

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
OCEANSIDE UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CHRISTOPHER MUNSTERMAN,

Respondent.

OAH No. 2015100487

DECISION

This matter was heard before the Commission on Professional Competence (Commission) in Oceanside, California on January 5 through 7, 2016. The Commission was comprised of the following members: Administrative Law Judge Susan J. Boyle, Jana Hegg and Gary Brooks.

Daniel Shinoff and Amir Azimzadeh, Artiano, Shinoff & Holtz, represented the Oceanside Unified School District (district).

Fern Steiner and Andrew Lockard, Smith, Steiner, Vanderpool & Wax, represented respondent Christopher Munsterman who was present throughout the hearing.

On February 5, 2016, the record was reopened to receive additional evidence.

The matter was submitted on February 12, 2016.

CASE SUMMARY

Respondent has been a certificated teacher for 18 years. In the spring of 2014, while working at Garrison Elementary School, respondent began having significant marital problems. He became overwhelmed with the disintegration of his marriage and its impact on his relationship with his children. By late 2014 and into early 2015, respondent became preoccupied with his personal situation and spoke often about it to the district personnel who worked in his classroom. In late January 2015, several district employees spoke to Garrison's principal, Fausto Barragan, and raised concerns about respondent. Based on these conversations, respondent was placed on administrative leave on February 11, 2015. On November 23, 2015, the district gave respondent notice that it intended to dismiss him.

The Commission unanimously determined that the district failed to establish cause to dismiss respondent by a preponderance of the evidence. The Commission unanimously determined that none of the charges alleged were sustained. The Commission unanimously determined that insufficient evidence was offered to demonstrate that respondent was unable to function as a teacher in the district or was unfit for service in the district, or that he persistently violated laws, rules, regulations and/or policies related to education, pursuant to Education Code section 44932, subdivisions (a)(5) and (7). The Commission unanimously dismissed the Notice of Charges that There Exists Cause to Dismiss Certificated Employee.

FACTUAL FINDINGS

Jurisdictional Matters

1. Respondent is a permanent certificated employee of the district. He possesses a clear moderate/severe teaching credential in special education. During the time relevant to these charges respondent was a pre-school special education teacher at Garrison who taught autistic students with limited verbal skills and behavior problems.

2. Respondent's last day of work at Garrison was February 4, 2015. He was on sick leave from February 5, 2015, until he was ready to return to work on February 11, 2015. On February 11, 2015, respondent was instructed to report to the district's Human Resources Department rather than to his classroom. He was put on paid administrative leave that day.

3. On September 3, 2015,¹ respondent was provided a Notice of Charges that There Exists Cause to Dismiss Certificated Employee (Notice of Charges). The Notice of Charges asserted that cause existed to dismiss respondent for (1) evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(5); and (2) persistent violation of or refusal to obey laws and regulations pursuant to Education Code section 44932, subdivision (a)(7). The Notice of Charges included 145 pages of documents the district relied upon to terminate respondent's employment, including board policies, emails, and computer logs.

4. On September 23, 2015, Sheri Sanders, Associate Superintendent, Human Resources, recommended to the Governing Board of the district that respondent should be dismissed as a certificated employee of the district. The Governing Board approved that recommendation.²

¹ The parties stipulated that respondent was served with the Notice of Charges on this date.

² The Notice of Charges was dated September 25, 2015. The parties stipulated that the governing board voted to accept Ms. Sanders' recommendation on September 23, 2015, but that the Notice of Charges was inadvertently not signed until September 25, 2015.

5. On September 23, 2015, respondent was provided a Notice of Intention to Dismiss Permanent Certificated Employee (Notice of Intention). The Notice of Intention advised him that the Governing Board had voted to dismiss him as a permanent certificated employee in 30 days unless he requested a hearing before the Commission on Professional Competence “to determine if there is cause to uphold the unpaid suspension.”³ The Notice of Intent included a copy of the charges the Board approved.

6. By a Request for Hearing and Notice of Affirmative Defenses dated September 30, 2015, respondent timely appealed the dismissal action.

7. The district did not file an Accusation and relied on the Notice of Charges it previously provided to respondent.

8. All prehearing jurisdictional requirements were met. The parties to this disciplinary proceeding agreed that the panel members were qualified to serve.

Background

9. Respondent had been a certificated teacher for over ten years when he was hired by the Oceanside School District in March 2011 and assigned to an early childhood special education class. After one year, respondent opted to transfer to a preschool autistic classroom at Garrison where he had up to 16 students in his class. Respondent received satisfactory performance reviews while employed with the district. He had different instructional aides in his classroom, with whom he developed personal relationships.

10. When he was hired by the district, respondent was married and had two young children. During the fall of 2014, respondent and his wife began having marital problems. The discord with his wife and their eventual separation deeply affected respondent and so occupied his thoughts that he became obsessed with his impending divorce and how it was affecting his relationship with his own children. He frequently discussed the specifics of his marital problems with Garrison’s principal, the principal’s assistant, the instructional aides assigned to his classroom and other educational professionals who provided services for his students.

Performance Evaluations

2011 – 2013 PERFORMANCE EVALUATIONS

11. Respondent never received a negative performance evaluation while he worked for the district. In an observation of respondent on November 1, 2011, for the 2011/2012 school year, evaluator Pat Kurtz observed respondent leading his students in circle time. Ms. Kutz noted that respondent used pictures and manipulative activities to teach about the letter “E.” “He differentiated questions with individual students to promote

³ The parties stipulated that respondent was placed on paid leave.

development of their divergent IEP⁴ goals. The students were focused on the facts and his presentation. He asked questions about what he just told them. He gave wrong ‘answers’ so the children would correct him and thus demonstrates [sic] their knowledge.” Ms. Kurtz observed the students transition to an activity involving cutting and pasting. She wrote that respondent was involved in the activity with his aides. “Mr. Munsterman provided clear instruction by explaining/speaking in Spanish with [a student].” Respondent gave genuine and positive praise to students when they completed a task, used their words, or responded appropriately to an instruction. Ms. Kurtz observed respondent to simultaneously teach five lessons to five diverse students. She “recognized [respondent’s] genuine appreciation and interaction in his relationships with his students and Instructional Assistants. He utilizes his [instructional aides’] skills to their maximum potential while creating a positive working and learning environment.”

12. In a “Summative Evaluation of respondent’s job performance for the 2011/2012 school year signed on May 21, 2012, Ms. Kurtz rated respondent as “satisfactory”⁵ and noted that respondent “developed several visual prompts and organization structures to support his students’ learning success. He also demonstrated exceptional flexibility and energy teaching multiple simultaneous lessons to his diverse group of students.”

13. On September 23, 2013, Dr. Barragan conducted an informal observation of respondent’s classroom. In an email to respondent, Dr. Barragan noted that, “Students have visuals and using tactile to learn numbers.” Dr. Barragan observed that, “Students are being provided with visual cues with picture cards. Students are aware/knowledgeable of schedule and routine of class.” Dr. Barragan acknowledged respondent’s aides and stated, “You have a great group of [instructional aides] in your classroom. You also provide good guidance and support for them. They are calm, patient and utilize good strategies to address the behavioral, academic, vocational, self-monitoring needs of your students.” Dr. Barragan said he enjoyed being in respondent’s classroom.

2014 PERFORMANCE EVALUATION AND REQUEST FOR RECOMMENDATION

14. On April 11, 2014, respondent asked Dr. Barragan if he would write a letter of recommendation commenting on respondent’s work performance. Dr. Barragan responded that he “would be honored” to do so.

15. On December 5, 2014, after he was aware of respondent’s marital problems, Dr. Barragan conducted a formal observation of respondent’s classroom and prepared a report. Mr. Barragan observed respondent for at least 30 minutes. He wrote that he observed circle time in which students were led by respondent to identify days of the week and months of the year through written words and songs and that “[t]eacher led students through a variety

⁴ IEP is an abbreviation for Individualized Education Plan.

⁵ The options were “Satisfactory” or “Unsatisfactory.”

of songs related to academic content.” Mr. Barragan watched students transition to their work centers and then to independent play and the library. Mr. Barragan noted that, “Teacher used visuals (PECS) to communicate the next task/activity/procedure/expectation to students. Teacher supported individual students to transition through activities with visuals, prompts, etc.” In the Post-Observation Conference notes dated December 11, 2014, Mr. Barragan wrote that:

Mr. Munsterman has organized a classroom environment where 13 boys are working with aides in a variety of activities that provide them with access to academics. Mr. Munsterman has trained his instructional aides to work with individual students to address their needs. Mr. Munsterman schedules activities to keep students active at all times of the day. Instructional Aides have knowledge of ABA strategies to support students on the spectrum. The classroom environment is flexible, and all staff members work closely to support any of the classroom/student needs. Mr. Munsterman communicates student progress to parents. Activities are aligned with academic content and strategies are used based on individual student needs. Mr. Munsterman uses a wide variety of tools including iPad, Picture Exchange Communication (PECS), motor lab, to support in meeting IEP goals [sic].

Respondent’s Discussions About His Marital Problems with Dr. Barragan and Dr. Barragan’s Assistant

16. On October 27, 2014, respondent spoke to Fausto Barragan, Jr., Ed.D, Garrison’s principal, about his marital problems. After their conversation, respondent sent an email to Dr. Barragan thanking him for his “care, concern, and good advice.” Respondent told Dr. Barragan he [respondent] is “feeling better by the second.” Respondent said he was leaving early to get his children. He added that his wife had “been taking them and keeping them away from me on purpose to hurt me.” He promised to return to work the next day “large and in charge.”

17. Also on the same day, respondent sent an email to the principal’s assistant, Martina Boeck, in which he told her that he had a “talk” with Dr. Barragan. He said he told Dr. Barragan that he was having serious back pain and that he was separating from his wife of ten years. He wrote that his wife “went a little crazy. No, she went a lot crazy.” Nonetheless, respondent stated that, although he was sad, he was also “happy for the first time in ten years.” Ms. Boeck responded that she was sorry to hear about respondent and his wife and that she would pray for them both and their children.

18. On October 28, 2014, respondent forwarded to Dr. Barragan an email respondent had sent to Ms. Boeck in which respondent thanked Ms. Boeck for listening to him. In that e-mail respondent told Ms. Boeck he did not “have any close family members or

friends [he could] talk to.” He provided Ms. Boeck with an “update” of what had been happening since he spoke to her the day before. Amongst other things, respondent told Ms. Boeck that his wife had “basically kidnapped” their children and took them to a friend’s home. He said the children and he were “super sad.” He also told Ms. Boeck that, on what was supposed to be “his night” with his children, his wife began texting him while he and the children were at a restaurant telling him she was coming for the children. Respondent believed his wife did that to stop him from having a “great time” with the children. Although respondent’s wife did not come to the restaurant, the fear that she would come diminished respondent’s ability to enjoy his time with the children. When respondent arrived at the family home to spend the night with the children, contrary to their agreement that his wife would stay with a friend on his nights, respondent’s wife was in the home. When they entered the house respondent’s wife “got weird again.” He was grateful that his wife finally agreed to start therapy. He stated he would like to move out of the family house, but he did not have the money to stay somewhere else.

19. On October 30, 2014, respondent sent an email to Dr. Barragan and Ms. Boeck regarding a confrontation he had with fellow teacher, Jennifer Knox.⁶ In the email, respondent referred to his attempts to repair his troubled marriage. He said it was difficult because his wife was “not being reasonable or rational.” He advised them he was taking a day off to “get all my ducks lined up again” and that he needed “a little time away from people who are not being so nice to me . . .” He stated that his wife had “sabotaged” the other days he took off to get work finished.

