

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

In the Matter of the Dismissal of:

CORRY HEARD,
A Permanent Certificated Employee,

Respondent.

OAH No.: 2018051034

DECISION

The Commission on Professional Competence, consisting of complainant's designee, Benjamin Bell, respondent's designee, Christopher D. Anaya, and Administrative Law Judge Jennifer M. Russell, from the Office of Administrative Hearings, heard this matter in Compton, California on September 18, 19, 20, 21, and 24, 2018. The record closed and the matter was submitted for decision at the conclusion of the hearing on September 24, 2018.

Milton E. Foster, III, Attorney at Law, represented complainant Compton Unified School District (CUSD or District). Carlos R. Perez, Attorney at Law, represented respondent Corry Heard, who was present throughout the hearing.

In a Statement of Charges,¹ the District alleges that respondent engaged in acts manifesting immoral conduct, evident unfitness, dishonesty, disobedience of school laws or regulations, and refusal to perform regular assignments. The Commission has determined that all but one of the charges were established by a preponderance of the evidence, but that dismissal of respondent is nonetheless unwarranted because the competent, credible evidence failed to establish respondent's unfitness to teach.

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¹ At the administrative hearing, the Statement of Charges alleging immoral conduct (Ed. Code, §§ 44932, subd. (a)(1), and 44939), evident unfitness for service (Ed. Code, §44932, subd. (a)(6)), persistent violations of or refusal to obey the school laws or reasonable regulations prescribed for the government of public schools (Ed. Code, § 44932, subd. (a)(8)), and willful refusal to perform regular assignments without reasonable cause (Ed. Code, §44939) was amended by interlineation to add dishonesty (Ed. Code, § 44932, subd. (a)(4)).

FACTUAL FINDINGS

Alleged Failure to Clear Single Subject Credential in a Timely Manner

1. The State of California mandates that all teachers shall hold a valid California teaching credential authorizing them to provide classroom instructions. To assist novice teachers with the credentialing process and requirements, the Commission on Teaching Credentialing (CTC) sponsors the Beginning Teacher Support and Assessment (BTSA), an intensive, voluntary professional development and assessment program designed for induction into the profession. School districts, including CUSD, maintain and provide a local consortium of directors and trainers or support providers to implement the BTSA program. Participating teachers typically complete the BTSA program in two years. Those requiring additional time to complete the BTSA program may apply to the CTC for an extension of time to do so.

2. The BTSA program focuses on transforming academic accomplishments and preparedness into practical knowledge and skills to achieve success in the classroom. The Formative Assessment for California Teachers, a performance-based assessment system, is employed to guide the acquisition, development, and assessment of classroom instruction and management skills. Participating teachers are paired with a support provider responsible for mentoring professional growth. Among other things, support providers guide instructional preparation, observe participating teachers in the classroom, and provide feedback for improving classroom instruction. Participating teachers attend conferences or regularly scheduled meetings, and they engage in informal and formal self-assessments.

3. Consistent with California's mandated credentialing requirements for teachers, the District's *Personnel Policy* on "Certification" states that "The Superintendent or designee may provide support and guidance to noncredentialed teachers in accordance with law to ensure the quality of the instructional program. He/she also may provide assistance and support to staff holding preliminary credentials to help them meet the qualifications required for the professional clear credential." (Exh. A at p. 000017.)

4. The District initially hired respondent as a substitute teacher at the beginning of the 2009/2010 academic year. Four months into that academic year, the District re-assigned respondent to a full-time teaching position at Dominguez High School. For reasons not established by the evidence, respondent left the District for a period of time lasting at least one and one-half years after full-time teaching at Dominguez High School, but he then returned to the District as a substitute teacher. On August 21, 2012, the District again retained respondent as a full-time teacher. In the 2013/2014 academic year, the District assigned respondent to Compton Community Day High School, where he remained until the District re-assigned him to Cesar Chavez Continuation High School in the 2015/2016 academic year.

5. When respondent began his teaching career in the 2009/2010 academic year in the District, respondent possessed a Preliminary Single Subject Teaching Credential.

Respondent did not possess any clear teaching credential from the CTC. The District's retention of respondent was conditioned on respondent obtaining a valid clear teaching credential.

6. In 2009, and again in November 2012, respondent signed a BTSA Induction Program Memorandum of Understanding agreeing to adhere to the program's requirements and to participate in the program's professional development activities in order to gain full credential eligibility status. It is undisputed that respondent did not complete the BTSA program within two years of 2009 or within two years of 2012 because respondent either took or was placed on leaves of absence from the District, had multiple support providers resulting in a discontinuity of mentorship, did not attend an unspecified number of meetings, did not meet with an assigned support provider at unspecified times, did not submit or made untimely submissions of logs, reports, or written reflections, and, on occasions, made submissions with either or both inaccurate and incomplete information.

7. On February 1, 2016, when respondent was teaching at Cesar Chavez Continuation High School, his Preliminary Single Subject Teaching Credential expired before he completed the BTSA program. As a consequence, the District relieved respondent of his full-time instructional duties and responsibilities and placed respondent on leave of absence without pay. After respondent requested and obtained from the CTC an extension of time to complete the BTSA program, the District re-employed respondent to serve as a substitute teacher for the remainder of the 2015/2016 academic year.

8. In the 2016/2017 academic year, respondent requested and obtained a second extension of time from the CTC, and the District again employed respondent as a full-time social studies teacher assigned to Centennial High School. During that academic year, respondent completed the BTSA program.

9. On June 1, 2017, the CTC issued a Single Subject Teaching Credential in Social Science to respondent.

10. In the 2017/2018 academic year, the District continued respondent's assignment to teach at Centennial High School, and respondent taught there up until February 21, 2018, when the District provided respondent with a notice of immediate suspension without pay and dismissal. (See Factual Findings 73-75.)

11. At the administrative hearing, Aracely Zambrano, who provided support to teachers in the District participating in BTSA, and Dr. Abimbola Williams-Ajala, who served as Assistant Superintendent for Human Resources until her recent 2018 appointment as Assistant Superintendent for Pupil Services, both opined that they believed respondent's approach to BTSA was not serious. Ms. Zambrano claimed that she reached out to respondent regarding his efforts to complete certain requirements of BTSA by certain deadlines and that respondent yelled at her and used profanity. Dr. Ajala claimed that "the BTSA incident shows a pattern of behavior of someone who likes to do things his way." Dr. Ajala asserted that because respondent "had to be taken out of the classroom in the middle of

the year,” the consequential impact on students was “inconsistency in learning.” Dr. Ajala testified that she “offered for him to sub to allow him to move around from school to school, but he had to work full-time to complete BTSA.”

12. A preponderance of the evidence establishes that respondent required at least six years to complete successfully the BTSA program to clear his single subject credential. Nonetheless, as set forth in Legal Conclusion 14, it is not established by a preponderance of evidence that, as alleged in the Statement of Charges,² requiring six years to clear a single subject credential warrants respondent’s dismissal from the District.

Alleged Physical Altercation with a Student at Compton Community Day High School

13. As noted in Factual Finding 4, beginning with the 2013/2014 academic year, the District assigned respondent to teach at Compton Community Day High School, an alternative high school for students with severe disciplinary issues, poor school attendance, or needs better served in a small learning environment.

