by Franco, other teachers, and classroom aides.

29. Helen Kang taught C [REDACTED] L. in kindergarten, and in first grade after C [REDACTED] L. transferred out of respondent's class. Kang testified that C [REDACTED] L. cried a lot in class. C [REDACTED] L. displayed separation anxiety in kindergarten, especially at the start of class and at dismissal when her mother was late picking her up from school. She also displayed separation anxiety in first grade, and became more defiant toward adults. Kang testified that she never observed respondent acting inappropriately with any student, and that respondent's students always looked happy. She testified that when school ends at 2:24 p.m., teachers, including respondent, leave their doors open and drop in on each other to chat.

30. Franco testified that it is "almost impossible" not to touch a child in K-2, that it helps the children feel that they are in a safe environment. It is appropriate for a teacher in those grades to pat a student on the shoulder or head; children often approach and hug teachers, and teachers appropriately pat them on the shoulder and thank them. Franco never saw respondent display excessive affection for a student or touch a student inappropriately, and he never heard that anyone else ever observed respondent acting inappropriately. He instructed respondent in school policies and the code of conduct. In evaluating respondent, Franco found that he always met or exceeded expectations and that he is an outstanding teacher. There were never any complaints about respondent's behavior with students, and he never saw respondent act toward students in any way that caused him concern. The District directed Franco to issue the disciplinary notices to respondent in this matter; it was not Franco's decision. Franco would visit respondent's classroom unannounced "quite frequently;" the classroom was right near the main office. Franco looked into respondent's classroom daily, before, during, and after class, and he never saw respondent alone with any children. There was always an adult aide, or a special education aide, or a volunteer, or some combination of those, in the room with respondent. And the door connecting respondent's classroom and Medina's classroom was never locked and was often open.

31. Tywanya Hill was a special education assistant in respondent's first-grade classroom during the 2009-2010 school year. She worked in respondent's classroom from 8:00 a.m. to 10:30 a.m. and from 1:30 p.m. to 2:30 p.m. on Monday through Wednesday, and from 8:00 a.m. to 10:30 a.m. on Thursdays and Fridays. Hill remained in the classroom during recess. Whenever she left the classroom, other classroom aides were still present, and parents and administrators frequently entered the classroom. Hill witnessed the altercation between C [REDACTED] L. and the other girl. She saw C [REDACTED] L. kick the other girl, told the girls not to fight, and described the incident to respondent. When T [REDACTED] C. came in to discuss the incident, Hill heard her yelling at respondent, despite respondent explaining that her daughter had kicked the other girl. Hill never saw respondent act inappropriately with any student; to her knowledge, respondent was never alone with any student.

32. Julie Medina, a first grade teacher at Wilshire Park during the 2009-2010 school year, taught in the classroom next door to respondent's. There was a connecting door between the classrooms, which was frequently open, especially before and after school. Medina frequently entered respondent's classroom unannounced, and respondent entered hers. She visited respondent's room before school, and almost every day after school, to collaborate on lesson plans. She never saw respondent alone in a classroom with a student, and never saw him behave inappropriately toward any student. There were always adult aides in respondent's classroom. Even at the Christmas play in December 2009, respondent was never alone with any student; he was in front of the stage directing the children as they performed.

33. Susan Youn-Joung Kim, a second grade teacher at Wilshire Park during the 2009-2010 school year, testified that C [REDACTED] L. was in her class for second grade and never told her she was afraid of respondent. Kim occasionally would enter respondent's classroom to chat; he always had his door open. She never saw respondent alone with any student, or act suspiciously, or touch students inappropriately.

34. Maria Teresa Hagedorn is respondent's sister. During the 2009-2010 school year, she worked as a volunteer aide in respondent's classroom, preparing the classroom before class began, preparing and reviewing homework, and helping to ensure that the children in class behaved well and received assistance from respondent as needed. She lives with respondent in his house and contributes to household expenses from the widow's pension she receives. She does not drive; respondent drove her to and from school each day. Once or twice per month on Fridays she would have a morning doctor's appointment; she would go to the appointment from school by bus, and then return to school the same way about two hours later. Hagedorn testified that before class, other adults would enter the classroom, including first grade teachers consulting with respondent, the principal, parents, and classroom observers. During class, classroom aides Tywanya Hill and Ms. King were usually present. After school, parents would pick up their children; if a parent was late, the child could phone home. Hagedorn testified that she was in the classroom every day, during and after class; respondent was never alone with any student. She testified that, after school, Medina would come into the classroom to consult with respondent, and parents, teachers, administrators, and custodial staff would enter unannounced after class. Hagedorn testified

that she never saw respondent touch C [REDACTED] L. on her leg, on her buttocks, or around her vaginal area, inside or outside of her clothing. She never saw respondent spread C [REDACTED] L.'s legs, or pull her hair, or try to staple her hand or push a bookshelf at her or swing a chair at her. If she had seen any of those things, she testified, she would not have allowed it. She said that she is a mother and grandmother first, and was adamant that she would have stopped respondent. Even though he is her brother, she said, she would not lie for him.

35. Based on ample testimony and documentary evidence, respondent's reputation among his colleagues, aides, and administration is that he is an excellent teacher, highly moral, of great integrity, efficient, dedicated, responsible, patient, and caring toward his students.

