

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

In the Matter of the Accusation and
Statement of Charges Against:

OAH No. 2014120109

ROBERT BELIVEAU,
A Permanent Certificated Employee,

Respondent.

DECISION

This matter was heard by the Commission on Professional Competence in Los Angeles on January 23, 2015, and February 2 – 4 and 6, 2015, under the authority of Education Code sections 44932 and 44939. The Commission was comprised of the following members: Kristi Harabedian, teacher, Los Angeles County Office of Education; Jeffrey Jacobs, retired teacher, Long Beach Unified School District; and Vincent Nafarrete, Administrative Law Judge, Office of Administrative Hearings.

Complainant Justo H. Avila, Chief Human Resources Officer, Los Angeles Unified School District, was represented by Mampre R. Pomakian, Assistant General Counsel. Respondent Robert Beliveau was present throughout the hearing and represented himself. He was assisted during the hearing by his spouse.

During the hearing, complainant presented documentary evidence and the testimony of several students as well as teachers and administrators. Respondent presented documentary evidence and the testimony of one witness. Respondent elected not to present any direct testimony but answered questions on cross-examination. He made several motions to dismiss the Accusation; his motions were denied.

On the last day of the hearing on February 6, 2015, complainant filed an Amendment and Request to Amend Portions of Accusation and Statement of Charges, which was marked as Exhibit 6B. Complainant's request to amend the Accusation and Statement of Charges to conform to proof presented at the hearing was granted.

Oral and documentary evidence having been received and oral argument heard, the Commission on Professional Competence submitted this matter for decision on February 6, 2015, conducted deliberations on February 10, 2015, and finds as follows:

FACTUAL FINDINGS

1. The Commission on Professional Competence takes official notice that, on December 12, 2014, the Accusation and Statement of Charges, Case Number 2014120109, was made and filed by complainant Justo H. Avila in his official capacity as the Chief Human Resources Officer of the Los Angeles Unified School District (District). With administrative offices located at 333 South Beaudry Avenue in Los Angeles and schools throughout the Los Angeles area, the District is one of the largest comprehensive school districts in the nation.

2. At all times relevant herein, respondent Robert Beliveau has been employed as a permanent certificated employee of the District. He was hired by the District on or about January 15, 1997, to teach at the elementary school level. He became a permanent certificated employee of the District on July 1, 2001. Eleven years later, on July 1, 2012, respondent was assigned or volunteered to be a pool or contract pool teacher after he was displaced from his elementary teaching position following teacher layoff proceedings. From July 1, 2012, through the present time, in his capacity as a contract pool teacher, respondent has served as a substitute teacher for the District at several of its elementary schools, which largely have been located in the San Pedro and Los Angeles Harbor areas. He is assigned or volunteers for substitute teaching assignments on a daily basis by checking the District's Sub-Finder system. Respondent has been a credentialed teacher for an undetermined number of years.

State and District Policies

3. (A) In October 2009, the Commission on Teacher Credentialing published the California Standards for the Teaching Profession (California Standards), which state, in part, that teaching is a professional endeavor in which the effective practice thereof is driven by an understanding of knowledge in the field and a commitment to all students and their families. The California Standards provide, in part, that effective teaching requires careful crafting of learning communities built on trust and respect as well as routines, expectations, resources, and strategies that support diverse students' intellectual engagement in learning. Effective teaching is said to occur through thoughtful planning and is revealed in the ways in which teachers respond to the strengths and needs of individual students while engaging and supporting all students in their learning.

(B) The California Standards provide for six interrelated standards of teaching practice. Standard Number 2 requires the creation and maintenance of effective environments for student learning. Under Standard Number 2.1, teachers are expected to promote social development and responsibility within a caring community where each student is treated fairly and respectfully. Under Standard Number 2.2, teachers should create physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students. Under Standard

Number 2.3, teachers should establish and maintain learning environments that are physically, intellectually, and emotionally safe.

4. Under its Employee Code of Ethics, the District is committed to three core ethical principles: commitment to excellence, district and personal integrity, and responsibility. For the core ethical principle of commitment to excellence, the District and its employees are to be committed to being the best school district and personnel and to educating students to their maximum potential. Everything that employees do is said to have an impact on the classroom. Employees must be committed to creating an environment of trust, care, and respect. Discriminatory or harassing behavior of students or colleagues is not tolerated. For the core ethical principle of integrity, the District and its employees are to be committed to ensuring that employee-student relationships are positive, professional, and non-exploitative. For the core ethical principle of responsibility, the District and its employees are to be responsible for their performance. The District and its employees must ensure that power and authority are used in an appropriate and positive manner that enhances the public interest and trust.

5. The District has promulgated a Code of Conduct with Students in which the District has resolved that the most important responsibility of the District is to ensure the safety of its students. While the cultivation of positive relationships with students is encouraged, employees and all individuals who work with or have contact with students are expected to use good judgment and are cautioned to avoid situations, including engaging in any behaviors with students or in the presence of students, that are unprofessional, unethical, illegal, immoral, or exploitative. District employees are also cautioned against making statements or comments in the presence of students which are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning.

6. In a Resolution adopted on October 10, 1988, the Board of Education of the District reaffirmed its policy that students and adults in both schools and offices should treat all persons equally and respectfully and should refrain from the willful or negligent use of slurs against any person (Board Resolution).