14. In the 2014/2015 academic year at Compton Community Day High School, respondent taught a social science class with a student population vacillating between nine and 15 students who were in grades ranging between eighth grade and eleventh grade. Among the student population in respondent’s classroom were students with a history of violent altercations, students with known gang membership or affiliation, and students under varying levels of supervision by a juvenile court or facility. At the administrative hearing, respondent explained that “there was a lot of tension in the class” but that he “liked the class and the kids” because “they were good kids” who “just needed hugs.” Profanities and racial epithets were interwoven into the students’ vernacular. Among other terms, students used “nigger,” “fuck niggers,” “fucking taco,” “piñata,” and “Mexican beaner” to degrade and offend, to express anger, and as terms of endearment.³ Respondent managed the classroom environment by, among other things, naming, voicing, or otherwise repeating the racial epithets students deployed in specific contexts to instruct and explain to students how their usage of such terms are offensive and hurtful and therefore should not be used in the course of their social interactions.

15. It was imprudent for respondent to name, voice, or repeat the racial epithets in their fullness, as opposed to saying “the N-word,” for example, in the classroom. Given the troublesome social history from which the racial epithets arise and are encapsulated, their full

² See Exh. A at p. 6, paragraphs 10–13.

³ The students’ multifaceted deployment of the various racial epithets illustrates Justice Oliver Wendell Holmes’ observation that “a word is not a crystal, transparent and unchanged.” A word is instead “the skin of a living thought [that] may vary greatly in color and content according to the circumstances and the time in which it is used.” (*Towne v. Eisner* (1918) 245 U.S. 418, 425). Justice Holmes’ observation holds true for racial epithets as well.

utterance out loud in a classroom already filled with “a lot of tension” risked heightened volatility. Nonetheless, the competent credible evidence offered at the administrative hearing establishes that respondent was innocent of intention to offend, humiliate, denigrate, demean, or otherwise harm the students in his classroom. Respondent was simply trying to instruct his students for their own benefit, albeit in a regrettable manner.

16. On Wednesday, October 29, 2014, N. was one of five students in attendance in respondent’s social science class at Compton Community Day High School. In between assignments, the students took a break by playing a game of basketball designed to expose students to concepts of mathematical percentages. At the conclusion of the basketball game, respondent informed the students that they would have an opportunity to fly model helicopters. Four or five model helicopters were in the classroom, and each student raced to the classroom to secure one of the helicopters. N. was not able to get one of the helicopters and he became angry and engaged one of his classmates in a shouting match. Respondent intervened, and a verbal exchange between respondent and N. ensued. Respondent explained at the administrative hearing that “it got to a point where it looked like [N.] was going to do something.” Respondent positioned himself in front of N. Respondent stretched out his arms with the palm of his hands downward and respondent put his hands on N.’s shoulders for approximately five seconds as he told N., “Calm down.” N. stormed out of the classroom, but soon thereafter returned to the classroom, at which time he had an opportunity to fly one of the model helicopters. At the end of the instructional day, respondent informed the principal, Richard Reed, that N. “had a blow out again.”

17. Two days later, on Friday, October 31, 2014, N. and his parents met with principal Reed and claimed that respondent choked N. in the classroom. N did not report any injuries to principal Reed. Principal Reed’s meeting with N. and N.’s parents is memorialized in a Compton School Police Incident Report Form (Incident Report) prepared by Officer H. Lucas. (Exh. B at pp. 000049-000053.) According to the Incident Report, principal Reed informed Officer Lucas that N. told him “that prior to the incident that they both exchanged words by saying ‘who would see who on the street.’” (*Id.* at p. 000051.) Principal Reed additionally informed Officer Lucas that N. “stated that Mr. Heard made racial slurs by saying ‘Dirty Mexicans.’” (*Id.*) Officer Lucas did not interview N. or N.’s parents.

18. According to the Incident Report, on Monday, November 3, 2014, principal Reed met with respondent “to inquire about the alleged choking incident.” Officer Lucas writes in the Incident Report that principal Reed told him the following: “Mr. Heard reported that a verbal exchange occurred between himself and the student. Mr. Heard also stated that at some point the exchange became heated at which time the student pushed him while inside the classroom. Heard went on to state that he responded to the push, by restraining the student which consisted of grabbing the student on both shoulders and holding him, during which time the student stopped his aggressive behavior and the class resumed without further incident.” (*Id.*) Officer Lucas did not interview respondent.

19. Officer Lucas conducted interviews of four students who were present in respondent's classroom at Compton Community Day High School on Wednesday, October 29, 2014. The students' interviews are summarized in the Incident Report. One student had no recollection of the incident. Two students did not see or were unaware of the incident. Officer Lucas writes in the Incident Report that another student, referenced as Witness #2, stated "there was a verbal exchange between the student and teacher during which the student dared the teacher by stating he wouldn't choke the student. Witness #2 continued to say that the teacher and student talked back and forth as to whether the teacher would do it (choke the student). Witness #2 said at some point the teacher briefly choked the student and then let go at which time the teacher went back to teaching the class." (*Id.* at p. 52.)

20. Officer Lucas concludes in the Incident Report that "it appears that physical contact did occur between the student and the teacher. This is established by the statements from the teacher, the student, and Witness 2. The . . . statements also lead to inference that if the "choking" incident occurred [it] was not malicious in nature." (*Id.*)

21. Principal Reed testified at the administrative hearing. Principal Reed recalled that N. and N.'s parents were upset. "They were livid. They wanted something done." Principal Reed explained that he "pulled in students" and that "some wouldn't say anything because they didn't want to be a snitch. Some said [respondent] choked him. Some said they heard [respondent] say 'dirty Mexican.'" Principal Reed explained that he also spoke to respondent, and principal Reed testified that respondent "said there was a back and forth," that respondent "said he didn't physically assault the student," that respondent "didn't mention racial comments made either by him or by [N.]," and that respondent "said he didn't use that language."

22. Principal Reed explained that he never heard respondent make racial comments to students, that he never observed respondent making any physical contact with students, and that respondent never demonstrated animosity towards Mexicans or racist tendencies. Principal Reed described respondent as "a good teacher," "very supportive," and "was always there" when work needed to be done. Principal Reed testified that prior to the incident there were "no complaints about [respondent's] behaviors."

23. The District placed respondent on paid administrative leave effective November 3, 2014, pending an investigation by the District, which consisted of principal Reed obtaining the statements from N., N.'s parents, the four students mentioned in the Incident Report, and respondent and providing notification to the Los Angeles County Sheriff's Department and Child Protective Services.

24. On Tuesday, November 4, 2014, a sheriff deputy was dispatched to Compton Community Day High School to interview N. N. declined the interview. N. reportedly told the deputy "that he had nothing to say and does not talk to the Police." (*Id.*) At the administrative hearing N. maintained, "I don't condone talking to the police. I don't do that."