20. On November 6, 2014, respondent sent an email to Dr. Barragan in which he requested “some time off, so I can regroup and come back strong.” He said that for the past 18 years of teaching, “it has been a rule of mine to leave personal issues at the door, so I could focus on the kids. I have been having a tough time separating the two, especially when I have younger, less experienced teachers yelling at me for working hard and doing a great job.” He stated that he was “nervous, shaking, crying, and feeling horrible.”

Respondent stated that he planned to take a full week off and “return as Chris the good teacher, not the shell of Chris.” He added that, “For some reason there has been a lot of [Ms. Knoxes] in [his] life for the past 18 years in education. People who want to hurt me or knock me down for working my behind off and getting results.”

21. On November 17, 2014, Ms. Knox sent an email to Dr. Barragan in which she expressed her concern that she and respondent were directed not to speak to one another until they met with him. She noted that the meeting had not occurred and it was very awkward between her and respondent. She stated, “I am not sure how our team is supposed to function when we are not able to speak to each other and I am concerned that this situation has been going on too long.”

⁶ The confrontation between respondent and Ms. Knox is discussed below.

Staff Speak to Dr. Barragan About Respondent

22. Beginning in or around October 2014, respondent began to discuss his marital problems and, later, his attempts to begin dating again, with his instructional aides. Some of his comments contained sexual content which was considered unprofessional by some of the staff. As time went on, respondent's discussions about his personal problems began to dominate his interactions with his aides and other professionals that came into respondent's classroom. Respondent's aides became concerned for respondent's mental health and worried that his personal problems were impacting his teaching.

On January 27, 2015, the instructional aides in respondent's classroom met with Dr. Barragan about respondent. They told Dr. Barragan that respondent had been acting inappropriately, was distracted from his teaching obligations by his personal problems and that they were not comfortable working with respondent. Dr. Barragan requested that they put their concerns in writing, which some did.

Email from Dr. Barragan Documenting his Conversations with Instructional Aides

23. On January 27, 2015, Dr. Barragan sent an email to Courtney Cook, Director of Special Education, Ms. Sanders and Todd McAteer, Ed.D, Director of Human Resources for Certificated Employees, advising them that he had met with "all of [respondent's] Instructional Aides" that day and that "their anxiety level is extremely high because of [respondent's] behavior during the last few months." He added that the aides "had not approached me with their concerns hoping that things would change," but stated that the aides did not "feel comfortable coming to work." He stated he planned to meet with respondent the following day to discuss his concerns, but he wanted Ms. Cook, Ms. Sanders and Dr. McAteer to have more information before he proceeded.

Dr. Barragan's Meeting with Respondent

24. On Friday, January 30, 2015, Dr. Barragan met with respondent to discuss the concerns raised by the instructional aides. Dr. Barragan told Ms. Cook, Ms. Sanders and Dr. McAteer in an email dated February 2, 2015, that respondent was "very emotional and cried several times." Dr. Barragan asked respondent if he needed to take some time off and respondent said he would let Dr. Barragan know if he did. Respondent shared details with Dr. Barragan about "his divorce, sex life, etc."

Complaint Regarding Respondent's Handling of Student M

25. In his February 2, 2015, email, Dr. Barragan stated that an instructional aide, [Ms. Bautista] had reported to him that day that there was tension in the classroom between respondent and the staff concerning the way he handled a situation involving Student M. Ms. Bautista stated that while Student M was crying, respondent removed Student M from the classroom and sat him outside. Ms. Bautista intervened and went to Student M. She reported that respondent was angry that she had contradicted his strategy to handle the

situation and made passive/aggressive comments under his breath expressing his frustration. Ms. Bautista reported that another aide confronted respondent about his comments. Dr. Barragan stated that Ms. Bautista was “usually very calm but became overwhelmed because of changing moods and the inconsistency in providing a structured classroom environment for students.” Dr. Barragan said he was concerned that respondent was sharing personal things with his aides, and he would meet with respondent again the following morning to discuss his concerns. There is no documentation that this meeting took place.

Respondent is Placed on Leave

26. On Wednesday, February 4, 2015, respondent sent an email to Dr. Barragan and Ms. Boeck advising them that he hurt his back and wrist while he was moving, had started physical therapy, and would not be at work for the rest of the week.

27. By email dated Friday, February 6, 2015, Dr. Barragan told respondent he was required to provide a medical release before he would be permitted to return to work. Respondent said he would provide the required medical release and added that he had informed his aides that he was “taking some time off to get a little better both physically and mentally. My divorce and the circumstances related to it have been very difficult for me. . . . This time off has been extremely helpful. I feel that I will be able to fully do my job and meet the needs of the students and staff alike.”

28. By email dated Tuesday, February 10, 2015, respondent advised Dr. Barragan that he had obtained a medical release and would be back to work the following day. Dr. Barragan told respondent to report to the human resources department at the district rather than to Garrison. On February 11, 2015, respondent and a union representative attended the meeting at the human resources department. Respondent was placed on administrative leave that day.

Written Statements Provided to Dr. Barragan

29. Pursuant to his request, three instructional aides and a speech language pathologist who provided services to students in respondent’s classroom provided Dr. Barragan written statements of their concerns about respondent. One of the instructional aides who prepared a written statement was Beth Ford. Beth Ford has been an instructional aide with the district for five years. She was an aide in respondent’s pre-school autism classroom at Garrison for over four years. Ms. Ford experienced family difficulties, including that her husband was incarcerated. She and respondent developed a friendship in which they trusted and confided in each other about personal matters. In the Spring of 2014, respondent began confiding in Ms. Ford about the marital problems he and his wife were having.

By email dated February 6, 2015, Ms. Ford stated, “As you are aware, [respondent] is experiencing some personal issues that are effecting the classroom environment. I am concerned not only for [respondent’s] well-being, but for the student[s] and staff.” She noted

that respondent's personal problems had been affecting the classroom for several months. She stated that respondent constantly discussed his personal life with her and that the nature of some of his comments, and the fact that he discussed his issues during instructional time, made her feel uncomfortable. She said she had not discussed her discomfort with respondent because he told her he was hurt when his aides in his previous school "turned on him."

Ms. Ford wrote that there was a "lack of consistency in discipline, the absence of a defined and organized PECS system, the lack of planning with the other special Ed pre-school classes, and [respondent was] not utilizing ABA therapies." While she believed respondent's personal issues "played a role" in him not fulfilling his teaching responsibilities, she also believed he could use a refresher course in these areas. Ms. Ford concluded by saying that respondent "is in deep emotional pain. I do believe his actions are directly related to his life transition. I hope the district can help him find the resources to alleviate his emotional distress and help him to better channel his emotions."

30. Amy De Matte was an instructional aide in respondent's classroom. In an email dated February 5, 2015, Ms. De Matte wrote of her concerns about respondent. She noted that "it has been increasingly uncomfortable in our class. [Respondent's] erratic and unprofessional behaviors have been fluctuating and becoming impossible to deal with." She stated that respondent "over shared" personal information, such as, his infidelity, membership in match.com, his and his wife's potential separation, his wife's lack of intimacy and her alleged mental condition. Ms. De Matte recalled instances when respondent told her about arguments he had with his wife, and he cried in front of the staff. Respondent showed Ms. De Matte photographs of himself crying and said he sent one each night to his wife to show her what she was doing to him. Respondent also showed Ms. De Matte photographs on dating sites and asked for her opinion about them; she felt this was inappropriate. Ms. De Matte was reluctant to complain about respondent because he expressed his gratitude for his aides supporting him, and she believed things would calm down.

Ms. De Matte stated that she had heard respondent, in frustration, tell the parents of two children in his class that their failure to follow through and allowing the children to run the household was the reason their students were not succeeding in school.

Ms. De Matte expressed her opinion that "in his current emotional condition, [respondent] has become an ineffective teacher for the kids and makes the adults uncomfortable." She wrote that she hoped respondent "gets the help he needs."

31. Instructional aide Monessa Benavente has worked in the district for six years. She first worked with respondent in the 2012/2013 school year. In an email dated February 11, 2015,⁷ Ms. Benavente wrote of her concerns regarding respondent. She said her first impression of respondent was that he talked fast, and she had a hard time following him. She stated, however, that his "erratic and unprofessional behavior has become unbearable this

⁷ It is not known whether Dr. Barragan received this email before respondent was placed on administrative leave.

school year.” She stated that, “Since going through personal issues (since October) he comes to work talking about it non-stop throughout the day. He’ll try to carry on with our daily schedule with our students but, more often than none [sic], I feel like us aides [sic] are running the class, fulfilling the duties’ of him [sic] and ensuring the goals of our students are being met [sic].” Ms. Benavente felt that “in frustration” respondent was harsh with two parents, essentially telling the parents that their sons were not doing well in school because the parents did not enforce the rules or program at home. Ms. Benavente believed that, in “his emotional state, [respondent has] become an ineffective teacher.” She described the classroom as an “unorganized mass chaos” with no structure. She concluded by expressing her hope that respondent “gets the help he needs, but feel we need a competent teacher that will guide us aides [sic] and students to achieve their goals.”

32. Priscilla Escalante began working for the district as a speech language pathologist in the 2014/2015 school year. Prior to working for the district, she worked for six years as a speech therapist for the Imperial County Office of Education. In her position with the district, Ms. Escalante provides speech and language evaluations at two schools. On Thursdays and Fridays she performed intervention therapy at Garrison for students with communicative disabilities, which included students with emotional disturbances and autism. In this capacity, Ms. Escalante was in respondent’s classroom for one hour twice a week until November 2014.

On February 10, 2015, Ms. Escalante spoke to Principal Barragan about her concerns regarding respondent. She also provided a letter to Principal Barragan documenting her concerns. Ms. Escalante stated that she had “informally expressed my concerns verbally to my administrators . . . about [respondent’s] change in emotional stability in the classroom setting given personal information he has publically shared about his marital status prior to our Fall break.” While providing speech and language services to student’s in respondent’s classroom, she observed that his personal issues “may be affecting his ability to teach his students effectively.” Ms. Escalante said respondent cried in front of the team in an IEP meeting when the student’s mother showed her appreciation for his hard work. Respondent told the team that “it felt nice to be recognized because he didn’t feel this way at home.” She also noted that, when she was in respondent’s classroom with students and staff nearby, he shared personal, private information that was not appropriate for the classroom setting.

Interviews Conducted by Todd McAteer After Respondent was Placed on Leave

33. On February 11, 2015, the day respondent was placed on administrative leave, Dr. McAteer interviewed instructional aides Ms. Ford, Ms. Bautista and Ms. De Matte, and Speech and Language Pathologist Lena Media,⁸ each of whom had expressed concern about respondent’s emotional state. Dr. McAteer allowed each interviewee to make an opening

⁸ Beginning in December 2014, Ms. Media was in respondent’s classroom twice a week working with his students. Ms. Media took over Ms. Escalante’s work in December 2014 when Ms. Media and Ms. Escalante determined that Ms. Escalante would work with general education students, and Ms. Media would work with special education students.

statement and then asked each a series of 14 questions he had prepared beforehand. The prepared questions included topics such as when the interviewee believed problems with respondent started, what respondent said that made the interviewee feel uncomfortable, how respondent's conduct affected his teaching, did the interviewee ask respondent to stop saying things that made her feel uncomfortable, did the interviewee suggest to respondent that he get help, and what did the interviewee want to happen as a result of relaying her concerns. Dr. McAteer prepared summaries of the interviews. Dr. McAteer did not interview respondent.