7. In a Policy Bulletin dated February 23, 2010, entitled, "Abolition of Corporal Punishment," the District reaffirmed its policy against the use of corporal punishment, in any form, as a disciplinary option at any grade level and with any student. Corporal punishment is defined as the willful infliction of, or willfully causing the infliction of, physical pain on a pupil. Under this policy, corporal punishment refers to the intentional application of physical pain as a method of changing behavior. In this Policy Bulletin, the District encourages the use of positive approaches to discipline and classroom management to ensure that students conform to proper and expected standards of behavior that permit them to derive greater benefits from the educational program.

8. The District's Employee Code of Ethics, Code of Conduct with Students, the Board Resolution re-affirming its commitment to the policy that all persons should be treated respectfully, and the policy for the Abolition of Corporal Punishment constitute reasonable

regulations prescribed for the governance of the schools of the District by its governing board. As a permanent certificated employee of the District, respondent was required to abide by these policies or regulations of the District. As established by his testimony, at all times relevant herein, respondent has been familiar with these District policies.

Cabrillo Elementary School

9. On October 3, 2012, respondent was assigned to and performed teaching duties as a substitute teacher for Ms. Bertane's third grade class at Cabrillo Elementary School.¹ Afterwards, a parent complained to Principal Ursula Martin about respondent's conduct. The principal spoke to students in Ms. Bertane's class about respondent, obtained written statements from them, and prepared a written summary of the statements. On November 9, 2012, Principal Martin conducted a conference with respondent and prepared a conference memorandum. The principal and three students testified at the hearing. The conference memorandum, written statements, and respondent's response were admitted into evidence.

10. (A) On October 3, 2012, while acting as a substitute teacher at Cabrillo Elementary School, respondent engaged in unprofessional conduct as follows: When the third grade students did not stop talking with each other or pay attention to him in class, respondent yelled and screamed at the students. When the students were standing in line, respondent yelled at them to stop talking. He yelled at one student when the student stood up to get a pencil. In addition, respondent put his fingers to his mouth and whistled loudly at the students to get their attention. Three students complained that respondent's loud whistles hurt their ears. The students thought respondent was mad at them. Some of them noticed that respondent's neck became red in color when he yelled at them. The students were scared by respondent's yelling and loud whistles.

(B) On October 3, 2012, respondent used and directed inappropriate language and engaged in other unprofessional conduct towards the third grade students. When the class got loud, respondent said, "Shut up!" to quiet the students. He said the words "shit" and "stupid" aloud in the classroom. Respondent told the students that they were the "worst" class that he had ever taught and that they were "stupid" and "dumb." He told the class that, unless they quieted down, they would not be going outside for physical education. Respondent slammed his hand down on a desk, making a loud noise. A female student, A.C., had written an essay about her family's trip to Mexico. After he read it, respondent told the student to write it again because there were too many misspellings and then he ripped up the essay in front of the student.

(C) It was not established that respondent told the students that he didn't care if people were bullying them a lot.

¹ The first or full name of the teacher, Ms. Bertane, was not established by the evidence.

(D) As a result of respondent's unprofessional conduct, students were made to feel sad and believed respondent did not care about them. Student W.A. became sad and scared when respondent yelled at the class. A.C., whose essay was ripped up by respondent, told the principal that she did not want to return to school. Another female student cried because she thought it was her fault that respondent yelled at the class.

11. (A) At the November 9, 2012 conference, Principal Martin reviewed and discussed respondent's conduct as a substitute teacher in Ms. Bertane's third grade class. The principal offered assistance and guidance by reviewing the District's Code of Conduct with Students, the Board Resolution for the respectful treatment of all persons, California Standard Number 2, and the District's Employee Code of Ethics. The principal directed respondent to refrain from making inappropriate statements to students and to follow the Code of Conduct with Students.

(B) During the conference, respondent was not receptive to the principal's suggestions or directives. He appeared angry and upset. He complained that Ms. Bertane's classroom had no classroom roster, schedule, or lesson plans, and that the students were not respectful, talked all day, and would not quiet down. He described the class as the "most misbehaved class" and that he felt like a "detention hall teacher" and a "piñata." Respondent told the principal that he had to walk a "big African American boy" to the school office and had a difficult time because the student was "sprawling" all over the place. Respondent admitted that, at the end of the day, he stopped being nice and told the class how he felt about them. He admitted that he got mad and raised his voice because the students would not quiet down. At the conference, respondent did not deny any of the students' complaints about him.

12. (A) Based on Findings 9 – 11 above, respondent's conduct at Cabrillo Elementary School on October 3, 2012, in yelling and whistling loudly at students and using and directing inappropriate and derogatory language at the students was inappropriate, negative, and demeaning and constituted unprofessional conduct in violation of the District's Employee Code of Ethics and the Code of Conduct with Students.

(B) Based on Findings 9 – 11 above, respondent's conduct at Cabrillo Elementary School on October 3, 2012, in which he yelled and whistled loudly at students, used and directed inappropriate and derogatory language at the students, and ripped and threw away a student's essay was inappropriate and disrespectful and constituted violations of the Board Resolution that District personnel must treat others with respect.