25. According to principal Reed, upon the completion of his investigation he prepared a written memorandum of his investigative findings, which he submitted to Andrea D. Credille, the Senior Director for the District's Human Resources-Certificated Personnel. Principal Reed did not elaborate on those findings beyond the memorialized statements attributed to him in Officer Lucas' Incident Report. Principal Reed testified, "I never got a conclusion of what happened so I assumed everything was cleared."

26. By letter dated January 23, 2015, Ms. Credille notified respondent that the Sheriff's Department was not pursuing criminal charges against him, and she reminded respondent of his obligation to conduct himself in a professional manner. The letter, which enclosed two District policy directives—*CUSD Board Policy Code of Ethics* and *CUSD Board Policy Corporal Punishment*—in pertinent part provides the following:

We have received notice that the Sheriff's Department is not pursuing any criminal charges against you. While the Sheriff's Department found no criminal findings, please be reminded that you must always conduct yourself in a professional manner when interacting with students, staff and parents. Also be reminded that you must employ a "Hands off" policy, when interacting with students. Further, please review the corporal punishment policy that is attached.

(Exh. G.)

27. In the spring semester of the 2014/2015 academic year, the District returned respondent to the same classroom he taught at Compton Community Day High School prior to the October 29, 2014 incident involving N. Respondent explained at the administrative hearing that Dr. Ajala "gave me a pamphlet and said at no time I should put hands on a student." Respondent recalled that he agreed with Dr. Ajala because he "was off for 90 days from a job [he] liked." When respondent returned to the classroom, he apologized to N. during their first encounter. Respondent explained, "I was big with the kids about being respectful and showing respect." N.'s testimony corroborated that respondent treated him with respect after respondent returned to the classroom. N. regarded respondent as "a pretty good teacher" and as "cool." Principal Reed testified that he had "no concerns" about respondent's return to the same classroom where N. was present.

28. At the administrative hearing, N. presented at least two versions of the events precipitating the October 29, 2014 incident. In one version, N. testified that "a conflict in class started with students joking around," "that racial slurs [were] going back and forth," and that respondent "got involved." In another version, N. testified that he "returned from playing basketball," that he "was giving [respondent] a hard time . . . antagonizing him." N. testified, "I said something racial to Mr. Heard. Just me being a fool in school. I wasn't the best student. I was in Community Day for a reason. I was acting bad. He said something back, something like 'all you taco-eating motherfuckers' or something like that. We went back and forth. He got upset." In this version of events, N. recollects that "[respondent] grabbed me by the throat and lifted me up on the table." N. demonstrated by crossing his

palms one over the other to form a V-shape and putting his crossed palms on his chest at the base of his neck under his chin with his fingers encircling his neck.

29. N. testified that he “was in shock” and that the incident “lasted no longer than three seconds.” N. recalled either walking out of the classroom or sitting in the back of the classroom after the incident. N. testified, “The next day, I told [respondent], ‘Try doing that to a grown man and see how that goes for you.’”

30. N.’s step-father testified that N. told him that respondent “grabbed him by the neck” in “a choke hold” and that “some racial remarks were made.” N.’s step-father claimed that respondent “made racial remarks towards Mexicans and my son made one back.” N.’s step-father testified that when N. informed him about the incident N. was upset, N.’s eyes were watery, and that N.’s neck “had a little bit of red.” According to N.’s mother’s testimony, when she asked N. about what happened, N. mentioned that respondent “was making racist remarks about Hispanic people and he in turn made a racist remark out of anger.” N.’s mother recalled N. stating that respondent “got upset and grabbed him by the neck and put him on the table.”

31. As set forth in Legal Conclusion 12, it is not established by a preponderance of evidence that, as alleged in the Statement of Charges,⁴ respondent engaged in a physical altercation by choking N. during class and that respondent made racial slurs during the encounter.

Alleged Failure to Fulfill Contractual Duty to Arrive at Cesar Chavez Continuation High School on Time

32. Article 7.7 of *The Agreement Between the Compton Unified School District and the Compton Education Association Certified Units* for the period July 1, 2015 – June 30, 2018 (*The Agreement*), provides that “Unit members assigned to middle and high schools shall report to work fifteen (15) minutes prior to the beginning of the student instructional day.” (Exh. 1 at p. 15.) As noted in Factual Finding 4, the District assigned respondent to teach at Cesar Chavez Continuation High School in the 2015/2016 academic year. Consistent with the requirements of Article 7.7, teachers, including respondent, were required to report to duty at 7:45 a.m., fifteen minutes before the 8:00 a.m. student instructional day.

33. Article 7.15 of *The Agreement* requires the District to “make a reasonable effort to obtain a substitute for unit members when they are absent.” In the event that a substitute cannot be obtained, “[m]iddle and high school unit members shall be assigned to cover the absent unit member’s class during his/her preparation period on an equitable basis” and “[m]iddle and high school unit members who cover another unit member’s class shall be paid one-fifth (1/5) of the daily rate of a substitute.” (Exh. 1 at p. 18.) The established protocol at Cesar Chavez Continuation High School required teachers to provide Bridget

⁴ See Exh. A at p. 4, paragraphs 2 and 3.

Brown, the school secretary, with advance notice of anticipated late arrivals or absences. Ms. Brown's responsibilities include scheduling and assigning substitute or other teachers to the classrooms of late-arriving or absent teachers.

34. Respondent's three-year old son attended a school located approximately three miles from Cesar Chavez Continuation High School. In August 2015, prior to the beginning of the fall semester at Cesar Chavez Continuation High School, respondent informed the principal, Laura Brown, that he takes his son to school at 7:45 a.m., and respondent requested that she designate the first period of the instructional day as his preparation period,⁵ as was the case when he taught at Compton Community Day High School, to avert conflict between his parental and professional obligations. At Cesar Chavez Continuation High School, respondent was assigned to teach during the first period and to preparation time during the seventh period. Principal Laura Brown declined respondent's request, and she advised respondent that late arrival to his first period class was unacceptable. Principal Laura Brown testified at the administrative hearing that respondent told her, "I'm a do my best."

35. On August 18, 20, 21, 24, and 31 and September 1, 2, 3, 8, 9, and 10, 2015, respondent reported late for duty, including at times after the first period commenced, at Cesar Chavez Continuation High School. On September 10, 2015, principal Laura Brown met with respondent to discuss his contractual work hours, and she memorialized the meeting in a Post Conference Summary, which in pertinent part states, "During this conference you were reminded of your contractual work hours. You were informed that beginning Monday, September 14, 2015 your time will be docked if you arrive at work after 7:45AM." (Exh. I.)

36. After the September 10, 2015 meeting with principal Laura Brown, respondent reported late for duty, including at times after the first period commenced, five additional times in September 2015 and 13 times in both October and November 2015. On December 1, 2015, principal Brown placed respondent on a 30-day improvement plan directing him, among other things, to "[r]eport to work daily a 7:45AM" and to "[c]all into the district substitute line to request a substitute teachers [sic] whenever you are going to be more than one period (50 minutes) late." (Exh. J.) The directive was intended to implement the California Teaching Standard 6 requirement that respondent maintain appropriate school wide policy and rules as a professional educator including regular and prompt attendance. (*Ibid.*) Principal Brown advised respondent of her intentions to re-evaluate him by January 28, 2016, and of her expectations "to see great improvement." (*Id.*)

⁵ Article 7.10 of *The Agreement* provides: "Middle and high school unit members shall be provided a preparation period of not fewer than two hundred (200) minutes per week. A preparation period is an assigned period set aside for all regular classroom middle and high school unit members to be used for instructional preparation and planning purposes, grade recording and correction, student evaluation, curriculum development, staff development, unit member/student conferences, unit member/parent conferences, unit member/administrator conferences, for covering another unit member's classes . . . and for whatever administrative assignments are necessary for the efficient operation of the educational program." (Exh. 1 at p. 15.)