34. The aides who were interviewed stated respondent's irregular behavior and constant discussion of his personal problems began between September and December 2014. In general, they provided more details than they had given Mr. Barragan in their emails sent earlier in the month.

The instructional aides told Dr. McAteer that respondent talked to them about every aspect of his divorce. He made comments such as his wife never kissed him on the mouth; he and his wife lacked sexual intimacy; and he cheated on his wife because of these problems. Once, respondent sent Ms. Ford 45 texts, beginning at 1:45 a.m., lamenting his marital problems. Instructional aides were aware that respondent searched on the classroom computer for information about personality defects he said his wife had. An instructional aide reported to Dr. McAteer that respondent made up inappropriate lyrics to songs he sang in circle time when students were present. One instructional aide said that, in early February 2015 during circle time, respondent spontaneously said, "Do you know my wife has never swallowed?" Several individuals were alleged to have heard respondent make this statement.

The individuals interviewed became frustrated by respondent's constant comments about his personal life. One aide made attempts to redirect respondent's conversations, but she was concerned he was so fragile and did not want to upset him more. Ms. Media, who worked with respondent for a short time, was surprised respondent spoke so freely about his marital problems in front of her even though she hardly knew him. Some of the individuals interviewed reported seeing respondent crying in his classroom. Some described the classroom environment as uncomfortable and stressful.

One instructional aide told Dr. McAteer that respondent sometimes talked down to his students' parents. The aide stated she believed respondent was correct in what he was saying, but she did not like the way he presented it to the parents.

35. Instructional aides felt respondent's personal problems negatively affected his ability to teach effectively. They stated the classroom fell apart when respondent was upset. Ms. De Matte believed respondent did not have a clear head to make decisions, he had mood swings, and the students did not make adequate progress. Some of the individuals interviewed complained respondent was disorganized, was not receptive to suggestions for improvements, did not adequately prepare for the each day, did not use PECS consistently, and did not follow established routines. One aide expressed the view that aides knew how to work effectively with the children, but respondent did not.

36. Ms. Bautista told Dr. McAteer about the incident that involved Student M. Her statement to Dr. McAteer was consistent with what she had told Dr. Barragan. Ms. Bautista believed she had Student M under control, and she criticized respondent for interfering. She said Student M would have stopped crying if respondent had left him alone. She claimed respondent became upset and did not speak to her the rest of the day. Ms. De Matte told Dr. McAteer that the aides went to see Dr. Barragan because they were unhappy with the way respondent treated Ms. Bautista following the incident with Student M.⁹ She said that, prior to that incident, she was hoping things in respondent's classroom would improve, and she was sorry she had to go to Dr. Barragan with her concerns.

37. Those interviewed told Dr. McAteer they were concerned for respondent and his students. Ms. Ford told Dr. McAteer that she and respondent were friends and she cared about him. Several interviewees expressed their hope that respondent would obtain help to handle his emotional issues. Respondent told at least one instructional aide he was seeing a therapist.

Ms. Media said she could continue to work with respondent if he got emotional help. She believed he was a nice guy, but he was not appropriate for a preschool environment. She did not have the opinion that respondent could not teach, rather she felt that the setting at Garrison was not a good fit for him. The three aides interviewed by Dr. McAteer stated they would prefer not to work with respondent any longer. Most were concerned that respondent might hold a grudge against them if he returned to the same classroom. Some said they believed respondent would work better with older students.

Evidence Presented at the Hearing

TESTIMONY OF DR. FAUSTO BARRAGAN

38. Dr. Barragan obtained his administrative credential in 2005. He became the principal of Garrison in September 2013. He was principal of a different school in the district for three years before he went to Garrison, and he was the principal of a school in the Los Angeles Unified School District for four years before that. He was also a special education teacher in San Bernardino.

39. Dr. Barragan described respondent's classroom, including that it exited to a kindergarten playground that was fully enclosed. The students in respondent's class were non-verbal with high social and emotional needs. Dr. Barragan described a non-verbal student as one who would cry to express a disinterest in eating rather than express his feelings with words.

⁹ Ms. De Matte was incorrect in this belief. The aides went to see Dr. Barragan on January 27, 2015. The incident with Student M occurred on February 2, 2015. Ms. Bautista told Dr. Barragan about the incident with Student M on February 2, 2015. There was no evidence, other than Ms. Bautista's statement to Dr. McAteer, that anyone spoke to Dr. Barragan about Student M prior to February 2, 2015.

When Dr. Barragan observed respondent's classroom, he looked to see how respondent worked with each child individually and how the individual needs of the students were handled in the group setting. He expected instructional aides to support the teacher to meet the needs of each student as identified in the student's IEP. Teachers are in charge of aides and are responsible to train them about strategies to use when working with students. If a teacher had concerns about his or her aides, Dr. Barragan expected the teacher to discuss the issue with him.

The students were present in respondent's classroom from 8:15 a.m. to 1:15 p.m. each day except Wednesday, which was a minimum day. The pre-school was a social pragmatic program. In addition to instructional time, students were expected to learn appropriate transitions. If students were to leave from circle and go to snack time, he would expect to see the teacher guide the aides to have the children line up appropriately. The teacher and aides must work with each student to meet their needs to get in line and demonstrate appropriate behavior. Dr. Barragan believed it was never appropriate to place a student in time out, which he described as removing the student from the environment in which they were supposed to be learning appropriate behaviors. Dr. Barragan believed, however, that consistent consequences must be implemented. Teacher and aides were expected to work effectively and provide the consistency the students needed.

Dr. Barragan did not experience any problems with respondent during the 2013/2014 school year. When he observed respondent's classroom, he noted that respondent spoke at a rapid pace but that did not concern him. Dr. Barragan confirmed that in his December 2014 observation he saw respondent use PECS, and effectively help the students to transition between activities. He gave respondent a satisfactory evaluation.

Dr. Barragan observed IEPs in which respondent participated in the 2013/2014 and 2014/2015 school years. He did not observe any problems in the way respondent handled the IEPs.

40. In October 2014, respondent began to share some of his marital problems with Dr. Barragan. Respondent said his wife would not kiss him on mouth anymore; she was crazy and was trying to take his children away from him. Respondent was emotional and cried. Dr. Barragan suggested that respondent take time off and they discussed resources available through the district. Respondent declined the offer. Dr. Barragan stated he offered respondent help until February 2015.

Although he did not receive any complaints from his administrative assistant, Ms. Boeck, Dr. Barragan was concerned that respondent was talking about such personal issues with Ms. Boeck.

41. In late October 2014, Ms. Knox and respondent separately told Dr. Barragan about an argument they had concerning moving a child to Ms. Knox's class. Ms. Knox admitted she became angry, stormed out of the room and said "screw you Chris." Dr. Barragan requested that Ms. Knox and respondent attend a meeting with him to discuss the

argument they had. Respondent did not accept the request for a meeting but responded by discussing more issues with his wife and taking the day off when the meeting was to occur.

42. Although in his November 6, 2014, email, respondent requested time off to regroup and come back strong, respondent took only a few days off, he did not take any significant time off, and his emotional state did not appear to be improved.

Dr. Barragan stated that everyone had concerns about respondent by February 2015, and everyone asked him to get help. Although the Education Code allows the district to obtain a mental health examination if there are mental health related concerns, he did not discuss whether there was a way to put respondent on leave for mental/emotional reasons. No one suggested to him that a mental health leave was a way to deal with respondent's conduct.

TESTIMONY OF TODD MCATEER, ED.D.

43. Dr. McAteer is the Director of Human Resources for certificated personnel. Sheri Sanders is his supervisor. He received a Bachelor of Science degree from UCLA, a master's degree from Pepperdine University, and his doctorate in education from the University of LaVerne. In his career he served as a long term substitute, elementary school teacher, Vice Principal, Principal and Human Resource personnel.

Dr. McAteer identified board policies that constitute the guiding principles of the district. Employees are provided copies of the policies when hired and at the beginning of each school year. Employees are expected to comply with the board policies. The board policies overlap with the California standards for teacher conduct. Dr. McAteer also identified administrative regulations that originate from the Education Code. He believed respondent violated several board policies and regulations.

TESTIMONY CONCERNING WHEN RESPONDENT'S IMPROPER CONDUCT STARTED

44. Instructional aides and other educational professional who took issue with respondent's conduct did not have concerns about him before October 2014. Ms. Ford stated that respondent began having significant personal problems beginning in October 2014; she did not believe respondent had any problems that affected his teaching prior to October 2014. She stated that by December 2014, respondent was so distraught he cried several times and she felt, at that point, his emotional state affected the classroom.

Ms. Benavente observed that, prior to October 2014, respondent was happily married and talked about his wife and children and their activities. In October 2014, Ms. Benavente saw a change in respondent's conduct, and the environment of the classroom worsened.

Ms. Bautista testified that she did not have an issue with respondent when she first began to work in his classroom. However, things changed when respondent brought his personal life concerns into the classroom. She said his discussions about his wife and his

marriage gradually increased as the year progressed, and she believed things began to get out of control in November 2014.

Ms. Escalante confirmed that she spoke with Dr. Barragan before the holiday break in December about her concerns regarding respondent because she saw a marked change in his emotional stability, and she felt it was affecting his work and his students. Ms. Escalante observed that respondent “all of a sudden” appeared overwhelmed by his personal problems which resulted in his inability to be fully available to the students and his job.

Ms. De Matte described respondent’s emotional state as “on and off,” but she said it “peaked” on the day she went to Dr. Barragan in January 2015. She said the first year she was in respondent’s class the personal discussions were not to a point where they were a problem, and overall, that school year was “all right.”

Dr. Barragan’s January 27, 2015, note confirmed that the instructional aides told him they were concerned about respondent’s “behavior during the last few months.” The instructional aides told Dr. McAteer respondent’s irregular behavior and discussion of personal problems began between September and December of 2014.

ISSUES REGARDING MS. FORD’S HEARING TESTIMONY

45. Ms. Ford testified at the hearing. Periodically during her testimony, Ms. Ford became upset and expressed her frustration with the hearing process. It was apparent she was a reluctant witness, and she regretted the things she had told Dr. Barragan and Dr. McAteer. In the midst of her testimony, Ms. Ford requested a break. When she left the hearing room, she approached the district’s counsel, drew her finger across her throat in a cutting motion, and advised him she was not returning to finish her testimony, and he would have to subpoena her to get any additional testimony. She did not return to the hearing room that day.

The following day Ms. Ford returned under subpoena and finished her testimony. Her demeanor changed dramatically from her first day of testimony to her second day. During her second day of testimony, Ms. Ford mostly kept her head down and answered in short statements. Although she continued to appear reluctant, she answered the questions put to her.

MS. FORD’S HEARING TESTIMONY

46. Ms. Ford testified that respondent followed a schedule for the classroom although it may not be followed exactly each day. She denied that respondent’s classroom was disorganized. She said the classroom materials and play items were organized in buckets. The arts and crafts materials were organized in the classroom cupboard.

She stated respondent effectively used music and songs in the classroom and the students enjoyed the songs. Respondent sang songs about the alphabet, numbers and other educational topics.