13. On November 27, 2012, respondent prepared a written response to the November 9, 2012 conference and the summary prepared by Principal Martin. Respondent wrote that the students in Ms. Bertane's class were loud, unruly, and unmanageable because they had not been taught how to properly behave in the classroom or how to be responsible for their own academic success. He stated that, because of the students' "loud and ungoverned behavior" and "booming voices," he had to raise his voice to preserve a "safe and classroom environment." Respondent admitted that he was "forced to whistle" at the

end of the day because the students were still loud and his voice became tired from trying to communicate with them. Respondent complained that he could not find any support because the administrators were absent from school that day and he became stressed. He claimed that he maintained a professional demeanor and that he was patient and kind throughout the school day. Respondent's characterizations of the students and his claim of not being able to find administrative support did not mitigate or excuse his unprofessional conduct and violations of the District's Employee Code of Ethics, Code of Conduct with Students, or the Board Resolution. His claim that he acted professionally at Cabrillo Elementary School on October 3, 2012, was self-serving and not supported by the evidence.

Barton Hill Elementary School

14. On October 10, 2012, respondent was assigned by the District to be a substitute teacher for a third grade classroom at Barton Hill Elementary School. The assistant principal, Rosemarie Eisner, walked into respondent's assigned classroom during instructional time and found the students running around, shrieking, and using adhesive tape to try to catch tiny insects which were crawling on the desks and flying about the classroom. Other students were scratching themselves and yelling that they were itchy from the bugs. Respondent had instructed the students to try and catch the insects in order to distract and calm them down. He did not call the school office upon seeing the insects in the classroom.

15. (A) It was not established that respondent's conduct in directing or allowing students in his classroom to catch the insects with adhesive tape, while other students were shrieking and yelling that they were itchy, constituted unprofessional conduct. Nor did respondent commit unprofessional conduct or violate any school rule by not immediately calling the office upon seeing the insects in his classroom. The sudden and unexpected appearance of the insects in the classroom caused an uproar among the students and respondent's conduct was not an unreasonable measure or reaction under the circumstances to gain control or management of the classroom.

(B) It was not established that, on October 10, 2012, respondent gave candy to students in violation of any state school or District policy.

16. (A) On October 10, 2012, upon seeing the students trying to catch the insects in respondent's classroom, Assistant Principal Eisner told respondent to call the operations coordinator. She returned to her office and arranged for respondent to move his class to the computer laboratory for the rest of the day. Shortly thereafter, the assistant principal called respondent in the classroom but no one answered. Respondent had taken his class outside to begin recess early due to the presence of the insects. The assistant principal went to the classroom and found it empty. She asked the school office to page respondent on the loudspeaker system and tell him to come to her office. Respondent returned the page and stated to the assistant principal that he could not come to her office during recess. Assistant Principal Eisner told respondent that he should come to her office to discuss the move of his class to the computer laboratory and to pick up the key to the computer laboratory.

Respondent replied that he could not walk to the assistant principal's office because he had a neck problem.

(B) Assistant Principal Eisner then met respondent in a hallway to discuss the plan for the rest of the school day. Respondent spoke to the assistant principal in a loud and angry tone. He was argumentative and talked over the assistant principal, interrupting her and choosing not to listen to what she had to say to him. Respondent stated that the assistant principal's plan was ridiculous, that the school was unkempt, and that he was going to complain to the District. He complained that there were no lesson plans for him to follow in the classroom. When the assistant principal told respondent that she was trying to help him, respondent replied that he was helping her by being there at the school as a substitute teacher. The assistant principal walked with respondent to the computer laboratory where they found another teacher already there with her class. When the assistant principal asked the other teacher to help respondent access internet websites, he interrupted and talked over the administrator, complaining and venting his anger in front of the other teacher. Subsequently, the assistant principal moved respondent and his class to a classroom in a bungalow.

17. (A) On November 7, 2012, Assistant Principal Eisner held a conference with respondent to discuss his conduct. A specialist from Teacher Quality and Staffing and the operations coordinator were also present at the conference. The assistant principal reviewed respondent's conduct on the day when the insects invaded his classroom and when she tried to help him to move to the computer laboratory. The assistant principal offered assistance and guidance to respondent by reviewing the District's Employee Code of Ethics and the Board's Resolution for the respectful treatment of all persons. The assistant principal reminded and directed respondent to follow all administrative directives and to cooperate and follow instructions and directives of administrators. Respondent was told to treat everyone in a respectful and professional manner, not to yell or raise his voice at students or adults, and not to talk over others. He was instructed not to use students to clean classrooms or to remove insects and not to put them in possibly harmful situations.

(B) At the start of the November 7, 2012 conference, respondent immediately interrupted the assistant principal and would not let her start the conference. He said that the assistant principal was "making up stories [that were] not true" and he was not there to be subjected to "slanderous accusations." Respondent further stated that the school was mismanaged and unkempt with insects and urine stains in the hallway. He added that the teacher for whom he substituted had no lesson plans and that he was moved to a room with asbestos that caused him to have health problems. Respondent apologized for being disrespectful but added that he had a passion for teaching and he felt he was being disrespected. Respondent told the assistant principal and the two other District employees in the conference that he "probably [had] more years teaching than the three of [them] put together." The assistant principal felt respondent acted in an unprofessional and disrespectful manner during the conference. He was arrogant and demeaning.