37. Respondent reported late for duty, including at times after the first period commenced, 11 times in December 2015 and 10 times in January 2016. On January 28, 2016, principal Laura Brown placed respondent on another 30-day improvement plan with directives requiring him to report to work daily at 7:45 a.m. and to call into the District's substitute line as set forth in the prior improvement plan. Principal Laura Brown additionally advised respondent that he would undergo another evaluation by March 15, 2016.

38. On March 15, 2016, no additional evaluation occurred because, as noted in Factual Finding 7, on February 1, 2016, respondent was relieved of his full-time instructional duties at Cesar Chavez Continuation High School when his Preliminary Single Subject Teaching Credential expired. Respondent never returned to Cesar Chavez Continuation High School to teach. Evidence offered at the administrative hearing did not establish whether in subsequent academic years teaching in the District, respondent continued to engage in a similar pattern of tardiness. The tensions between respondent's parental and professional obligations ceased. Respondent testified, "I smooth out a lot of things. I found my groove."

39. At the administrative hearing, principal Laura Brown explained that respondent's late arrival to teach his first period class at Cesar Chavez Continuation High School was "an imposition." She maintained that "students lost out on instructional time." Principal Laura Brown emphasized that students attending a continuation school "are there to make up credits" and that when left unsupervised "will have a tendency to get into things." Other teachers who were unprepared to instruct respondent's students were required to accommodate respondent's students in their classrooms. Principal Laura Brown covered respondent's class when no other teacher was available to do so, and she maintains that as a consequence her attention was diverted away from her day-to-day administrative duties as a principal.

40. It is established by a preponderance of evidence that, as alleged in the Statement of Charges,⁶ respondent did not fulfill his contractual duties to arrive at Cesar Chavez Continuation High School on time as required under the terms of *The Agreement*. Nonetheless, as set forth in Legal Conclusion 15, it is not established by a preponderance of the evidence that respondent's failure to arrive at Cesar Chavez Continuation High School on time warrants respondent's dismissal.

Alleged Difficulty Instructing Students at Cesar Chavez Continuation High School

41. During the September 10, 2015 meeting set forth in Factual Finding 35, Principal Laura Brown discussed respondent's submission of lessons plans, and she memorialized her discussion with respondent as follows:

You informed me that you had not submitted lessons plans because your computer was not working. You informed me that a colleague was working on your computer. At that time you submitted a list of activities that you

⁶ Exh. A at pp. 4-6, paragraphs 4-9.

assigned to your students. After receiving that list of activities I informed you via a face to face conversation that the list of activities that you provided was not acceptable and I gave you a lesson plan to utilize.

(Exh. J.)

42. On November 10, 2015, principal Laura Brown observed respondent's classroom at Cesar Chavez Continuation High School. She explained at the administrative hearing that she observed tenth, eleventh, and twelfth graders coloring maps and that map coloring is "generally over in elementary schools." She also testified that the white board in respondent's classroom had "a lot of information which didn't match students' work." To principal Laura Brown, it appeared as if "a packet of work sheets was randomly handed out to the students" and that "there was no apparent lesson plan." She was concerned that students were doing busy work, that students were not being prepared for the next grade level, and that students "would not be able to acquire and speak academic language." Principal Laura Brown documented her classroom observation as follows:

After observing your class on November 10, 2015, and saw that the students were coloring maps of the United States, I met with you again face to face to express my concern for the lack of rigor; you explained that this activity was leading into more rigorous activities. At that time I asked you for a lesson plan; you stated that your computer still did not work and that you refuse to use your personal computer for CUSD business; you stated that the colleague was still trying to fix your computer.

(Exh. J.)

43. As a consequence of principal Laura Brown's observation of respondent's classroom, the December 1, 2015 30-day Improvement Plan, discussed in Factual Finding 36, additionally directs respondent to create and submit lesson plans effective December 2, 2015, and it informs respondent that lesson plans are due every Friday. The directive was intended to implement the California Teaching Standard 4 requirement that respondent establish and communicate learning goals for all students.

44. In a December 9, 2015 30-day Improvement Plan Addendum, principal Laura Brown informs respondent that she would assist him with fulfilling the directives of the 30-day Improvement Plan in the following pertinent manner:

Provide you with a computer so that you can submit lesson plans[.]

Frequently observe your class and provide you with *written* feedback to assist you with delivering rigorous instruction[.]

Since you are requesting a copy of the district lesson plan template I will accommodate you by allowing you to utilize the district lesson plan template to formulate your lessons. Because this is not the lesson plan template that we use at Chavez I do not have a completed lesson using this template; however,

you can use the laptop computer that was issued to you on Tuesday, December 8, 2015 to go to the CUSD website and download a copy of the district lesson plan template. If you need assistance with completing the lesson plan I am available to assist you.

(Exh. J.)

45. Respondent defended his classroom instruction explaining that he engaged his students in work that was consistent with state-wide academic standards and expectations, and that because his students at Cesar Chavez Continuation High School presented with varying levels of academic deficiency he also offered his students exercises so “that they could feel accomplished.” Regarding the map coloring exercise, respondent explained, “A lot of the kids didn’t know geography; so, I added it to history. I met them where they were. I wouldn’t have taught it if they knew it.”

46. As noted in Factual Finding 7, on February 1, 2016, respondent was relieved of his full-time instructional duties at Cesar Chavez Continuation High School when his Preliminary Single Subject Teaching Credential expired. Although the District subsequently re-employed respondent as a substitute teacher for the duration of the 2015/2016 academic year, respondent was likely not expected and did not submit lessons to principal Laura Brown. The evidence offered at the administrative hearing did not establish whether respondent formulated lesson plans or submitted lesson plans to principal Laura Brown consistent with the requirements of the 30-Day Improvement Plan. Nor did the evidence offered at the administrative hearing establish whether principal Laura Brown conducted further observations of respondent’s classroom or offered written feedback to assist respondent with the delivery of rigorous classroom instruction.

47. It is established by a preponderance of evidence that, as alleged in the Statement of Charges,⁷ respondent “struggled to establish and communicate learning goals for all students,” but it is not established by a preponderance of evidence that respondent “failed to effectively develop and sequence instructional activities and materials for student learning.” As set forth in Legal Conclusion 16, it is not established by a preponderance of evidence that respondent’s struggle to establish and communicate learning goals warrants respondent’s dismissal.