Ms. Ford and respondent developed a personal friendship. They talked to each other about family issues and concerns and shared personal information about themselves and their families. They talked before and after school and when the students were at recess. According to Ms. Ford, they did not talk in front of students. She stressed that working with children with special needs required their full attention. Ms. Ford understood that the discussions she engaged in with respondent were not appropriate in his role as her supervisor, but as her friend the discussions did not bother her.

Ms. Ford denied that she felt she could lose her job because of respondent. She did not believe that respondent was inappropriate with the other aides even though that opinion was attributed to her in Dr. McAteer's summary of his interview with her. Although respondent talked some about his sex life, she did not feel she was sexually harassed. He was her friend and they had both agreed to talk confidentially about things that were happening in their lives. She believed respondent was a good listener. She was more concerned with the constant nature of things respondent talked about than the content.

Ms. Ford was respondent's friend and she wanted to help him. She believed respondent needed to take time off to get help. She suggested it to him and thought he was moving towards getting help. She did not know what happened that stopped him from taking the time off he needed. She was not as direct with him as perhaps she should have been because she did not want him to feel she turned on him.

As related to a comment attributed to her in Dr. McAteer's summary, she acknowledged that she said respondent was not focused on teaching, but clarified that she was referring only to the time beginning in October 2014. Contrary to a statement that she did not confront respondent because she did not want to lose her job, Ms. Ford recanted the statement and said it was taken out of context. She also clarified her comment that respondent was inappropriate "with the ladies." She did not mean to imply that respondent had engaged in any inappropriate sexual activities or speech; she said she was referring to respondent's conduct with regard to Ms. Bautista and Student M. She also denied she heard respondent say anything inappropriate to a parent. Ms. Ford emphasized that when she spoke to the district administration about respondent she was concerned about him and hoped that the district would help him.

Nonetheless, Ms. Ford did state that respondent's stress affected the classroom environment and caused her personal stress. Ms. Ford was also going through a hard time because of some personal issues, and respondent's stress added to her stress. She was upset that she was not at her best for the students when she was experiencing the combined stress. Because all of the aides were hearing about respondent's problems all the time, the stress level was magnified and had a negative impact on the other aides, as well.

RESPONDENT'S DISCUSSIONS ABOUT HIS WIFE, MARITAL PROBLEMS AND DATING

47. Like those who spoke to Dr. Barragan and/or Dr. McAteer, witnesses at the hearing confirmed that, beginning at least by October 2014 and continuing until he was placed on leave, respondent spoke openly and frequently to any and all of the staff with whom he worked about his marital problems. Ms. De Matte said respondent commented about his life four times a day in the five hours of class time.

48. Witnesses testified respondent said his wife was not affectionate towards him, she did not touch him, and they were not intimate. He told some staff members that he had appointments with a masseuse who touched him in a way his wife had not touched him. He spoke of his asserted sexual prowess, stating he had been with many women while his wife had only been with one sexual partner. Respondent told Ms. Ford that he was concerned he had contracted a venereal disease when he cheated on his wife. Although respondent asked Ms. Ford to not repeat his concerns, she later heard the story from another employee. Ms. Benavente testified that respondent told her that he may have contracted a sexually transmitted disease from having sex outside his marriage. Respondent talked about being lonely and accessing online dating applications to get a date. Respondent became upset about his problems to the point of crying on occasion.

Ms. Bautista testified she heard respondent say, "Can you believe that my wife has never swallowed." Ms. Bautista understood respondent to be referring to oral sex. Ms. Brown was working in respondent's classroom when respondent made that comment. Ms. Brown testified her hearing was not very good, and she thought she had misheard the comment until others in the room remarked about it. She interpreted respondent's remark to refer to a sexual act, and it made her uncomfortable. She believed the comment was inappropriate for any school setting and it was particularly inappropriate to have been said in front of female staff members. Ms. Ford denied that she heard this comment; she stated she heard about it from others and repeated it.

Ms. Media testified that the first day she entered respondent's classroom in December 2014, she heard respondent talking loudly about his wife. She was surprised that respondent continued the conversation when he saw her enter the room.

Ms. Brown was assigned to respondent's classroom in or around January 2015. Although she worked with respondent only a few days because he was absent quite a few days and then on leave, she testified respondent talked about his home life each time they worked together. On her first day, respondent discussed that he was getting a divorce and that he believed his wife was narcissistic. Ms. Brown was surprised to learn so much about respondent's personal life so quickly.

Ms. Escalante stated that respondent made personal comments when students were around and could hear them. Respondent would share these details spontaneously without being asked about what was going on with him. She felt his thoughts were always "going, going, going," and he verbalized his thoughts without a filter.

Ms. Ford heard respondent make sexual comments about people he dated or was going to date. She believed it was inappropriate for respondent to make those comments at school, but he said them to her as a friend not as her supervisor. Ms. Ford stated that respondent did share personal things about his life with other aides, but he did not tell the other aides as much as he told her. One evening he sent Ms. Ford 45 text messages lamenting his situation.

During this period, respondent frequently discussed with staff his belief that his wife was narcissistic. Ms. Brown, heard respondent discuss this on her first day in respondent's classroom.

49. Respondent often used singing and music as an instructional tool in his classroom. Sometimes respondent would insert pop cultural references in the songs to keep his student's attention. Witnesses agreed that respondent's students were attentive to his guitar playing and that when used appropriately, the singing and music were effective for educational purposes.

Respondent was heard by several instructional aides to sing a song that included the phrase "story of my life." He said he related to the song because the story of his life was that he always had problems. On one occasion two witnesses heard respondent change the lyrics to a song so that the words had a sexual connotation. When an instructional aide was critical of the changed lyric, respondent shrugged it off, said he was just having fun, and continued with the song. On other occasions, instructional aides heard respondent change song lyrics so that they related to his personal relationships and problems with his wife. Ms. Escalante stated that the songs, as modified, sometimes distracted her from the time that was to be devoted to the students, and she was concerned that it could also distract the students. Ms. Benavente stated that respondent would say anything on his mind; he had no filter.

Respondent's instructional aides and others who worked in his classroom unanimously agreed that respondent's comments about his personal life were inappropriate and unprofessional. Ms. Benavente stated she was "floored, uncomfortable, and in disbelief" when respondent spoke so openly about highly personal matters.

COMPUTER AND TELEPHONE USAGE

50. Respondent was observed on his telephone and/or the class computer during instructional time. On Ms. De Matte's first day in respondent's classroom, respondent told her that he was on the telephone to cancel his match.com account because he and his wife were trying to work things out. Ms. Benavente said respondent showed her photographs of a young woman on a singles' website, such as Tinder. Ms. De Matte said respondent looked up narcissistic on the school computer and invited the aides to see what he had found.

Ms. De Matte stated that when respondent was busy on the computer or not following the established routine, it affected the students. Respondent could "get it together" to do circle time, but afterwards he went to his computer.

Ms. Escalante said that in the beginning, respondent would work with her to help students. Later, instead of helping, he was on the computer at his desk. Respondent would apologize for having his back to her, but told her he was going through a lot. Ms. Escalante did not observe any dating sites, but respondent spoke to her about wanting to find a woman that surfed on a dating site. Respondent spoke to Ms. Escalante about these things in the classroom.

Ms. Ford saw respondent on the classroom computer searching websites. She did not believe the websites were inappropriate. Once he showed her a photo of female he saw on a dating site.

Ms. Media observed that respondent was on the computer and behind the desk, not with students, a lot of the time. This, in her experience, was unusual. However, she was leading instruction for the group of students when she was there.

51. The district submitted evidence of respondent's computer usage for fifteen days between December 3, 2014, and January 29, 2015. The evidence showed the following:

Hours	Dates and No. of Websites	Total No. Websites
8:00 a.m. to 9:00 a.m.	January 13, 2015	37
9:00 a.m. to 10:00 a.m.	December 1 (2) December 15 (5) January 6 (7) January 9 (4) January 23 (2)	20
10:00 a.m. to 11:00 a.m.	December 3 (4) December 18 (14) January 6 (19) January 9 (12) January 14 (17) January 20 (3) January 28 (7) January 29 (6)	82
11:00 a.m. to 12:00 p.m.	January 9 (7) January 15 (19)	26
12:00 p.m. to 1:00 p.m.	December 16 (5) January 5 (6)	195

	January 9 (3) January 13 (76) January 20 (1) January 23 (105)	
1:00 p.m. to 2:00 p.m.	January 9 (26)	26
2:00 p.m. to 3:00 p.m.	January 20 (4) January 29 (4)	8
TOTAL SITES		394

Almost 70 percent (272) of the non-educational websites were viewed on three days - January 9 (52); January 13 (113); and January 23 (107). Approximately 50 percent of the websites were viewed between 12:00 p.m. to 1:00 p.m. (195). The next highest computer usage was from 10:00 a.m. to 11:00 a.m. (82).

According to a class schedule identified by several witnesses, respondent's students were finishing lunch (11:40 to 12:05), having bathroom break (12:05 – 12:15), going to recess (12:15 – 12:40) and participating in circle time (12:40 – 12:55) between 12:00 p.m. and 1:00 p.m. From 10:00 a.m. to 11:00 a.m. students were involved in motor skills training (9:45 to 10:15), bathroom breaks (10:15 to 10:30), recess (10:30 to 10:55) and beginning circle time (10:55 to 11:15). Witnesses testified that during bathroom, lunch, motor skills training, and recess, the students were primarily supervised by instructional aides. It was agreed that respondent was responsible for, among other things, leading circle time. No witnesses testified that respondent failed to lead circle time.

RESPONDENT'S EMOTIONAL STATE'S IMPACT ON STUDENTS AND HIS CLASSROOM

52. Ms. Bautista testified consistently with her statements to Dr. McAteer that respondent's classroom was chaotic and disorganized; there was no set time schedule, and PECS was not used for students that needed visual clues to follow the schedule. Ms. Bautista stated that the environment in respondent's classroom when respondent was going through his divorce was stressful to the students who were on the autism spectrum, had individual needs, and required structure. She believed respondent became more concerned about his own needs than the students' needs. Ms. Bautista said there was minimal instructional content in the classroom and that the children played most of the day. Instructional time diminished – then stopped in December 2014. Respondent would be on task one day out of the month. She said respondent was easily distracted. There was a class schedule, but it was not followed.

53. Ms. De Matte observed that respondent's emotional state affected the students. Behavior plans were not in place, not followed or not updated. The students in respondent's class had severe behavioral problems; the students' needs had to be constantly evaluated and strategies changed if they were not producing the desired results. Ms. Benavente and Ms. Brown described respondent's classroom as disorganized. According to Ms. Benavente, the disorganization made the classroom an unpleasant place to work.

Ms. De Matte acknowledged that respondent had centers in the classroom where students worked on projects, such as cutting and pasting items or words starting with the letter of the alphabet on which they were working. Ms. De Matte said some students were able to go from non-verbal to verbal. This was a big achievement, and all of the staff was very excited when it happened.

54. Ms. Escalante stated that respondent's aides tried to support him and keep the students on track. Respondent knew what he wanted to do but had difficulty achieving it. She had not worked with respondent before but believed respondent could do a good job if he did not have so many personal distractions. Respondent knew the needs of his students and relayed them to Ms. Escalante. She observed that he had a schedule, but it was not always followed and respondent often changed it. Ms. Escalante believed the students needed a consistent schedule. She observed that when respondent was out for the day, and the aides were able to follow the schedule, she saw fewer outbursts, and the students were calmer.