18. Based on Findings 16 – 17 above, respondent’s conduct and interaction with Assistant Principal Eisner on October 10, 2012, at Barton Hill Elementary School in which he refused to go to the administrator’s office to pick up a key, spoke to and interrupted the administrator in a loud and angry tone, and complained in front of another teacher, was inappropriate and disrespectful and constituted unprofessional conduct. Respondent’s conduct violated the District’s Employee Code of Ethics and the Board Resolution that District personnel treat others with respect. Respondent was likewise disrespectful towards the assistant principal during the November 7, 2012 conference.

19. In a written response following the November 7, 2012 conference, respondent stated that, on October 10, 2012, he and his class were not given access to the computer laboratory and were sent to the bungalow without any teaching materials or student books. He complained that, although the Assistant Principal had good intentions, she had “little capacity to offer any actual support beyond further exacerbating the situation.” He said the assistant principal’s suggestions were “puzzling,” she made the problems worse, and she caused him “discomfort and chaos.” Respondent wrote that, after working the day at Barton Elementary School, he was ill for over one month. Respondent’s written statement did not mitigate or excuse his violations of the Employee Code of Ethics or the Board Resolution.

15th Street Elementary School

20. (A) On January 22, 2013, respondent served as a substitute teacher for a second grade classroom at 15th Street Elementary School in San Pedro. At the end of school day, respondent left the classroom and was walking down the hallway when he met Imelda Mack, a third grade teacher who was standing outside her classroom. Ms. Mack asked respondent how his day went and how a certain student had behaved that day. The classroom for which respondent was a substitute teacher that day was known to have students who misbehaved.

(B) In response to Ms. Mack’s query, respondent stated that the certain student had behaved so badly that the student acted as if his “cojones” [testicles] were hurting him. Respondent gestured or pointed towards his own groin and private parts as he made this statement. Ms. Mack was made to feel very uncomfortable by respondent’s inappropriate and offensive statement and gesture. She thought that the conversation was over and entered her empty classroom.

(C) Respondent, however, followed Ms. Mack into her classroom and closed the classroom door behind him. He then stated to Ms. Mack what he disliked about the District and its schools. He told Ms. Mack about the allegations or accusations that the District had made against him and the issues that he had with Barton Elementary School. Ms. Mack listened to respondent and felt uncomfortable by respondent’s complaints as well as by his presence in her classroom. Respondent stayed in her classroom for approximately 10 minutes. He did not leave Ms. Mack’s classroom until a male teacher entered and then

respondent left suddenly. Ms. Mack found the classroom contact with respondent to have been strange and unsettling.

21. On or about April 3, 2013, respondent was again assigned to be a substitute teacher at 15th Street Elementary School. Gordon Berg, a third grade teacher, went into the classroom where respondent was substitute teaching and began talking with him. Respondent criticized the teacher for whom he was substituting by saying to Mr. Berg that the colleague taught writing incorrectly. Respondent stated that he had to correct the colleague's teaching techniques.

22. (A) One week later, on April 10, 2013, respondent returned to 15th Street Elementary School for another substitute teaching assignment. He was assigned to be a substitute teacher for Mr. Berg's third grade class. Mr. Berg had to take an emergency absence and did not leave a lesson plan book. However, Mr. Berg had put test practice packets for the upcoming California Standardized Tests (CST) on a table. The students had been working on the test practice packets for the past week. In addition, the students kept their "Measuring Up" books with them at their desks. Mr. Berg also left lesson plans on the District's Sub-Finder system, telling any substitute teacher that the students should work on the test practice packets, Measuring Up books, spelling packets, and language arts and math assignments.

(B) Upon meeting the students in the classroom, respondent introduced himself as "Mr. Be Quiet" and wrote that name on the white board. He did not find any lesson plan book. He apparently had not accessed the Sub-Finder system to listen to or obtain Mr. Berg's lesson plans. Students told respondent that they had been working on their Measuring Up books and told respondent where they had last worked in the books. In response, respondent told the students that the Measuring Up books were "junk." When the students asked if they should work on the spelling packets that Mr. Berg had prepared or disseminated to them, respondent replied that the spelling books were "stupid," "dumb junk," and "a waste of time." He tossed the spelling packet or packets into a trash can in front of the students. The spelling packets contained students' classroom and homework assignments in various subjects. Respondent did not use the CST practice test packets, Measuring Up books, or spelling packets to teach the students that particular day.

(C) During the school day, respondent told the students that they were not going to work on the CST practice tests but, instead, would work on math. He gave the students math problems or lessons that involved the multiplication of large numbers. As third graders, the students had only learned to multiply single digit numbers. The students had not yet learned how to multiply larger numbers and were confused by respondent's math assignment. When a student stated that the math problem was for fourth grade students and was too hard, respondent stated in a loud voice, "You will learn what I teach you." Respondent's assignment of fourth grade or higher grade level math was not appropriate for the third grade students.

(D) On the walls and white boards of his classroom, Mr. Berg had placed or taped large paper charts that contained instructions or lessons for the students in math and reading. Respondent tore the charts off the walls and white boards and threw the charts onto the floor, where they remained for the rest of the school day.