Alleged Neglect of Duties Arising from Early Departure to Coach Softball for Private School

48. The District’s *Personnel Policy* on “Nonschool Employment” provides, “In order to help maintain public trust in the integrity of district operations, the Board of Trustees expects all employees to give the responsibility of their positions precedence over any other outside employment. A district employee may receive compensation for outside activities as long as these activities are not inconsistent, incompatible, in conflict with, or inimical to his/her district duties.” (Exh. A at p. 000023.) The “Nonschool Employment” policy

⁷ Exh. A at p.5, paragraph 6.)

specifies which outside activity is deemed inconsistent, incompatible, or inimical to district employment as follows:

An outside activity shall be considered inconsistent, incompatible, or inimical to district employment when such activity:

1. Requires time periods that interfere with the proper, efficient discharge of the employee's duties
2. Entails compensation from an outside source for activities which are part of the employee's regular duties
3. Involves using the district's name, prestige, time, facilities, equipment, or supplies for private gain
4. Involves service which will be wholly or in part subject to the approval or control of another district employee or Board member

(*Id.*)

49. The "Nonschool Employment" policy establishes the following process for obtaining authorization to engage in outside employment:

An employee wishing to accept outside employment that may be inconsistent, incompatible, in conflict with, or inimical to the employee's duties shall file a written request with his/her immediate supervisor describing the nature of the employment and the time required. The supervisor shall evaluate each request based on the employee's specific duties within the district and determine whether to grant authorization for such employment.

The supervisor shall inform the employee whether the outside employment is prohibited. The employee may appeal a supervisor's denial of authorization to the Superintendent or designee. An employee who continues to pursue a prohibited activity may be subject to disciplinary action.

(*Id.*)

50. Junipero Serra High School (Serra), a private religious-affiliated school not associated with the District, employed respondent during the spring semester of the 2014/2015, 2015/2016, and 2016/2017 academic years to assist with coaching Serra's Girls Varsity Softball team. Respondent took the coaching position at Serra because he was interested in securing a similar coaching position within the District and respondent believed that the Serra coaching position would establish him as an experienced coach and therefore a suitable candidate for a coaching position within the District should the opportunity arise. Serra's softball season begins in March of each spring semester, and for each spring semester that respondent coached at Serra he was paid a \$500 stipend.

51. In the spring semester of the 2014/2015 academic year, respondent was assigned to Compton Community Day High School. The students whom respondent taught departed at 1:30 p.m. Respondent concluded his duties in the District at 2:45 p.m. He commenced coaching at Serra at 3:15 p.m. Respondent credibly testified, “I never had to leave early. . . . It was after school.” Respondent’s outside activity coaching Serra’s Girls Varsity Softball did not require his use of time that interfered or conflicted with his proper and efficient discharge of his instructional duties at Compton Community Day High School.⁸ In these circumstances, the “Nonschool Employment” policy did not obligate respondent to obtain authorization to engage in outside activity coaching Serra’s Girls Varsity Softball.

52. It is not established by a preponderance of evidence that, in the spring semester of the 2014/2015 academic year, respondent’s outside activity coaching Serra’s Girls Varsity Softball was inconsistent, incompatible, or in conflict with, or inimical to, his District duties.

53. In the spring semester of the 2015/2016 academic year, the February 1, 2016 expiration of respondent’s Preliminary Single Subject Teaching Credential caused the District to relieve respondent of his full-time instructional duties in the District. After February 1, 2016, respondent functioned as a substitute teacher in the District for the

⁸ Respondent’s testimony that, in the spring semester of the 2014/2015 academic year, he never had to leave early to pursue his coaching activities is credited over the information appearing in Exhibit O, which Dr. Ajala instructed District personnel to prepare, and which Dr. Ajala claims “demonstrates that [respondent] was using personal necessity leave to work elsewhere.” Article 12.4 of *The Agreement* defines “Personal Necessity Leave” as accumulated sick leave for certain specified personal emergencies not present in this matter. (See Exh. 1 at pp. 35-36.) Exhibit O falsely represents that respondent was assigned to Chavez Tubman on May 7, 2015, a day when respondent purportedly used three hours of personal necessity leave. Respondent was not assigned to Chavez Tubman on May 7, 2015. In fact, during the spring semester of the 2014/2015 academic year, the District returned respondent to Compton Community Day High School after its investigation of the October 29, 2014 incident involving N. (Factual Finding 27.) Exhibit O does not specify the actual time comprising the purported hours identified as personal necessity leave and used in connection with respondent’s outside activity coaching. Other evidence offered at the administrative hearing indicate that respondent used personal necessity leave on days unrelated to days he engaged outside activity coaching. (See Exhibit R.) Consequently, respondent’s use of personal necessity leave is not indisputably linked to his outside coaching activity. Additionally, Exhibit O attributes seven hours of “School Business” to respondent’s outside activity coaching on April 30, 2015. Article 12 of *The Agreement* governs leaves and it does not list “School Business” as one of 14 enumerated specific leave categories. (See Exh. 1 at pp. 33-54.) Exhibit R, which purports to represent respondent’s payroll record, does not support attributing that number of hours to any leave of absence category respondent utilized on that day. These infirmities engender doubts about the reliability of the information appearing in Exhibit O such that Exhibit O was deemed worthy of mistrust.

remainder of the 2015/2016 academic year. Without a full-time teaching assignment and concomitant instructional obligations during that period of time, respondent fulfilled his coaching duties and responsibilities for Serra's Girls Varsity Softball during times when he did not accept teaching assignments and did not function as a substitute teacher in the District.

54. It is not established by a preponderance of evidence that, in the spring semester of the 2015/2016 academic year, respondent's activity coaching Serra's Girls Varsity Softball interfered with the proper and efficient discharge of the duties he assumed as a substitute teacher in the District.

55. In the spring semester of the 2016/2017 academic year, respondent was assigned to teach social studies full-time at Centennial High School, where his students included tenth graders and graduating seniors. Dr. Shauna Harris and Douglas Charles Brown, Sr. served as co-principals at Centennial High School during the 2016/2017 academic year.

56. In the spring semester of the 2016/2017 academic year, respondent's coaching obligations required him to drive a bus transporting members of Serra's Girls Varsity Softball team. To attend Serra's home games, respondent left Centennial High School at the conclusion of the instructional day. To attend Serra's "away games," respondent admits and does not dispute that he "had to leave at the beginning of fifth period" for "near games" or "during lunch period" for "far games."

57. Respondent and principal Douglas Brown are fraternity brothers, and they frequently "talked shop" and about softball, including respondent's coaching position at Serra. At the administrative hearing, principal Douglas Brown acknowledged that he was aware of respondent's employment as a softball coach at Serra. Principal Douglas Brown testified, however, "I did not give permission for Mr. Heard to leave his contractual work day in 2016/2017. I received no notification from Mr. Heard that he would be leaving early to coach softball at Serra." According to principal Douglas Brown, "I approached [respondent] and told him he shouldn't be working somewhere else while working for the District. I was aware that he was leaving early and I instructed him that it was inappropriate and against District policy."