55. Ms. Media was disappointed that respondent would not accept help from her. If she offered a suggestion for working with a student to encourage speech, respondent rebuffed the suggestion either by saying he already did what was suggested or he asserted that the student already knew how to talk but would not. Ms. Media found it difficult to consult with respondent. He did not follow through with prepared lesson plans. Respondent was very fast talking. The goal in respondent's classroom was to elicit speech from the students. Ms. Media noticed that because he was fast talking, respondent sometimes did not give students time to respond verbally. However, Ms. Media testified that she observed the students at circle or play time when she walked in to work with the students. There were centers in the classroom and she did speech related center activities.

56. Ms. Benavente observed that some instructional aides took advantage of respondent. They frequently arrived late, which meant that respondent was required to get his students from the bus. This was supposed to be done by the aides. Ms. Benavente believed that the aides "turned on" respondent and were not helping him as they should. She was "shocked" the aides did this, and she did not know why they did it. Despite not approving of all of the other aides' actions, Ms. Benavente felt the aides were running the class, keeping the students on schedule and on task and making sure the students' goals were being met. Ms. Benavente loved her job, but she did not like working with respondent.

ISSUE WITH MS. BAUTISTA AND STUDENT M

57. Ms. Bautista testified in detail about the incident involving Student M. She stated Student M's snack was taken from him because he was playing with it. When Student M cried, he was taken from the lunch room for a time out. Ms. Bautista asked Student M if he was ready to come back and she wiped his tears away. Respondent approached Student M and "got in his face," telling Student M "you don't need to cry." Student M began crying again. Ms. Bautista became angry because Student M had stopped crying and respondent had caused him to cry again.

Respondent moved Student M from the classroom to outside the door of the classroom and said he would watch him from the door. Respondent heated his own lunch while Student M was outside alone. Ms. Bautista said she had reached her limit and did not want to listen to respondent anymore. She went to Student M to comfort him. Respondent accused Ms. Bautista of being rude and disrespectful. Ms. Bautista knew respondent was upset with her because she disregarded his instruction. She agreed that some students needed a stern approach because they hit or bite, but, she testified Student M was "one of the most soft" and she did not feel he was treated appropriately. This incident occurred one week after respondent made the "swallow" comment, and those two incidents spurred Ms. Bautista to complain to Dr. Barragan about respondent's constant talking about his personal life and its impact on the students. Ms. Bautista did not see respondent again after she spoke with Dr. Barragan.

Ms. Bautista challenged respondent's assertion that she babied students when she tried to soothe them when they were crying. She believed she gained a student's trust when she hugged him, picked him up or wiped away his tears when he was upset, especially if the child was non-verbal. She also felt respondent spoke inappropriately to a student's mother when he told her to either get on board with what he was doing or the child would not improve.

Ms. Bautista was aware there are various behavior modification techniques that are appropriate to use when working with children on the autism spectrum. She understood that wiping tears and providing comfort to a student could reinforce bad behavior. Nonetheless, she disagreed with how respondent handled Student M and believed she knew better how to deal with him.

Ms. Bautista was shown a schedule that purported to be for Student M. She denied having seen this schedule before. Contrary to her statement that respondent did not use PECS in the classroom; Ms. Bautista said she was aware that Student M used images to communicate. Ms. Bautista agreed that she did not usually review IEPs, and she would not necessarily know what the IEP team had determined were the individual needs of each student.

Ms. Benavente was present when respondent took Student M outside after the student had a "meltdown." She was aware that Ms. Bautista went to the child and took him for a

walk outside. Respondent was annoyed that Ms. Bautista took it upon herself to do that, and he complained to Ms. Benavente about it. Ms. Benavente felt that respondent should have gone after Ms. Bautista and handled it then rather than complain to Ms. Benavente. Ms. Benavente acknowledged that the student engaged in behaviors that needed to be modified.

Ms. De Matte said she was motivated to talk to Dr. Barragan about respondent after the incident with Student M and because respondent continued to talk about his marital problems. She was upset that respondent openly criticized Ms. Bautista who went to comfort Student M. He told the other aides he could not believe Ms. Bautista interfered with his strategies and that he knew what he was doing. Ms. De Matte did not agree that the student should have been left outside. Ms. De Matte decided that it was time to get the aides together and talk to Dr. Barragan.¹⁰

DISTRICT STAFF WANTED RESPONDENT TO GET HELP

58. Ms. Ford testified that she and the other instructional aides were motivated to talk to Dr. Barragan and Dr. McAteer by a desire for respondent to get help coping with his marital problems. As his friend, when respondent became obsessed with his separation and divorce, Ms. Ford became concerned about him and his well-being. She worried that his preoccupation with his marital problems could impact his job. She was concerned that if respondent lost his job, lost his wife and family and lost the friendships of his aides and co-workers, it would be too much for him. She knew he was very stressed out and hoped the district would help him.

59. Ms. Bautista talked to the other aides about respondent. The focus of the discussion was to get help for respondent. They agreed the situation was getting out of hand and that respondent's personal issues were too much for him to handle. Ms. Bautista believed respondent needed family therapy to help him get himself together. She told respondent that he needed to get help. Respondent told her he was all right and that he could take care of himself.

60. Ms. Benavente believed respondent needed help and she hoped he would get it. The first time she mentioned respondent needed help was in February 2015.

61. Most of the time, Ms. De Matte felt empathy for respondent. She understood that he was having serious marital problems. She tried not to be rude or shut respondent down when he spoke of personal matters, and she tried to make general comments to encourage him and gently move him on to student related tasks. She did not directly tell him to stop talking about personal matters. Ms. De Matte was aware that someone once asked respondent to limit talking about personal matters and he reacted negatively. He announced sarcastically that "we can't talk about personal things." She hoped respondent would get the help he needed and that things would change. She told him there were programs in the

¹⁰ As noted supra., the aides spoke to Dr. Barragan before the incident with Student M occurred.

courthouse that might be able to direct him where to get help. She stated that all of the aides wanted respondent to get help and return to the classroom “in full capacity.” Respondent told Ms. De Matte that his previous aides had turned on him after he thought everything was going well. She did not want respondent to feel he did not have a support system or that she had turned on him.

62. Ms. Escalante told Dr. Barragan that respondent was going through something and suggested that someone talk to him.

63. Ms. Media confirmed the statements she made to Dr. McAteer in February 2015. She affirmed her original opinion that the issue was not that respondent could not teach, but that his placement in the pre-school classroom at Garrison was not a good fit.

DISCUSSION OF PERSONAL MATTERS BY OTHERS

64. Ms. Bautista agreed that she had discussed some personal matters with respondent, but she said they were either very general or involved significant events such as when her sister died in a car accident. She stated that other aides also talked about personal matters at school. Ms. De Matte also agreed that all of the staff had engaged in some off-topic discussions, but that they were limited in number and duration and not to the degree that respondent shared. Ms. Ford and respondent developed a friendship and mutually confided in each other about personal matters.

RESPONDENT’S TREATMENT OF PARENTS

65. Ms. Benavente was critical of the way respondent sometimes spoke to parents. She felt his duty as a special education teacher was to help and guide parents to get the help they needed for their child. Ms. Benavente observed respondent scolding a parent for failing to follow through at home with the techniques used in the classroom. The parent appeared upset and offended when he spoke to her that way.

66. Ms. De Matte was present when respondent spoke to a student’s parent in a way she felt was inappropriate. Although she agreed with what respondent told the parents, she did not agree with how respondent spoke to them. Ms. Ford denied that she heard respondent say any inappropriate things to students’ parents. She does not believe respondent said anything to parents that was inappropriate or unprofessional.

CONDUCT IN IEPs

67. Robin Ancona is a Program Specialist, Special Education, with the County Office of Education and provides services to the district. Among her job duties, are attending IEP meetings and providing guidance about special education laws and procedures. She knew respondent when he worked for the Chula Vista Elementary School District, and she worked with him in Oceanside.

68. In October/November 2014, Ms. Ancona helped prepare for, and she attended, an IEP requested by a parent of a student in respondent's classroom. The parent was concerned about her son's continuing maladaptive behavior, seen more often at school than at home. Prior to the IEP, Ms. Ancona had heard that respondent was going through a difficult time and was having trouble handling student behaviors that he had previously been able to handle.

Ms. Ancona and respondent exchanged emails regarding the upcoming IEP. Ms. Ancona had some concerns about how respondent would conduct himself in the IEP due to the tone of his emails. In a conversation between Ms. Ancona and respondent the day before the IEP, respondent seemed to be in an escalated state and shared personal problems he was experiencing. She described him as talking about things in all directions at once. After this conversation, Ms. Ancona believed that respondent needed some time to get himself together. She was concerned that his personal problems could impact his effectiveness as a teacher.

In the IEP, Ms. Ancona found that respondent was open to suggestions from the behavioral specialist and speech therapist and conducted himself properly. She had no concerns about the way he handled himself at the IEP.

69. Ms. Escalante was present at an IEP meeting in which the parent of a student commended respondent for his work with her son. Respondent became overwhelmed and cried at the compliment and said that he was emotional because he was not appreciated at home. Ms. Escalante believed it was inappropriate to bring his personal life into the IEP. The student's mother consoled respondent and shared a personal situation of her own which caused Ms. Escalante to be concerned that the focus of the IEP had shifted to respondent and away from the student.

COMPLAINTS MADE BY MS. FORD ABOUT OTHER STAFF

70. Ms. Ford complained about other district employees. She complained to respondent that Ms. De Matte's involvement in other school-related activities meant Ms. De Matte was often out of the classroom. Ms. Ford found her absence disruptive to classroom activities. Ms. De Matte was involved in so many school activities that she earned the nickname "Mayor of Garrison."

Ms. Ford also expressed her concerns about teacher Jennifer Knox. She wrote an email complaining about Ms. Knox not acting in the best interest of her students. Ms. Ford also said she was not comfortable working with Ms. Knox because Ms. Knox talked down to her and yelled at her.

Evidence Relating to Violation of School District Policies

71. The Notice of Charges alleged that respondent violated the board policy and administrative regulation governing Professional Standards (4119.21), the board policy and

administrative regulation governing sexual harassment (4119.11), the board policy and administrative regulation governing the use of technology (4040), and the board policy governing civility (1313).

a. The Professional Standards policy and regulation contained very general language. The policy stated that the district expects employees to “exhibit professional behavior, follow district policies and abide by the law.” “Employee conduct should enhance the integrity of the district and advance the goals of the district’s educational programs.” The regulation incorporates a Code of Ethics and provides, among other things, that an educator “Shall make reasonable efforts to protect the student from conditions harmful to learning or to health and safety.”

b. The sexual harassment regulations included the following definition of sexual harassment: “The conduct has the purpose or effect of having a negative impact upon the individual’s work The conduct is sufficiently severe, persistent, pervasive or objectively offensive so as to create a hostile or abusive working environment” Examples of conduct that might constitute sexual harassment included, “overly personal conversations”

The sexual harassment regulation provides that “[t]he accused shall also be fully notified of such rights pursuant to this administrative regulation at the earliest appropriate time.” The regulation delegates the responsibility to investigate sexual harassment complaints to the Associate Superintendent – Human Resources. At the conclusion of the investigation, the Associate Superintendent – Human Resources is required to prepare a written report “giving consideration to the record as a whole and the totality of circumstances, including the nature of sexual advances and the context in which the alleged incidents occurred.” According to the regulation, the sexual harassment complainant and the accused harasser “shall” receive a copy of the written report.

c. Board policies and regulations provide that employees “shall use the district’s technological resources primarily for purposes related to their employment.” Neither the policy nor the regulation prohibits an employee from ever using district technology for personal reasons.

d. The district’s civility policy provides that one of its basic purposes is to “promote a work and learning environment that is safe, productive, and nurturing for all staff and students.” The examples used to demonstrate uncivil conduct include using vulgar, obscene or threatening gestures or communication to another person, yelling during a meeting or conference, interrupting a person speaking, invading a person’s space and blocking a person’s exit from a room or location.