23. (A) On April 10, 2013, respondent verbally and physically mistreated and abused individual third grade students in Mr. Berg's class. He would not allow student C.C. to work on her spelling packet. He said that the student's spelling packet and homework were "junk," threw her packet into a trash container, and called C.C. a "bitch." He told student A.O. that her spelling packet was a "nightmare" and "boring." He then took A.O.'s spelling packet from her desk and threw the packet by the student's face such that the edge of the packet scratched A.O.'s right cheek. It was not established that respondent slapped A.O. on the face.

(B) Before recess, respondent had the students line up at the classroom door. Respondent told student K.V. to unlock the classroom door so that the class could go outside and he threw keys at K.V. The keys struck K.V. in the head at his right temple. In response, respondent stated, "You better catch them the next time." Later, K.V. asked respondent if he could go to the restroom; respondent would not let the student go to the restroom. During recess, student N.L. got hit in the face by a ball and, when the student asked, respondent would not allow N.L. to go to the nurse's office for a medical evaluation and called N.L. "stupid." While N.L. was sitting at his desk, respondent hit N.L.'s hand with the spelling packet. At one point during the school day, the students were lined up on the stairs leading to the classroom. Respondent told student J.H., who was standing on the stairs or an upper landing, to open the classroom door. He then threw the keys toward the student. The keys hit J.H. on her shoes and dropped down the stairs. Respondent directed J.H. to come down the stairs and fetch the keys.

24. On April 10, 2013, respondent made additional remarks to the students that were demeaning, disrespectful, and inappropriate. He told the students that they were the "worst class ever" and "stupid" and that they would never get promoted past the third grade. He described the classroom as "messy" and the overhead projector as a "piece of junk." Respondent criticized the students' teacher by saying that Mr. Berg had not taught them well. He told the class that they would fail the CST. On three or four occasions, respondent told the students to "shut up." For example, he told students J.P. and A.S, "Shut up, blabber mouths" when the two girls were talking in class. While he was sitting in the classroom, respondent stated aloud, "Oh bitch, my ass hurts." At the end of the school day, respondent handed out candy to the students.

25. (A) It was not established that, on April 10, 2013, respondent told the class that they were "idiots" and "a bunch of kindergarten kids," addressed student S.D. as "yellow," or called student N.L. "stupid" when the student did not know how to do a fourth grade math assignment.

(B) It was not established that, on April 10, 2013, respondent told the students in Mr. Berg's class that they were "horrible and annoying" or the "dirtiest class." Nor was it established that respondent directed student A.S to help her classmates with a math assignment or yelled at the student when she did not do a math problem correctly.

(C) It was not established that, on April 10, 2013, respondent caused students to be tardy to an intervention class by telling the students to wait until the teacher called the classroom. Nor was it established that respondent had the students write the alphabet and the numbers one to 10 as many times as possible despite the students' protests that they already knew the alphabet and the numbers.

26. The next day, April 11, 2013, Mr. Berg returned to his classroom and found his charts on the floor. The students voiced complaints about respondent. Mr. Berg told the principal about the students' complaints that respondent had said that their spelling packets were "garbage." The teacher asked that respondent not be allowed to act as a substitute teacher any longer at 15th Street Elementary School. Principal Jennifer Mak spoke to Mr. Berg and to the students about their complaints. She had Mr. Berg obtain written statements from the students.

27. (A) On April 12, 2013, respondent was again assigned to act as a substitute teacher at 15th Street Elementary School. When she learned that morning that respondent was returning to her school, Principal Mak asked a school administrative assistant to instruct respondent when he arrived that he was to wait in the school office because she wanted to talk with him before he went to his assigned classroom. Principal Mak had to first conduct a school assembly. At approximately 7:45 a.m., respondent arrived at the school for his substitute teaching assignment. He obtained the key and the attendance list for his assigned classroom from the school administrative assistant who gave him the principal's instructions.

(B) However, rather than wait in the school office as directed, respondent went out to the school yard and confronted Principal Mak who was getting ready for the school assembly. He asked the principal why he had to wait and speak with her before going to his classroom. Principal Mak informed respondent that she wanted to discuss the concerns that were raised by Mr. Berg and his students when he acted as a substitute teacher two days earlier. Respondent told the principal that she had to put her directive in writing and that he had a right to have a union representative present during any discussion. Principal Mak told respondent three times to go and to wait for her in the school office. Finally, respondent said that he felt sick and could not take the substitute teaching assignment at her school that day. He told the principal to find another substitute teacher and left the yard. He went to the school office and returned the key and attendance list to the school administrative assistant. He told the school administrative assistant that he was not feeling well and was leaving, and that the school should find another substitute teacher.

(C) At 8:00 a.m., the school bell rang and Principal Mak opened and began leading the assembly in the school yard. Students, staff, and parents were present. The principal planned to present the award for the "Citizen of the Week." However, respondent

had returned to the yard and began pacing back and forth near the area where the principal was standing and in front of the entire student body. The principal saw respondent pacing back and forth. After pacing for one minute, respondent went to the main building of the school but returned again to the schoolyard 30 seconds later. He stood in front of the second grade class for a minute and then walked back to the main building. Parents, students, and teachers noticed respondent's pacing. Principal Mak asked a program advisor to finish leading the assembly; she cut short her presentation so that she could talk with respondent. The principal called and told the school administrative assistant to call the school police and report respondent's "strange behavior."