58. In March 2017, on a day not specified in the evidence received at the administrative hearing, the teacher in the classroom adjacent to respondent's classroom informed Ms. Brown, the school secretary at Centennial High School, that respondent's students were lingering outside respondent's classroom after the lunch period concluded and the next instructional period began. Respondent had not provided Ms. Brown notification about his absence, and no arrangement had been made for coverage of respondent's classroom. Ms. Brown queried respondent about the matter, and at the administrative hearing she recalled that respondent orally informed her "he would be leaving early a number of days."

59. On March 10, 2017, respondent provided Ms. Brown a hand-written note with the following disclosures: "These are the dates that I need coverage for my 5th & 6th periods. I coach Varsity Softball at Serra H.S. And on travel days or away games the team leaves during lunch." (Exh. T.) The hand-written note lists March 10, 16, and 28, April 4 and 27, and May 4 and 9, 2017 as days on which coverage would be needed for respondent's classroom.

60. Ms. Brown reported the times respondent departed the District early to pursue his outside activity coaching to the District's Payroll Department under the category "Personal Necessity Leave." Ms. Brown arranged for coverage for respondent's classroom. At times, the teacher in the classroom adjacent to respondent's classroom covered for respondent. That teacher taught a science class to approximately 20 students with special needs. Covering respondent's classroom required that teacher to incorporate respondent's 30 social studies students into her classroom populated with special needs students.

61. On April 6, 2017, respondent provided Ms. Brown with another note disclosing additional days on which he expected departing the District early to pursue his outside activity coaching. The note states, "These are the remaining days that I have to leave for Serra Softball," and lists April 6, 11, 25 and 27 and May 2, 4, and 9, 2017. (Exh. P.)

62. It is established by a preponderance of evidence that respondent's outside activity coaching Serra's Girls Varsity Softball was inconsistent, incompatible and in conflict with respondent's instructional duties at Centennial High School in the spring semester of the 2016/2017 academic year. Consequently, the District's "Nonschool Employment" policy required respondent to obtain authorization to engage in such outside activity from his supervisors. Respondent informing Ms. Brown about his outside activity coaching and providing Ms. Brown with relevant dates was not the equivalent of obtaining authorization for such activity from his supervisors.

63. On an unspecified day in late April 2017, Dr. Harris observed students lingering outside respondent's classroom after the instructional period began. Dr. Harris queried about respondent's whereabouts, and Ms. Brown informed Dr. Harris that she was in the process of finding someone to cover respondent's classroom. On a second occasion, Dr. Harris again observed students lingering outside respondent's classroom after the instructional period began. Dr. Harris learned from Ms. Brown that respondent was coaching softball elsewhere. Dr. Harris testified, "Ms. Brown informed me he was coaching softball at another district. Prior to that conversation with Ms. Brown, I was not aware. I had no conversation with him about this."

64. At the administrative hearing, Dr. Harris recalled that when respondent learned that she wanted to address the matter with him, he approached her asking, "You want to speak to me?" Dr. Harris testified that she responded by querying respondent, "'Are you leaving your classes to coach baseball,' and respondent said, 'Yes.' I asked, 'Why would you leave your class to do that?' and he said he was coaching at Serra and that he wasn't going to quit and you can dock me because I'm not going to quit." Respondent's response

surprised Dr. Harris. “He was just like, I’m not quitting and you can dock me if you want to. He had a nonchalant this-is-what-I’m-doing tone. No expression of remorse or expression of appreciation of what he was doing.”

65. After her conversation with respondent, Dr. Harris confirmed with principal Douglas Brown that he provided no authorization to respondent to leave Centennial High School during the lunch or fifth period to engage in outside activity coaching Serra’s Girls Varsity Softball.

66. It is established by a preponderance of evidence that the respondent did not provide his supervisors with a prior written request describing the nature of and the time required for him to pursue outside activity coaching for Serra and that respondent obtained no authorization to engage in such activity from his supervisors.

67. On April 26, 2017, Dr. Harris sent Dr. Ajala the following email regarding her exchange with respondent.

Good Morning Dr. Ajala. I wanted to touch base with you in regards to Mr. Heard. I spoke with you about his leaving campus early to go coach for another school. He never cleared any of this with me and I found out when I noticed he needed more coverage than usual. When I spoke with him about it his response to me was “Well go ahead and dock me because I have an obligation over there and I am not going to quit now.” When I told him of his obligation here with his students at Centennial (who are also Seniors) he refused to change his tone or his mind. So I am now forwarding the dates and information to you because although I can write him up for not adhering to his contractual obligations here at Centennial, I can’t block his pay. Or can I? I know HR can. He needs to either remain committed to the students he signed up to teach or not get paid. Attached please find the dates that were given to my secretary (not to me) for coverage. For the attached dates he has requested 6th period coverage but leaves during 5th period as well. His conference is 1st period by the way. Let me know if there is anything else I need to do or submit. Thanks.

(Exh. S.)

68. Evidence offered at the administrative hearing failed to establish whether Dr. Harris actually wrote up respondent. Evidence offered at the administrative hearing failed to establish whether the District’s Human Resources Department had authority to “block” respondent’s pay or whether respondent’s pay was actually blocked and on what grounds.

69. Dr. Harris and Dr. Ajala testified that respondent’s early departure from his teaching assignment at Centennial High School in the District to engage in outside activities coaching was disruptive to the educational community at Centennial High School. Dr. Harris was concerned about “deprivation of instructional time to students” attempting to graduate. According to Dr. Ajala, respondent’s students at times wandered around the school

without supervision or they did not receive subject matter instructions—they were “just being baby sat.” Dr. Ajala contended that “content matters and that is why you have a single subject matter credential. If the substitute is not qualified in that subject matter, then the substitute is not appropriate for the students. There was no time for the school to prepare for the coverage. The school has to scurry around to find an appropriate response at extra costs. On a number of levels, it was wrong. It was conduct unbecoming.” Dr. Ajala additionally contended that respondent committed “theft of District time” because respondent “had an obligation to work his full hours, he left and went to another paid job” and it was “not appropriate to receive pay for the same time.” Dr. Ajala’s theft contention is rejected. At most, there was a misuse of respondent’s personal leave time.

70. On June 7, 2017, several days after the CTC issued a Single Subject Teaching Credential in Social Science to respondent, Dr. Ajala summoned respondent to her office. Respondent recalled Dr. Ajala admonishing him stating “you are double dipping.” Respondent testified that he “immediately quit” his coaching position at Serra because “it was hard for me to get my credential and I didn’t want to jeopardize it.”

71. The District continued to employ respondent. In the 2017/2018 academic year, respondent resumed his teaching assignment at Centennial High School.

72. It is established by a preponderance of evidence that, as alleged in the Statement of Charges,⁹ in the spring of the 2016/2017 academic year, respondent left Centennial High School early to pursue outside activity coaching softball for a private school outside the District contrary to District policy. Nonetheless, as set forth in Legal Conclusion 17, it is not established by a preponderance of evidence that such conduct warrants respondent’s dismissal.

Compton Unified School District’s Suspension of Respondent

73. On February 21, 2018, the District provided respondent with a Notice of Proposed Intent to Immediately Suspend Without Pay and Dismiss with Statement of Charges. In the Notice, the District informed respondent of his right to respond to the Statement of Charges and that a Skelly conference was scheduled for February 28, 2018.