36. C [REDACTED] L.'s version of the events of the 2009-2010 school year was uncorroborated and was internally inconsistent. She admitted that there were other children in the classroom when the touching allegedly occurred, as respondent was helping them learn to read. She neglected to mention or could not remember that Hagedorn was also present in the classroom every afternoon, helping with the children and waiting for her brother to drive her home. The statements Morrow said were made by C [REDACTED] L. about respondent pulling her hair and spreading her legs were not supported by C [REDACTED] L.'s testimony at hearing, and C [REDACTED] L. never mentioned to Morrow that respondent tried to staple her hand and shove a bookshelf at her. C [REDACTED] L. told Manjra that respondent had only touched her over her clothing; she said respondent had touched her once, then twice, and then at hearing said it was only once.

37. The District introduced no evidence to show that a psychiatrist or psychologist examined or treated C [REDACTED] L. The District did not sufficiently establish that the cause of C [REDACTED] L.'s symptoms, or the alleviation of those symptoms, related in any way to any improper acts by respondent. Morrow, who is not a psychologist, did not produce notes of her therapy sessions with C [REDACTED] L., and stopped her sessions with C [REDACTED] L. rather suddenly. Morrow conceded that it would have been important to know of symptoms of separation anxiety occurring before the alleged acts; there was ample testimony at hearing of such symptoms.

38. T [REDACTED] C. appeared overprotective and her testimony was self-serving and lacked credibility. Her testimony about respondent screaming at the Christmas play was contradicted by other witnesses. She often dropped her daughter off late and picked her up late. She said respondent's classroom door was closed and the school was empty right after school, and that C [REDACTED] L. was alone in the classroom with respondent. But other witnesses consistently testified that the classroom door was open after school and that many people were present for quite some time after class ended. They also testified, and C [REDACTED] L. testified, that respondent was never alone with C [REDACTED] L. in the classroom. T [REDACTED] C. appeared to be too quick to side with her daughter and blame others for her daughter's frequent crying, screaming, temper tantrums, and fights with other children, and she appeared to react poorly when respondent mildly challenged her during the meeting with

Franco. C [REDACTED] L. behaved markedly differently when accompanied by her aunt, rather than her mother, while testifying.

39. The District's evidence did not demonstrate that respondent had the opportunity to engage in the acts alleged. Franco and all of the teachers and aides who testified said that the doors to respondent's classroom were open, that people were frequently walking in and out, both from the hallway and from the adjacent classroom, and that aides were always present. The District did not establish that respondent was ever alone in the classroom with C [REDACTED] L. Every witness with access to the classroom, including C [REDACTED] L. herself, contradicted that allegation in testimony.

40. The District did establish that respondent used physical contact as a means of reward or to acknowledge or guide his students, touching or patting them on the head, hand, or back. But during the relevant time period such contact was age-appropriate and was in accordance with the school's Code of Conduct With Students. (Ex. 9.)

LEGAL CONCLUSIONS

Jurisdiction

1. The Commission has jurisdiction to proceed in this matter under section 44944. (Factual Findings 1 through 3.)

Burden of Proof

2. The District has the burden of proof in this matter, since it is seeking to dismiss respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardiner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040.)

Causes for Dismissal

3. Cause does not exist for respondent's dismissal under Education Code section 44932, subdivision (a)(1), for unprofessional conduct, by reason of Factual Findings 4 through 40.

4. Cause does not exist for respondent's dismissal under Education Code sections 44932, subdivision (a)(1), and 44939, for immoral conduct, by reason of Factual Findings 4 through 40.

5. Cause does not exist for respondent's dismissal under Education Code section 44932, subdivision (a)(5), for evident unfitness for service, as set forth in Findings 4 through 40.

6. Cause does not exist for respondent's dismissal under Education Code section 44932, subdivision (a)(7), for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing him, by reason of Factual Findings 4 through 40.

7. Cause does not exist for respondent's dismissal under Education Code section 44939 for willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, by reason of Factual Findings 4 through 40.

8. The District did not establish by a preponderance of the evidence that respondent engaged in conduct indicating his unfitness to teach and justifying his immediate suspension and termination of his employment with the District. (Factual Findings 4 through 40.)

9. It has been established that "[t]he Commission has broad discretion in determining what constitutes unfitness to teach and immoral conduct, and whether dismissal or suspension is the appropriate sanction. [Citation] '[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.' [Citation]." (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 343-344.)

10. As set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, a teacher's conduct cannot be abstractly characterized as "immoral," or "unprofessional," thus warranting discipline, "unless that conduct indicates that [respondent] is unfit to teach." (*Id.* at p. 229.) *Morrison, supra*, enumerated criteria for the trier of fact to analyze in determining whether a teacher is unfit to teach. Because the District did not establish that respondent committed any of the alleged improper acts, the *Morrison* factors are not applicable here.

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ORDER

The determination of the Board of Education of the Los Angeles Unified School District to dismiss respondent Jose Martinez as a permanent employee of the District is reversed. The Accusation and the Statement of Charges, OAH Case No. 2011110670, filed and issued by complainant Vivian Ekhian, Chief Human Resources Officer, on behalf of the Board of Education of the Los Angeles Unified School District, and against respondent Jose Martinez, is dismissed. Respondent Jose Martinez is not terminated or dismissed as a permanent certificated employee of the Los Angeles Unified School District.

COMMISSION ON PROFESSIONAL COMPETENCE AND OFFICE OF ADMINISTRATIVE HEARINGS, STATE OF CALIFORNIA

DATED: January __, 2013

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

I concur with the Decision and Order set forth above:

COMMISSION ON PROFESSIONAL COMPETENCE

DATED: January __, 2013

GELANE CAMERON
Commission Member

I concur with the Decision and Order set forth above:

COMMISSION ON PROFESSIONAL COMPETENCE

DATED: January __, 2013

VIRGINIA ESCOBAR
Commission Member