(D) At 8:12 a.m., the school administrative assistant encountered respondent in front of the principal's office as he was leaving the assembly. Respondent asked if she had found a substitute teacher to replace him. Principal Mak returned to her office just as respondent was talking to the school administrative assistant. Respondent stated to the principal that he still was not feeling well and was leaving. The principal released respondent from his substitute teaching assignment and escorted him off the school campus. As he was walking, respondent kept saying to the principal that she was "harassing" him and making him feel very anxious. Respondent then asked the principal, in a disrespectful tone, to unlock the gate by the kindergarten yard. The principal directed respondent to go to the staff parking lot and asked a building and grounds worker to stand guard in the staff parking lot to make sure that respondent left the school. The principal went to the staff parking lot to check on respondent and saw that respondent was still there. In a loud and angry tone, respondent said to the principal, "You are still harassing me. Stop harassing me!" He then got into his car, drove off, and left the school at 8:15 a.m. Principal Mak found that respondent did not follow her directive to wait for her in the school office and was insubordinate. She also believed that respondent disrupted the school assembly and acted in an erratic and unprofessional manner.

28. On April 23, 2013, Principal Mak conducted a conference with respondent to discuss his conduct on the three days that month when he was assigned as a substitute teacher at 15th Street Elementary School, as described in Findings 21 – 27 above. A District representative and union representative were also present. During the conference, the principal offered assistance and guidance to respondent and issued directives. Respondent was instructed, in part, to use standards-based lessons and to provide instruction and assignments to students which are appropriate to their grade level. He was directed, in part, to follow District and school policies, obey directives of the principal, not throw objects at students, maintain a climate in the classroom that promoted fairness and respect, and conduct himself in a professional manner. In response, respondent told the principal that she did not impart fairness and respect, that the principal or the students were making up stories and lies, and that the complaints against him were exaggerations and falsehoods.

29. (A) Based on Finding 20 above, respondent's conduct and interaction with teacher Mack at 15th Street Elementary School on January 22, 2013, when he used an inappropriate term in referring to a student's private parts, gestured towards his own private parts, and then stated what he did not like about the District and its schools, was

inappropriate and disrespectful and constituted unprofessional conduct. Respondent's conduct violated the District's Employee Code of Ethics calling for the creation of a trusting, caring, and respectful school environment, and the Board Resolution requiring respectful treatment of all persons.

(B) Based on Finding 21 above, respondent's conduct and interaction with teacher Berg at 15th Street Elementary School in April 2013, when he criticized the regular teacher in the classroom in which he was acting as a substitute teacher, was inappropriate and disrespectful and constituted unprofessional conduct. Respondent's conduct violated the District's Employee Code of Ethics calling for the creation of a trusting, caring, and respectful school environment, and the Board Resolution requiring respectful treatment of all persons.

(C) Based on Findings 27 – 28 above, respondent's conduct and interaction with Principal Mak on April 12, 2013, at 15th Street Elementary School, when he failed to follow her directive to wait in the school office, disrupted a school assembly, turned down a substitute teaching assignment that he had already accepted, and spoke to the principal in a loud and angry voice, was inappropriate and disrespectful and constituted unprofessional conduct. Respondent's conduct violated the District's Employee Code of Ethics requiring that employees create a trusting, caring, and respectful school environment, and the Board Resolution that District personnel treat all others with respect. Respondent was likewise disrespectful towards Principal Mak at the April 23, 2013 conference when he asserted that the principal was unfair and disrespectful and made up lies against him.

30. (A) Based on Findings 22 – 25 above, respondent's conduct at 15th Street Elementary School on April 10, 2013, when he told students that his name was "Mr. Be Quiet," made derogatory remarks about and threw away the regular teacher's and students' school work books and packets, tore down the regular teacher's charts and criticized the classroom, failed to follow the regular teacher's lesson plans, verbally and physically abused students, and used and directed derogatory language at the students, was inappropriate, negative, immoral, disrespectful and constituted unprofessional conduct. Respondent's conduct violated the Employee Code of Ethics, Code of Conduct with Students, and the Board Resolution calling for the respectful treatment of all persons.

(B) Based on Findings 22 – 25 above, respondent's conduct at 15th Street Elementary School on April 10, 2013, when he hit two students with keys that he had thrown at them, did not allow a student to go to the school nurse, did not allow a student to go to the restroom, hit a student's hand with a spelling packet, and hit a student's face with a spelling packet, constituted corporal punishment and violations of the District's policy against corporal punishment.

31. (A) In an undated letter to Principal Mak following the April 12, 2013 conference, respondent complained that he had worked with said principal for six years at Lomita Math and Science Magnet School and, yet, she never greeted or smiled at him at 15th Street Elementary School. He indicated he never felt welcomed as a substitute teacher at

15th Street Elementary School. Respondent accused Principal Mak of having a “poisoned perspective” and making false accusations against him.