Dr. McAteer testified that respondent violated each of these policies and regulations.

72. On March 24, 2011, as part of his “employment paperwork,” respondent acknowledged receipt of certain board policies and administrative regulations. The policies

and regulations governing use of technology and sexual harassment were included in the documents respondent received. Neither the professional standards nor the civility policy were listed as having been provided to respondent. No evidence was presented that showed respondent had ever acknowledged receipt of the professional standards or civility policies.

Respondent's Testimony and Evidence Presented on Behalf of Respondent

RESPONDENT'S TESTIMONY

73. Respondent received his Bachelor of Arts degree from San Diego State University. He has a level 1 and 2 teaching credential for teaching moderate to severe level students. In or about 2011, respondent received a Master's Degree in early childhood special education from National University. He has 18 years' experience teaching special education.

74. Respondent began working for the district in 2011 at a Ditmar Elementary School satellite while Santa Margarita Elementary School was being built. He taught early childhood special education, primarily children on the autism spectrum. When Santa Margarita opened, he taught pre-school autism there. One of his aides at Santa Margarita was Ms. Ford. After his first year at Santa Margarita, respondent was offered the opportunity to stay there or transfer to Garrison for the 2012/2013 school year. He chose to transfer to Garrison to teach a pre-school autistic class.

75. Respondent applied to teach summer school each year he taught for the district, with the exception of when he was on administrative leave. He was selected and approved by the district's human resources department to teach each of the three years he applied.

STRATEGIES IN THE CLASSROOM

76. Respondent said his classroom was designed to address the individual needs of each student; he used whatever strategies worked with each student. Respondent had at least eight "centers," or educational environments in the classroom so that his students had varied educational experiences. He testified he was organized.

77. Respondent consistently used visual prompts (PECS) in the classroom because eighty percent of what the students took in and retained was visual. He stated he "caught on early" that PECS were an effective way for autistic students to advance.

Respondent provided a sample basic schedule he maintained almost the entire time he taught for the district. The schedule included pictures and words to describe the activities for the day. For example, bathroom time showed a cartoon-style depiction of a toilet, recess showed a cartoon-style depiction of a swing set and sliding board. Modifications were made to the schedule for special services given to the students. Additionally, respondent's students had significant behavioral concerns, and a student having a behavioral issue could interrupt

the flow of the instructional time and impact the schedule. The class schedule was posted several places in the classroom so the aides could see it.

78. Respondent's students had limited verbal capability but all of the students had some. Some students spontaneously spoke, but more often the students needed to be directed to speak. The level of his student's verbal abilities went from those who had two to five words to one student who could read on a fifth grade level. Respondent worked towards increasing his students' language and life skills.

For encouraging speech, respondent catered to the interests of each individual student. One student had an interest in Spiderman and respondent used this interest to facilitate and support speech. Because speech and music have such a strong connection, respondent used songs, guitar, and small preschool instruments to get students motivated to use words. Respondent had multiple students who advanced from being non-verbal to verbal. When a student advanced, respondent was elated.

79. Respondent had a notebook with goals and documentation sheets for each of his students. The notebooks were kept in an organized area in a cabinet and were available to the instructional aides. The instructional aides were to use the notebooks to become familiar with the students' goals and needs, and they were expected to make notes in the notebooks about the students. Respondent used the notebooks as a way to measure the students' progress. Respondent maintained these notebooks each year he taught for the district.

DISCUSSIONS WITH AIDES

80. Respondent admitted that he spoke to his instructional aides and others about his personal life. He was trying very hard to hold his family and his job together at the same time. Because of the divorce, he had to move a lot and times were stressful.

He shared more intimate details about his divorce, concerns for his children and beginning to date again with Ms. Ford. He admitted that he discussed aspects of his and his wife's sexual life and things he learned about his wife during the course of the divorce. He also shared with her a concern that he could have contracted a venereal disease from a post-separation sexual encounter. He recalled that he stepped outside of the classroom to talk to Ms. Ford about this and asked her to keep their conversation confidential. Ms. Ford shared very personal information about her life, family, and her relationships with her family with respondent. He considered Ms. Ford a friend, and when they spoke of personal things, he expected that their conversations were confidential. He talked to Ms. Ford about these more personal matters either before the students arrived in his classroom or after; he arrived at school early to prepare for the day.¹¹

¹¹ Respondent stated his hours were 7:45 a.m. to 3:15 p.m. Students were in the classroom from 8:15 a.m. to 1:15 p.m. except on Wednesdays.

81. Respondent was forthcoming about the personal information he shared with other staff, as well. He admitted he spoke to Ms. De Matte about his divorce, wife, and children, but he stated she also talked to him about personal issues. He and Ms. De Matte spoke about personal matters before and after school when students were not around. Ms. De Matte had children who were musical, and he and the children played music, sang, and practiced for plays together. Respondent also shared some personal information with Ms. Benavente, Ms. Escalante and Ms. Media. Respondent sometimes helped Ms. Benavente's son with school work after school when respondent's students were not present.

82. Respondent was surprised that his staff raised complaints against him. He believed they all got along well and were comfortable with him. As proof that he thought the staff liked him, respondent pointed to the fact that the staff had recently given him birthday presents.

Although most personal conversations occurred when respondent's students were not in the classroom, respondent admitted that some of the discussions about his wife and his divorce occurred when students were around. He said he was trying to hold it all together; he talked a lot and to everyone.

83. Respondent admitted he made the comment about his wife not swallowing. He was singing a song with his students about a "slippery fish" that included lyrics, "gulp gulp." He said he was in the back of the room not facing the students when he made the remark. He said the thought came into his head and then slipped out. He thought no one heard the remark and was very apologetic when he learned some aides had heard it. He apologized at the hearing and unequivocally agreed the comment was vulgar and not acceptable. He never made a similar comment on any other occasion. He understood that this comment violated the district's sexual harassment policy.

84. Respondent felt comfortable discussing personal matters because some of the aides also talked about their sex lives. He did not discuss personal issues in a group but in conversations between himself and one other person. He recalled that Ms. De Matte "nonchalantly" suggested to him that he stop talking about personal details; however, other than that, none of his aides asked him not to talk about his personal issues anymore. Respondent did not recall how he responded to Ms. De Matte. Ms. Ford and Ms. De Matte suggested he get help from a church group, or surfing or somewhere. Respondent did attend a support group at his church and he continued to surf.

Respondent talked to Dr. Barragan and to Ms. Boeck. He wanted them to know what was going on in his life in case he needed to leave to deal with problems that might occur. Because Ms. Boeck was a person of faith, respondent felt comfortable sharing his personal struggles with her. Neither Dr. Barragan nor Ms. Boeck told him not to send emails to them about personal matters.

Respondent acknowledged he told people at work that his wife did not hold his hand or kiss him on the mouth and that there was a general lack intimacy between himself and his wife.

USE OF COMPUTER

85. Respondent was aware of the district's policy concerning the use of district computers. Respondent admitted he used the classroom computer during his break time to check his personal email and that he accessed websites on the classroom computer to search about narcissistic personalities. He believed his wife, who he had been in a relationship with for 10 years, had the symptoms of a narcissistic personality disorder. He was concerned about what the impact might be on his children if she had such a disorder. Respondent also admitted he researched topics pertaining to divorce proceedings and custody issues on the classroom computer. He stated that he clicked on a link in an email that went to a "Pilipino" dating site, but he said he did not look through the website.

Respondent stated he limited his computer usage to after school, when he was on a break, or when he was not responsible for teaching, such as when the students were supervised by his aides, or the speech therapist was working with them.

Respondent denied using Tinder during school hours and said he did not have the app for Tinder on his phone. He admitted he showed Ms. Ford and Ms. De Matte photographs of potential dates two to three times during his preparation period.

REGARDING THE INCIDENT WITH MS. BAUTISTA AND STUDENT M

86. Student M had developed a pattern of crying when he wanted something or was unhappy. Respondent testified that Student M cried 90 percent of the school day and his crying had a negative effect on the other students who had auditory sensitivity. Respondent had been working with Student M using a picture exchange board to encourage Student M to use words to communicate what he wanted rather than crying. For example, if Student M wanted a book, he was directed to point to a picture of a boy with the words "I want" under it, and then to a picture of a book with the word "book" under it.

Respondent created a behavior plan for his aides to use when working with Student M. The behavior plan stated clearly, "100% ignore, I mean 100%. When he stops crying, then go talk with him and prompt him to use language. Use picture or verbal prompts to get him to 'say' what he wants. If he cries, show him visual prompts and simply state 'Every time you scream and cry, you are going to take a break.¹² You need to use your words.' Show use your words visual prompt." Additional instructions for working with Student M emphasized that Student M must remain in the break area of the classroom until he uses words to get what he wants. "The breaks and opportunities for language need to be

¹² Respondent's classroom had a "break" area in which there were bean bag chairs, books and toys.

consistent. [Student M] is persistent and will try to break you down by excessively crying for long periods of time. . . . Do not give in. Expect and accept verbal language 100% of the time. [Student M] is very capable of talking and stopping his crying behavior. . . .”

One day, Student M was crying to get a snack. Respondent worked with Student M and tried to make him use the picture exchange board to get the snack, but Student M did not cooperate and continued to cry. Respondent saw that other students were reacting to Student M’s crying, so respondent sent Student M outside as he had done on other occasions. Where he was outside, Student M could be seen by respondent and the instructional aides. Respondent went to heat his lunch and had planned to sit with Student M and read a social story¹³ to enforce the behavior respondent wanted from Student M. Before he could get back to Student M, Ms. Bautista went to him, took him for a walk, and tried to calm him down.

Respondent did not want Ms. Bautista to take Student M. He was upset and frustrated that she had interfered with the lesson he was trying to enforce. He said the best practice was not to interrupt a behavior intervention. Respondent stated that Student M was doing better in school. He had not cried for three days before the incident with Ms. Bautista, and he had been progressing. Student M was also receiving Applied Behavior Analysis (ABA) therapy at home. The ABA therapy had the same goal of teaching Student M to use words instead of crying. Consistently reinforcing the learning strategies at school and home was important for Student M to learn that he will only get what he wants or needs by using words.

Under his breath, respondent expressed his disappointment with Ms. Bautista going against the behavior plan and interfering with his lesson. The aides heard him complain about Ms. Bautista, but no one told him they were upset by his remarks.

MANNER RESPONDENT SPOKE TO PARENTS

87. The Notice of Charges alleges that respondent spoke harshly and inappropriately to his students’ parents. Respondent denied that he was mean or rude to any of his students’ parents and that his only purpose was to help his students. He specifically denied Ms. Benavente and Ms. De Matte’s suggestion that he acted inappropriately towards Student M’s mother. He stated that Student M’s mother requested an IEP to better coordinate Student M’s home-based ABA therapies with those provided at school. In an email dated November 12, 2014, respondent stated his professional belief that Student M was “very smart and wants to be challenged.” However, respondent noted that he saw little change in his behavior since being provided ABA services in the home. He stated his belief that Student M’s “crying behavior must be reinforced somewhere and serve a purpose, or it would have stopped (extinguished) a while ago.” Respondent believed that Student M’s parents were giving in to him at home and not requiring that Student M use words to get his needs met. Respondent’s comments were intended to help the parents and the student.