74. Respondent attended the February 28, 2018 Skelly conference with his union representative and respondent presented reasons why he should not be dismissed from the District. The Skelly officer recommended that the District proceed with the immediate suspension and dismissal of respondent.

75. On March 14, 2018, the Governing Board for the District placed respondent on unpaid suspension pending dismissal. On March 20, 2018, pursuant to Education Code section 44943, respondent requested a hearing on the Statement of Charges. Thereafter, these proceedings ensured.

⁹ Exh. A at p. 6, paragraphs 14-20.

LEGAL CONCLUSIONS

1. The District has the burden of proving by a preponderance of evidence that cause exists pursuant to Education Code section 44932 to dismiss respondent, a permanent certificated employee, from the District. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ [Citations.] . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325; italics in text.) In meeting the burden of proof by a preponderance of the evidence, the District “must produce substantial evidence, contradicted or un-contradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

2. Education Code section 44932 authorizes the dismissal of a permanent, certificated employee only for certain specified causes including immoral conduct, unprofessional conduct, dishonesty, evident unfitness for service, and persistent violation of, or refusal to obey, reasonable regulations prescribed by the governing board of the school district employing him or her.

3. “Immoral conduct” has been defined generally as “that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a 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 Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

4. “‘Dishonesty’ connotes a disposition to deceive. [Citation.] It . . . denotes an absence of integrity; a disposition to cheat, deceive or defraud[.]” (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-719.) Courts understand integrity to mean “soundness of moral principle and character, as shown by a person’s dealings with others, in the making and performance of contracts, in fidelity and honesty in the discharge of trusts. In short, it is used as a synonym for probity, honesty, and uprightness in business relations with others.”” (See *In re Estate of Gordon* (1904) 142 Cal. 125, 132, quoting *In re Bauquier* (1891) 88 Cal. 307.)

5. “Evident unfitness for service” means ““clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” “Evident unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

6. “Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her” as cause for dismissal requires more than a single violation of a school board’s rules by a permanent school teacher. (*Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, rehearing denied 28 Cal.App.3d 77.) In addition, persistent violation of, or refusal to obey, a district’s governing board’s reasonable regulations requires a “showing of intentional and continual refusal to cooperate.” (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

7. Under Education Code section 44939, subdivision (b), a teacher’s “willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district” is ground for dismissal.

8. Abstract characterizations of conduct—for example, as “immoral”—are insufficient grounds for dismissal of a district’s permanent certificated employee. (See *Morrison v. State Board of Education* (1969) 1 Cal.3d 214.) A rational connection or nexus must exist between alleged misconduct and competence or ability to teach effectively. The determinative test is whether conduct demonstrates unfitness to teach. (See *Board of Education v. Jack M.* (1977) 19 Cal.3d 691.) Unfitness to teach is a question of ultimate fact. (*Id.* at p. 698, fn. 3.)

9. *Morrison* identifies several factors relevant to the determination of unfitness to teach: the likelihood that conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of credential held or applied for by the person involved; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons; and the publicity or notoriety given to the conduct.

10. All *Morrison* factors need not be present to reach a determination of unfitness to teach. In other words, an item by item analysis of each established individual fact is not required. Rather, *Morrison* calls for a comprehensive analysis of the accumulated established facts. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1457.)

11. In this matter, complainant established some but not all allegations in the Statement of Charges by a preponderance of competent, credible evidence.

12. Notably, complainant failed to produce a preponderance of competent, credible evidence establishing that respondent engaged in a physical altercation with a student.

a. The only testifying witnesses who perceived—indeed, who were involved in—the incident occurring in respondent’s classroom, on October 29, 2014, at Compton Community Day High School are respondent and N. Their testimony conflicts in material aspects. N. claims respondent choked and lifted him by his neck to placed him on a table. Respondent denies N.’s claim, but admits to placing the palms of his hands on N.’s shoulders to calm N. in a moment of escalating tensions.

b. Members of the Commission evaluated the credibility of N. and respondent’s testimony in accordance with the factors cataloged in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceedings.

c. Members of the Commission were guided by the decisional law acknowledging that fact finders are permitted to “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); to “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 777); and even to reject testimony that is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

d. Respondent’s testimony was found to be more credible than N.’s testimony. In the immediate aftermath of the incident occurring on October 29, 2014, principal Reed obtained statements from N., N.’s parents, a student present in respondent’s classroom at the time of the incident identified as Witness #2, and respondent. No one—not N., N.’s parents, Witness #2, or respondent—reported to principal Reed that N. was lifted off the ground and placed atop a table. N.’s parents, who learned of the incident from N. since they were not present in respondent’s classroom at the time of the incident, parroted N.’s claim at the administrative hearing. They exhibited a discernible misunderstanding of how racial epithets were actually deployed in the classroom. Their claim included N.’s step-father’s assertion that N.’s neck “had a little red” even though almost contemporaneously with the incident N. had informed principal Reed that he sustained no injuries. The intimate relationship N. presumably enjoys with his parents likely affected N.’s parents’ testimony in favor of their son and against respondent.

e. A Compton School Police officer conducting a contemporaneous investigation of the incident determined and documented that there was physical contact between respondent and N. Respondent does not deny making physical contact with N. N.’s rendition about students joking around and an ensuing conflict in which racial slurs were going back and forth is consistent with respondent’s testimony explaining how he intervened by positioning himself in front of N. and placing his out-stretched arms with palms

downward on N.’s shoulders to calm N. when it appeared to him that N. “was going to do something.” The Compton School Police officer’s documented investigative determination corroborates that although physical contact occurred between respondent and N., such contact was “not malicious in nature.” The Incident Report the officer prepared contains principal Read’s report of N. pushing respondent and respondent restraining N. by grabbing N.’s shoulders and holding N. to stop N.’s aggressive behavior. N.’s testimony claiming that respondent choked and lifted him by his neck to placed him on a table is not credible.

f. N. told principal Reed that during the October 29, 2014 incident he and respondent “exchanged words” and that respondent said “Dirty Mexicans.” Respondent told principal Reed that there was “a back and forth” and that at some point the exchange became heated, but that he “didn’t use that language.” Respondent’s practice of instructing his students on the offensive and hurtful nature of racial epithets more than suggests that respondent was unlikely to have deployed “Dirty Mexican” or any other racial epithet to harm N. during the October 29, 2014 incident. Principal Reed, who appeared as a witness on behalf of the District, vouched that respondent never demonstrated animosity towards Mexicans or racist tendencies.

g. Consistent with its obligation to provide safe school environments and to minimize the risk of harm to students, the District launched an investigation, at the conclusion of which the District returned respondent to his classroom at Compton Community Day High School with a reminder to conduct himself in a professional manner and to employ a “Hands off” policy when interacting with students. Law enforcement officials declined to pursue any criminal charges against respondent in connection with the alleged October 29, 2014 incident. A reasonable inference is that N.’s claims were as unsubstantiated then as they are now, and that the District did not consider respondent’s return to Compton Community Day High School a risk to the District’s pupils.

h. It is not established by a preponderance of evidence that respondent engaged in a physical altercation with a student warranting respondent’s dismissal from the District.