(B) With respect to the substitute teaching assignment in Mr. Berg’s classroom, respondent described the teacher’s classroom as “cluttered with broken technology.” He said Mr. Berg’s charts were “plastered” on the chalk boards, were poorly written and unreadable, and were lacking in insight and educational benefit. Respondent asserted he was not given any lesson plans, schedule, or educational materials other than the “rubbish” that was “piled up in huge mess.” Respondent also criticized Principal Mak of being unable to maintain a tidy work space for herself, which he attributed to the principal’s tendency to overlook Mr. Berg’s inadequacies and inability to keep a clean classroom. Respondent claimed that he commented on the “inadequacies” of the spelling packets because not every student had one and he had brought his own lessons with him. He stated that he has always seriously considered the health and safety of the students and would no longer share his “objective thoughts” about the public schools with other teachers who do not “welcome [a] purposeful dialog.” Respondent’s letter to the principal did not mitigate or excuse his unprofessional conduct at 15th Street Elementary School in April 2013.

Park Western Elementary School

32. (A) On April 22, 2013, respondent was assigned to be the substitute teacher at Park Western Elementary School for an upper grade, special education class that served and taught students with moderate to severe intellectual disability. He had been a substitute teacher at the school on several prior occasions. At the beginning of the school day on April 22, 2013, Cathy Howard, the primary teacher for the special education class, advised respondent that the students needed to follow a certain routine and a structured schedule and that Gordana Bezmalinovich, the teacher’s assistant, knew the routine and schedule and would help and guide respondent. The routine included having the students act as monitors or leaders for different parts of the daily schedule. In addition, Howard informed respondent that the students had work folders that contained their individual assignments. Howard then left the classroom.

(B) The special education class, which was comprised of 12 or 13 students, began the school day by having breakfast and using the restroom. Next, Bezmalinovich began the routine that the students knew well by bringing a student to the front of the class to act as a calendar monitor, and then starting a review of the days of the month and the daily news. Rather than allow Bezmalinovich to complete this part of the schedule, respondent stepped in front of the teacher’s assistant and interrupted her. He asked the students whether certain days of the month were odd or even numbers. Respondent’s attempt to teach odd and even numbers was misplaced, for this math concept was above the abilities of the special education students and inappropriate for them. The students were puzzled by respondent’s lesson.

(C) Respondent remained at the front of the special education class and continued teaching or lecturing the students without taking heed of their need for routine and structure. Bezmalinovich tried to get respondent's attention to tell him that the students needed to proceed to the next phases of the class routine and tried to tell respondent about the class schedule. Respondent ignored the teacher's assistant. Bezmalinovich became concerned because respondent would not let her guide him to the next phases of the students' schedule, which included appointing students to perform duties as the daily news monitor, office monitor, and recycling monitor. These classroom monitor jobs were important to the special education students because they earned the right to be monitors by their classroom performance or behavior. The students became confused and uneasy with the change in their daily routine and schedule.

(D) Next on their schedule, the special education students were supposed to perform individual work in reading and writing which was contained in their work folders. Bezmalinovich tried to show the students' work folders to respondent, but he said, "Never mind. I brought my own papers to do." Respondent proceeded to teach math to the students at a level which was above their educational or cognitive abilities. He did not have the students perform their reading and writing assignments. The students became frustrated. Bezmalinovich had to spend time keeping the students calm. She kept trying to tell respondent about the classroom schedule and what the students' routines and assignments were for the school day but respondent kept ignoring her. Bezmalinovich became frustrated as well and found that respondent did not even try to work with her or enlist her assistance with the special education students. Bezmalinovich had been a teacher's assistant in a special education classroom for 15 years and never had such an experience with a substitute teacher.

(E) Throughout the school day on April 22, 2013, respondent gave candy to the students. On a previous assignment at the school, respondent had been told by the principal, Rena Fairchild, not to give candy to the students due to health concerns about possible allergies, as described in Finding 33(A) below. The provision of candy to the special education students was inappropriate in that the classroom had a disciplinary structure based on classroom rules and the rewarding of stickers, fake money, and "Goldfish" crackers to those students who followed the rules, helped others, and were respectful to others. Respondent failed to follow the principal's directive and undermined the classroom disciplinary structure.

33. (A) On an undetermined date in April 2013, Principal Fairchild learned that respondent had given candy to students as a treat. The principal held an informal talk with respondent and directed him not to give candy to students as a reward or treat because he did not know whether the students were allergic to the candy.

(B) On April 25, 2013, respondent was again assigned to be a substitute teacher for a kindergarten teacher at Park Western Elementary School. When he arrived in the classroom before 8:00 a.m., respondent did not find any lesson plans. At 8:15 a.m., another kindergarten teacher brought him a schedule. Respondent thanked the teacher for the

“plans” and the other teacher said the papers were a schedule and not a lesson plan. Respondent replied the papers “were no help anyway” and said he “was just being polite.” His statement to the other kindergarten teacher, who was just trying to help him, was impolite and disrespectful.

(C) At 9:00 a.m., the lesson plans prepared by the regular teacher for the school day arrived in respondent’s kindergarten class. Principal Fairchild visited the class before the morning recess and found that respondent was not following the lesson plans. Upon seeing the principal, respondent forcefully handed a paper to the principal and asked her to make copies for him. The principal asked respondent if the paper was part of the lesson plans that he received earlier. Respondent replied that he could not understand the lesson plans. He then aggressively handed the lesson plans to the principal and told her to try and make sense of the lesson plans. Principal Fairchild reviewed the lesson plans, found them to be thorough, and directed respondent to follow the lesson plans. Respondent replied that he found it difficult to follow lesson plans when they don’t arrive until an hour after the start of school. The principal told respondent to review the lesson plans, and she began teaching math to the kindergarteners as outlined in the lesson plans in order to give respondent the time to review the lesson plans. Respondent reviewed the lesson plans and re-assumed teaching the class. The principal left the classroom.