¹³ A social story is a book written for a student with picture symbols that demonstrates the teacher’s desired outcome by using a story. For example, the picture symbols would tell a story such as: M likes trains, M wants train, M needs to use the picture board to get a train.

POSITIVE FEEDBACK FROM STUDENTS' PARENTS

88. Respondent received positive feedback from his students' parents. On May 9, 2013, Student M's mother sent an email praising respondent and his staff for their "hard work with the kids" She thanked respondent for being "respectful and loving and caring" towards her son.

By email dated November 4, 2013, Student A's parents expressed how thrilled and amazed they were that their child was able to attend a general education pre-kindergarten. The parents reported that Student A's teachers were impressed with Student A's ability to follow rules, academic advancement, counting and cutting skills which they attributed to early intervention and respondent's teaching. Student A's parents expressed their hope that respondent would "continue being the outstanding teacher you are and continue to make a difference in other children's lives."

Other parents referred to respondent and his aides as "angels making miracles happen and giving us so much hope." Parents described them as "amazing people" for helping their students succeed. In a card dated January 18, 2013, a parent wrote to respondent and told him "You are the best example of what a great dedicated teacher should be." The parents stated they "never thought my little boy would progress the way he did." They described respondent as "patient and loving with all the children and your love for teaching such special kids like [their child] doesn't go unnoticed." Another parent thanked respondent for the way he taught and challenged her son. Parents attributed their children's growth and progress to respondent's efforts.

An April 24, 2014, email from a student's mother thanked respondent for providing an update on her son and expressed that she was very pleased with her son's progress.

An August 11, 2014, letter from a parent thanked respondent and provided a summary of how her son did over the summer.

IEP MEETINGS ATTENDED BY RESPONDENT

89. Respondent was the case manager for each of his 16 students and he attended all of his student's IEP meetings. He acknowledged that he cried "tears of joy" in an IEP meeting when a student who was behaviorally challenged showed a "huge improvement" after two years with respondent as his teacher. He stated that he likely cried tears of joy on one or two other occasions when students succeeded. He noted that no one had ever criticized him for crying in an IEP meeting.

SHORT STAFFED

90. In response to testimony that respondent appeared unorganized, respondent stated that there was a recurring problem getting sufficient qualified instructional aides to support the special education needs at Garrison. He consistently operated his classroom with

fewer aides than he was supposed to have. When he could, respondent would share his instructional aides with other teachers who were short. Many times respondent had substitute aides in his classroom to try to maintain the correct number. He stated that sometimes he did not have students in educational centers or was unable to have students engage in planned activities because the classroom was not fully staffed.

In 2013 to 2015, respondent did not have the number of instructional aides he was supposed to have. In mid-January 2013, the district notified respondent that a new student was being placed in respondent's class. The email recognized that respondent's classroom was "quite impacted."

91. In February 2013, respondent was short staffed as a long term sub left and a replacement was not immediately found.

92. On August 14, 2014, the district determined that an additional aide needed to be added to respondent's classroom to maintain the aide/teacher to student ratio. At that time, respondent had one female and 13 male students.

93. On August 21, 2014, respondent expressed continuing concerns with insufficient staffing to Dr. Barragan. He stated, "I am a little confused why the more mild programs with less students and behaviors are well supported [while] we are struggling every day to meet the needs of the 13 very busy, behaviorally involved students." Dr. Barragan responded that he supported respondent's request for another instructional aide.

94. Also on August 21, 2014, respondent sent an email to Dr. Barragan and others acknowledging the shortage of aides. He stated that, "I feel we are not meeting the needs of the students with the current staffing. Students are sitting around waiting for someone to work with them because of the lack of staff. Other times 2-3 staff are dealing with the behavior of one or two students leaving 1-2 staff to meet the needs of 10-11 students who are also very active with behaviors." He noted that in the prior school year there were five aides with three less students, and in the current year there were only four aides. He requested additional support for the "academic, social, and behavioral needs of the students."

95. In mid-December, 2014, the district requisitioned two new instructional aide positions for one classroom and extended the substitute authorization for substitutes to provide extra support to respondent's and Ms. Knox's classrooms.

In an email exchange in late January 2015, between respondent, Dr. Barragan and others, the participants discussed the problem of hiring and retaining quality instructional aides.

96. The Notice of Charges includes reference to an argument that occurred between respondent and fellow special education teacher Jennifer Knox in October 2014. Respondent contended that, other than that one incident, he and Ms. Knox had a congenial and professional relationship. He further noted that, although there had been complaints made against Ms. Knox's demeanor in the classroom, including her conduct towards parents, students, and aides, no charges were filed against her.

97. Ms. Knox wrote a letter of recommendation for respondent dated February 14, 2014. In the letter, Ms. Knox stated that, "With his knowledge of the program and Autism he helped me [a] great deal with the transition into teaching this program. It has been a pleasure to work with him and see the energy he brings to the classroom." She described respondent as "a strong leader in his classroom" who "builds strong and respectful relationships with his students." She observed that respondent's program "is well structured and facilitated by himself and the staff he leads in the classroom. He is able to instruct not only the students but also manage his staff effectively to accommodate the needs of his students." She noted that respondent helped her improve her program "through collaboration and support with materials." She stated that respondent utilizes a "variety of instructional methods with his students to help them stay engaged in learning."

98. In an email to Dr. Barragan dated October 29, 2014, Michelle Bosserman, an instructional aide in Ms. Knox's classroom, complained that she had had "been witnessing an increasingly hostile environment coming from Mrs. Knox. I have seen her behave in a very inappropriate and unprofessional manner toward her coworkers, the parents of the children in our classroom, our school O.T., and most upsetting to me, toward the children in our care. . . . I have tried to just stay focused on my responsibilities to our students, but she is making her mistreatment of others impossible to ignore." Ms. Bosserman described Ms. Knox as unprofessional, volatile and unpredictable. Ms. Bosserman said she had 17 years of pre-school experience before she worked at Garrison and she had not experienced the "level of unprofessionalism" that she had with Ms. Knox. She also stated that another teacher was in the classroom multiple times a day taking Ms. Knox's attention away from the children. She said Ms. Knox and the other teacher discussed issues relating to other teachers and staff members. These discussions made Ms. Bosserman uncomfortable.

99. On October 29, 2014, Ms. Ford sent an email to Dr. Barragan complaining about Ms. Knox. She recited her years of experience and course work in early childhood education and stated that she believed Ms. Knox's "behavior was [not] age appropriate for her classroom assignment. She stated that Ms. Knox tried to move students into her class, not for the benefit of the students, but to keep her classroom numbers up so as not to lose a particular aide.

¹⁴ Jennifer Knox did not testify at the hearing.

100. On October 29, 2014, respondent “emotionally” reported to Dr. Barragan that he had had a “verbal altercation” with Ms. Knox over a disagreement about a student’s placement. After the argument, Ms. Knox was reported to have “got[ten] in [respondent’s] face and yelled “screw you Chris.”” Dr. Barragan later received two emails from Ms. Knox asking to speak with Dr. Barragan. When he met with her, Ms. Knox stated she felt offended that respondent would question her professionalism, but acknowledged she was unprofessional in her use of words.

Dr. Barragan confirmed in an email dated October 30, 2014, that, prior to respondent’s complaint, he had “had several complaints from instructional aides (IAs) and another teacher regarding the unprofessional behavior of Jennifer Knox.” He stated he “met with two IAs who feel extremely uncomfortable working with Mrs. Knox because of the disrespectful and ‘mean’ manner in which she treats them. They were in tears during our meeting. According to the IAs they are treated negatively and yelled at. They also expressed their discomfort with the way Mrs. Knox treats her students. They hesitated to report any incidents to me for fear of retribution and because they wanted to give Mrs. Knox the benefit of the doubt because of her emotional state with her husband’s 11 month deployment. Her husband is back from deployment and no change.”

Dr. Barragan wrote that he was “concerned for both teachers because they were both experiencing personal situations that are affecting their work.

101. On October 30, 2014, respondent wrote an email to Dr. Barragan and Ms. Boeck. He acknowledged that it had been “a rocky and bumpy two weeks.” He expressed his distress at being yelled at and called names by Ms. Knox, “[e]specially since I did absolutely nothing to warrant the verbal abuse.” He also referenced he was in great physical pain and trying to repair his marriage.

102. On November 21, 2014, respondent sent an email to Ms. Knox thanking her for soup she gave him. Ms. Knox responded and said she was glad he enjoyed it and hoped he had a “wonderful Thanksgiving.”

103. In an email exchange in late January 2015, respondent recommended that two students who had shown significant progress be moved to a less restrictive classroom environment. Ms. Knox thanked respondent for putting his recommendation in writing and said she looked forward to discussing the two students in their next meeting.

RESPONDENT’S THERAPY

104. When respondent spoke to Dr. Barragan about his personal issues, Dr. Barragan told him about resources available through the district to get help. Respondent moved from his home on November 7, 2014, and sought help on his own rather than going through the district’s resources. Respondent entered therapy paid for by his insurance. He saw this therapist for approximately six to eight months. He then found a specialist for personality disorders. He saw both therapists for a while and later saw only the specialist.

He did not share with anyone at the school district that he was seeing a psychiatrist. He is still seeing the specialist.

Respondent has surfed competitively since he was 14 years old. He also participates in other sports. During his divorce, respondent worked with quadriplegic surfers and a special needs program that helps autistic children learn to surf. These activities helped him during the divorce.

The district questioned why respondent did not apply for a leave of absence when he was having such a difficult time dealing with his divorce and accompanying issues. Respondent stated he took some days off, but felt a responsibility to be present for his students. He also stated that, although Dr. Barragan suggested he take some “time,” he did not suggest to respondent that he take a week or two off, and respondent was unaware that he could have asked for a leave of absence to devote to his emotional health.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Due Process under the Education Code

2. A permanent employee may be dismissed for cause only after a dismissal hearing conducted in accordance with the Education Code. (Ed. Code, §§ 44932, 44934 and 44944.)

3. The dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of the Commission must be non-district teachers, one chosen by the respondent, one by the district, and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings. (Ed. Code, § 44944, subd. (b).) The Commission’s decision is deemed to be the final decision of the district’s governing board. (Ed. Code, § 44944, subd. (c).)

4. A Commission on Professional Competence has broad discretion to determine the issues before it and to determine whether dismissal is the appropriate sanction. (*California Teachers Ass’n v. State of California*, (1999) 20 Cal.4th 327, 343.) When a

school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).

Statutory Grounds for Dismissal

5. Education Code section 44932 provides in part:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

[¶] . . . [¶]

(5) Evident unfitness for service.

[¶] . . . [¶]

(7) 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 governing board of the school district employing him or her.

[¶] . . . [¶]

Relevant Legal Authority

6. A Commission has broad discretion in disciplinary matters. Its role is not merely to determine whether the charged conduct in fact occurred, but to decide whether that conduct - measured against the criteria established in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 - demonstrates unfitness to teach. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220.)