13. Even where complainant produced a preponderance of evidence establishing certain conduct alleged in the Statement of Charges—that respondent took at least six years to obtain a clear teaching credential (Factual Findings 1-12), that respondent failed to arrive at his assigned school site on time as he was contractually required (Factual Findings 32-40), that respondent had difficulty with classroom instruction (Factual Findings 41-47), and that respondent left work early to pursue outside activity coaching softball (Factual Findings 48-72)—it was not established by a preponderance of competent, credible evidence that such conduct individually or collectively warranted respondent’s dismissal pursuant to Education Code sections 44932 or 44939.

14a. During the six-year period when respondent lacked a clear single subject credential, the District employed and re-employed respondent to perform both substitute and full-time teaching duties and responsibilities notwithstanding that, pursuant to Education

Code section 44929.21, subdivision (b), the District's Governing Board could have, but did not, terminate respondent's employment with the District.¹⁰

b. Although teachers holding preliminary teaching credentials typically complete the processes for satisfying the requirements for obtaining a clear professional credential in a two-year period, no evidence offered at the administrative hearing supports a conclusion that the typical two-year period is a mandated period of time. To the contrary, the competent, credible evidence establishes that teachers unable to satisfy the qualifications for a clear professional credential within the typical two-year period may apply for and obtain from the CTC an extension of time, which is what respondent did. Complainant therefore failed to produce a preponderance of evidence establishing that respondent requiring an atypical amount of time to conclude the processes for obtaining a clear teaching credential alone amounts to unfitness to teach warranting his dismissal from the District.

15. On multiple occasions respondent did not fulfill his contractual duties in the 2015/2016 academic year to arrive at Cesar Chavez Continuation High School at 7:45 a.m. as required under the terms of *The Agreement*. (Factual Findings 32-40.) Respondent's tardiness had an adverse effect on the educational community. Students lost out on instructional time. Other faculty were required to cover respondent's classroom without adequate preparation. Principal Laura Brown's attention was diverted from her administrative responsibilities and duties in order for her to attend to respondent's students. Respondent's tardiness contravened terms of employment with the District set forth in *The Agreement*. In extenuation, respondent's conduct was not occasioned by a refusal to obey the contractual terms governing his employment in the District. Rather, respondent was caught between a rock and a hard place—eschewing his parental responsibility to his child and abandoning his professional obligations to his students. Respondent's dilemma resolved, and respondent subsequently provided classroom instruction in the District without any further recurrence that would support a conclusion that tardiness is a fixed, irremediable character trait he possesses. Under these circumstances, respondent's tardiness was not established as indicating unfitness to teach warranting respondent's dismissal from the District.

16a. Principal Laura Brown opined that respondent exhibited difficulties with classroom instruction at Cesar Chavez Continuation High School, which piqued her concern

¹⁰ Section 44929.21, subdivision (b) provides:

The governing board shall notify the employee, on or before March 15 of the employee's second complete consecutive school year of employment by the district in a position or positions requiring certification qualifications, of the decision to reelect or not reelect the employee for the next succeeding school year to the position. In the event that the governing board does not give notice pursuant to this section on or before March 15, the employee shall be deemed reelected for the next succeeding school year.

about the quality of instruction respondent's students were receiving. (Factual Findings 41-47). At the time, respondent held a preliminary teaching credential. The District evidently anticipated that the preliminary credentialed teachers it employed, including respondent, might need support and guidance to achieve the high-quality educational program it sought for its pupils. Principal Laura Brown consistent with the District objectives provided respondent with a 30-Day Improvement Plan directing him to prepare and submit lesson plans and informing him of her intentions of providing him with written feedback. The evidence offered at the administrative hearing failed to establish whether the 30-Day Improvement Plan was actually implemented or whether after receipt of support and guidance respondent continued to exhibit difficulties with his classroom instruction since respondent was relieved of his full-time instructional duties at Cesar Chavez Continuation High School and placed on a leave of absence when his preliminary credential expired on February 1, 2016.

b. The District re-hired respondent in two subsequent academic years—2016/2017 and 2017/2018—to provide classroom instruction full-time at Centennial High School. No evidence of recurring issues or concerns about respondent's classroom instruction in the District during those subsequent academic years was presented at the administrative hearing. If there were significant recurring or on-going issues or concerns about respondent's classroom instruction, it is reasonable to assume that the District, consistent with its objective of providing a high quality educational program, would not have continued respondent's employment teaching District students in the 2016/2017 academic year and again in the 2017/2018 academic year. Indeed, by the conclusion of the 2016/2017 academic year, respondent successfully completed the BTSA program, which included assessments of his classroom instruction and management skills. A reasonable inference is that whatever difficulties principal Laura Brown may have observed they were redressed and abated. Under these circumstances, it was not established by a preponderance of evidence that the difficulty respondent had in the 2015/2016 academic year instructing students at Cesar Chavez Continuation High School constitutes cause warranting respondent's dismissal.

17a. In the spring semester of the 2016/2017 academic year, respondent engaged in outside activity coaching Serra's Girls Varsity Softball team that was inconsistent, incompatible, and in conflict with respondent's instructional duties at Centennial High School. (Factual Findings 55-72.) Respondent disclosed his outside activity to the school secretary, who arranged coverage for respondent's class and who reported respondent's early departure from the District to pursue that outside activity to the District's Payroll Department as personal leave time. Principal Douglas Brown was aware of respondent's outside activity coaching (Factual Finding 57), but did not ask respondent to seek formal authorization. Principal Douglas Brown's awareness is imputed to the District.

b. Respondent was required to obtain authorization to engage in outside activity deemed inconsistent, incompatible, and conflicting with the duties he owed the District from his supervisors, but he obtained none. Respondent's pursuit of his outside activities coaching was disruptive to the educational community at Centennial High School. He remediated his conduct by immediately ceasing all outside activity coaching softball when Dr. Ajala

reproved his conduct. Thereafter, the District continued to employ respondent to provide classroom instruction. A reasonable inference is that respondent's unauthorized outside activity did not unfit him to teach. Under these circumstances, it is not established by a preponderance of evidence that respondent's early departures from Centennial High School in the spring semester of the 2016/2017 academic year to engage in outside activity coaching softball warrants respondent's dismissal.

18. In sum, application of pertinent *Morrison* Factors to the conduct alleged in the Statement of Charges that complainant established by a preponderance of evidence—that respondent took at least six years to obtain a clear teaching credential, that respondent failed to arrive at his assigned school site on time as he was contractually required to do, that respondent had difficulty with classroom instruction, and that respondent left work early to pursue outside activity coaching softball—does not support the conclusion that respondent's dismissal is warranted. In each instance, respondent remediated his conduct. Where remediation has occurred, there is no longer any grounds for dismissal. (See e.g. *Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d. 334.)

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ORDER

The Accusation is dismissed.

DATED: December 18, 2018

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Benjamin Bell
Commissioner
Commission on Professional Competence

DATED: December 19, 2018

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Christopher D. Anaya
Commissioner
Commission on Professional Competence

DATED: December 19, 2018

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JENNIFER M. RUSSELL
Administrative Law Judge
Office of Administrative Hearings