7. Fitness to Teach: The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. Unfitness or fitness to teach is a question of ultimate fact. (*West Valley-Mission Community College Dist. v. Concepcion* (1993) 16 Cal.App.4th 1766, 1775, citing *Board of Education v. Jack M.*, (1977) 19 Cal.3d 691, 698, fn. 3.)

In *Board of Education v. Jack M.*, *supra*, the court delineated the process to be considered when determining fitness to teach. This opinion upheld the standard established in *Morrison*, that a discharged teacher is entitled to a fitness hearing in which not only his alleged conduct but the following factors must be analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of

conduct. These factors may be used to determine whether the teacher's future classroom performance is likely to meet the board's standards.

The *Morrison* factors can be applied to all the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

8. Evident Unfitness for Service: As a threshold matter, the *Morrison* criteria must be examined to determine whether the conduct in question indicates unfitness for service. "If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident,' i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland, supra.*, at p. 1445.)

Evident unfitness for service under Education Code section 44932, subdivision (a)(5), is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland, supra.*, at p. 1,444.)

Unlike unprofessional conduct, "evident unfitness for service connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*San Diego Unified School District v. Commission on Professional Competence (Lampedusa)* (2011) 194 Cal.App.4th 1454, 1462.)

The definition of "evident unfitness for service" does not include the terms "incompetent" and "physically or mentally unsound" since those characteristics are specified as separate causes for dismissal in the statute.

9. Persistent Violation: The word "persistent" is defined as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) A school district has the right to adopt rules governing the conduct of its employees and to require employees to observe those rules. Education Code section 44932, subdivision (a)(7), pertains to unintentional as well as intentional transgressions. The Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow the opportunity for a correction. It is the persistent disregard of school rules that the subsection is designed to regulate. (*Id.*, at p. 84.)

A violation of Education Code section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the district must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated

incidents or incidents involving an issue unresolved over a period of time are not generally considered “persistent.” (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

Evaluation and Analysis

EVALUATION OF THE FACTS

10. Respondent engaged in inappropriate discussions with his instructional aides and other district employees who were in his classroom to provide services to his students. From October 2014 to February 2015, these discussions were constant, and they negatively impacted respondent’s classroom environment. All parties, including respondent, agreed that the conversations about intimate details of respondent’s marital situation; that included sexually suggestive comments; that referenced his beliefs about his wife’s psychological status; and that discussed his efforts at dating; were inappropriate and did not belong in the educational environment. Respondent’s belief that the instructional aides were his friends does not justify his constant discussion of such personal matters during the school day and in his classroom.

Respondent testified that he spoke about his personal life before and after school, during breaks, and during times he was not responsible for supervising the students, for example when the students were supervised by the aides during bathroom breaks, recess and lunch, and when other employees were providing services to the students. This alleged mitigation does not diminish the wrongfulness of respondent’s conduct or provide a valid reason for respondent to be discussing intimate details of his life. Regardless of when during the day he made the comments, he created a stressful and unprofessional environment in his classroom. Significantly, respondent was paid for being a district employee from 7:45 a.m. until 3:15 p.m. each day; his students were in the classroom most days from 8:15 a.m. to 1:15 p.m. Respondent was not relieved of duty, nor was his compensation reduced, during times the students were not directly under his supervision or had been released for the day. He had a responsibility to the students, district employees and the district to remain focused on his teaching obligations and to use the time he was paid to improve the educational experience of his students.

11. Respondent similarly testified that his use of the classroom computer for personal reasons was mostly done during times he was not responsible for supervising students. The computer data for ten days of internet usage showed respondent’s pattern of usage. For the same reasons as those discussed above, respondent’s contention that use of the classroom computer for personal matters was somehow excused because he did that when he was not directly responsible for students is rejected.

12. Respondent made critical comments “under his breath,” but within the hearing of other aides and potentially students, about how Ms. Bautista handled Student M. Respondent was unprofessional in the manner in which he dealt with this situation. Respondent had very specific instructions about how to handle Student M. Ms. Bautista

decided she knew better than respondent, ignored his instructions and directly interfered when respondent was implementing his behavior modification strategies. In this situation, it would have been appropriate for respondent to counsel Ms. Bautista, but it was not appropriate to criticize her in front of other employees and refuse to speak to her.

13. The district did not meet its burden of proof that respondent's conduct in placing Student M outside the classroom, in an enclosed area and where he could be seen, for a short time was cause for discipline.

14. The district did not meet its burden of proof that respondent spoke improperly to students' parents. Witnesses to statements alleged to be improper, nonetheless agreed with the substance of respondent's comments. As with Student M, respondent held strong beliefs that, for the benefit of the student, the behavior modification strategies had to be employed 100 percent of the time, and if they were not, the student would regress. No evidence was presented that any parents complained of the way respondent treated them or that respondent was counseled about how he spoke to them. Respondent, however, presented evidence of appreciation shown to him from his students' parents.

15. The Notice of Charges alleges that respondent frequently text messaged his wife during instructional time, sang "last call for alcohol" when prompting students with "drinking" for the letter "D" of the alphabet, discussed his parents' divorce, and complained that his mother did not support him financially and did not offer to babysit his children. These allegations were not proven.

FITNESS FOR SERVICE AND APPLICATION OF MORRISON FACTORS

16. The district proved by a preponderance of the evidence that respondent's conduct caused by his emotional state during his divorce and interactions with his ex-wife during the months of October 2014 through February 2015, adversely affected district staff who worked with him to such an extent that they felt compelled to speak with the principal of the school and ask him to intervene.¹⁵ Respondent's conduct occurred during a time that he was under significant emotional stress, and it was limited in time to four and one-half months between October 2014 and February 2015.¹⁶ Respondent is aware of the impact his conduct had upon the district's staff. He has received and is continuing to receive psychological therapy. His divorce appears to be finalized and there was no evidence presented that suggested he is under the extreme emotional turmoil he experienced in late 2014. Based on these facts, it is unlikely he will engage in the inappropriate conduct in the future.

¹⁵ It is determined, however, that respondent's conduct was not the source of the conflict between himself and Ms. Knox in October 2014.

¹⁶ It is noted that the district was on winter break from December 19, 2014, to January 3, 2015.

The application of the *Morrison* factors results in a finding that the district failed to prove by a preponderance of the evidence that respondent is unfit to teach. It is likely that respondent's future classroom performance and overall impact on his students are likely to meet the board's standards. Respondent taught school for 18 years. But for his conduct from October 2014 to February 2015, respondent had an exemplary teaching record. No evidence of prior complaints, performance issues or discipline was presented. In fact, Dr. Barragan performed a formal evaluation of respondent in December 2014, after respondent had confided in him about the intimate details of his marital problems. Dr. Barragan's evaluation report was very complimentary of respondent and described respondent as an organized and effective teacher.

17. If respondent had been found to be unfit for service, to uphold a dismissal, the Commission would also be required to determine whether respondent's "unfitness" was "evident," i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland, supra.*, at 1,445.) Evident unfitness for service under Education Code section 44932, subdivision (a)(5), is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Ibid.*, at 1,444.)

Unlike unprofessional conduct, "evident unfitness for service connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*San Diego Unified School District v. Commission on Professional Competence (Lampedusa)* (2011) 194 Cal.App.4th 1454, 1462.) The definition of "evident unfitness for service" does not include the terms "incompetent" and "physically or mentally unsound" since those characteristics are specified as separate causes for dismissal in the statute.

The evidence presented at the hearing proved that respondent's inappropriate conduct was situational and temporary. The instructional aides told Dr. Barragan they were concerned about respondent's conduct because it was unlike his usual demeanor and they had noticed a sudden change. No evidence demonstrated that respondent suffered from a fixed character trait that was not remediable upon notice. Respondent was not given notice that his discussions about his personal problems were unwelcomed by, or offensive to, district staff. To the contrary, respondent confided in the district's administration and staff, who listened to him and tried to give him words of encouragement and support. Respondent told Dr. Barragan intimate details of his relationship with his wife, but Dr. Barragan did not tell respondent he should not speak of such things. Respondent first learned that his aides complained about him on Friday, January 30, 2015. Respondent was in the classroom for only three days after that, until he was placed on administrative leave on February 11, 2015. Prior to placing him on leave, the district did not tell respondent to stop talking about personal issues. He was not told to stop using the computer for personal research. He was not told his conduct was considered a violation of district policies and regulations. In 18 years of teaching, respondent had no prior written or oral warnings, counseling memoranda, or other discipline. The district failed to prove by a preponderance of the evidence that respondent was evidently unfit to teach in the district.

PERSISTENT VIOLATION OF POLICIES AND REGULATIONS

18. The District contended that respondent's conduct constituted a persistent violation of specific district policies and regulations. As noted above, the application of the *Morrison* factors results in a finding that the district failed to prove by a preponderance of the evidence that respondent is unfit to teach.

It is not disputed that the district has the right to adopt policies and require compliance with those policies. "Persistent" violations are those in which respondent refused to comply with district policies, continued his conduct when instructed to stop or constantly repeated violations of policy. The evidence did not support a finding that respondent knew or understood that his conduct could be interpreted as a violation of the very general language in the district's professional standards or civility policies and regulations. Nonetheless, a dismissal can be based upon unintentional violations of policies and regulations. Respondent testified that he understood his personal use of his classroom computer could be a violation of the district's use of technology policy, but that policy does not, on its face, prohibit all personal use of district computers. Respondent understood that his comment regarding "gulp, gulp" could fall under the district's sexual harassment policies.

19. Here, respondent was never counseled about his conduct and was not provided an opportunity to correct it. The admittedly inappropriate conduct committed by a teacher with 18 years of teaching experience, was limited to a brief period of time when respondent was under significant emotional stress; his actions were not motivated by a desire to offend district staff; and he was not asked to stop the conduct. It is significant that the instructional aides and others who went to the district's administration to "complain" about respondent, expressed their desire that respondent get help for his emotional problems. Instead, within a matter of a few days, respondent was removed from the classroom and placed on leave. It took the district another seven months to serve him with a Notice of Charges. Considering the totality of the circumstances, it is found that the alleged violations of the professional standards, use of district technology, sexual harassment¹⁷ or civility policies and regulations do not rise to the level of warranting dismissal.

Cause Does Not Exist to Dismiss Respondent from Employment

20. Cause does not exist for dismissal pursuant to Education Code section 44932, subdivision (a)(5), because respondent's conduct is not the result of fixed traits of character, temperamental defects or inadequacies.

¹⁷ The sexual harassment regulation requires the district to follow specific procedures, including conducting an investigation, preparing a written report and providing a copy of the written report to the alleged harasser. Other than mentioning that respondent was interviewed by an investigator, the district did not provide evidence of compliance with the terms of its sexual harassment policy.

21. Cause does not exist for dismissal pursuant to Education Code section 44932, subdivision (a)(7), because respondent's conduct was not a persistent violation of laws, rules, regulations and policies related to education.

ORDER

Christopher Munsterman's appeal of his dismissal from employment with the Oceanside Unified School District is granted. The district's request to dismiss Christopher Munsterman is denied. Christopher Munsterman shall not be dismissed from the district.

DATED: May 23, 2016

DocuSigned by:
Susan J. Boyle
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SUSAN J. BOYLE, Administrative Law Judge
Commission on Professional Competence

DATED: May 23, 2016

DocuSigned by:
Jana Hegg
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JANA HEGG, Member
Commission on Professional Competence

DATED: May 23, 2016

DocuSigned by:
Gary Brooks
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GARY BROOKS, Member
Commission on Professional Competence