(D) After lunch around 1:00 p.m., Principal Fairchild returned to respondent’s classroom. Respondent was not teaching from the lessons plans but, instead, was having the kindergarteners write numbers on worksheets which he had brought to the classroom. In other words, respondent had disobeyed the principal’s directive to teach the students in accordance with the lessons plans. When respondent was leaving the school that day, Principal Fairchild asked respondent to meet with her in informal conference so that she could discuss his conduct and teaching that day. Respondent became angry, told the principal that they had already talked during the day, and refused to meet with her without a union representative being present. He left the school without meeting with the principal.

34. (A) On May 22, 2013, Principal Fairchild held a conference with respondent to review his conduct during his two substitute teaching assignments at Park Western Elementary School in April 2013. A teacher’s union area representative and a school operations coordinator were also present for the conference. The principal discussed respondent’s conduct on April 22 and 25, 2013, described above.

(B) With respect to his conduct in the special education class, respondent stated that Bezmalinovich’s statements were not true and that the teacher’s assistant had made up “nonsense to fit her needs.” With respect to his giving candy to students on April 22, 2013, respondent replied that the principal was treating him unequally and with prejudice. He stated that other persons bring candy to the classroom and that he was giving out candy that he found in the classroom to create a positive classroom environment and to help the students to succeed. Respondent claimed that the principal had not provided him with reasonable accommodations and had a personal agenda that he found “despicable.” With respect to his conduct on April 25, 2013, respondent stated that there were no lesson

plans in the classroom when he arrived that morning, that the lesson plans did not arrive until later in the morning so that he could read them before the start of class, and that the classroom was chaotic.

(C) During the conference on May 22, 2013, Principal Fairchild directed respondent to treat all staff and students respectfully and to follow the lesson plans written by the regular teacher. If he had any questions about the lesson plans, respondent was directed to ask an administrator or a buddy teacher for assistance. Principal Fairchild also reviewed the Board Resolution regarding the respectful treatment of all persons and the Employees Code of Ethics. The principal felt respondent's conduct during the conference was confrontational.

35. Based on Finding 32 above, respondent's conduct in the special education class at Park Western Elementary School on April 22, 2013, when he interrupted and failed to follow the guidance offered by the teacher's assistant, failed to follow the regular teacher's instructions that the students needed routine and structure, and failed to implement the lesson plans, and, instead, tried to teach the student math which was above their abilities, was inappropriate and disrespectful and constituted unprofessional conduct. The special education students became frustrated and the teacher's assistant became upset. Respondent's conduct violated the District's Employee Code of Ethics calling for the creation of a trusting, caring, and respectful school environment and positive relationships, and the Board Resolution requiring respectful treatment of all persons.

36. Based on Findings 33 – 34 above, respondent's conduct and interactions with Principal Fairchild at Park Western Elementary School in April 2013 were inappropriate, disrespectful, and insubordinate. He failed to follow the principal's directive not to give candy to students, aggressively handed papers to the principal and demanded that she make copies for him, failed to follow the principal's directive to implement the lesson plans delivered to the classroom, and angrily refused to meet with the principal at the end of the school day. Respondent was likewise disrespectful towards the principal during the May 22, 2013 conference when he accused her of having a despicable personal agenda. Respondent's conduct was unprofessional and violated the District's Employee Code of Ethics calling for the creation of a trusting, caring, and respectful school environment and positive relationships, and the Board Resolution requiring respectful treatment of all persons.

37. On June 17, 2013, following the conference at Park Western Elementary School, respondent sent a written response to Principal Fairchild. With respect to the kindergarten class, respondent complained that the lesson plans that the principal directed him to follow did not arrive until 9:00 a.m. and he did not have a chance to review them before the start of school. He stated that the principal continued to interrupt his instruction while she tried to confer with him and direct him to follow the lesson plans. Respondent claimed that he "politely asked" the principal to make copies of a math lesson because she kept interrupting his teaching and distracting the students. With respect to the special education class, respondent characterized the teacher's assistant as unkind and said that she did not help and lost control of the students because she became frustrated. Respondent

wrote that he continued to conduct himself in a professional manner and did not break any District policies. He asserted that he did not do anything wrong, lamented a lack of support and professional development training, and claimed that he was being subjected to harassment and retaliation because of his work-related injury. Respondent concluded his response by stating that he was dedicating his time and money to offering support to the students of the District through his on-line website called “Mr. Beequiet.com.”

Notices and Statement of Charges

38. (A) In or before May 2014, the District re-assigned respondent to the Educational Service Center South, Human Resources Division, pending an investigation of allegations of inappropriate conduct.

(B) At a conference on May 8, 2014, the District served respondent with a Notice of Unsatisfactory Acts and a Notice of Suspension which set forth causes of unprofessional or immoral conduct and persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the governance of public schools by the State Board of Education or the governing board of the District. The Notice of Unsatisfactory Acts and the Notice of Suspension alleged 45 charges or incidents, and attached to the Notices were conference memoranda, witness statements, evaluations, notices, and documents evidencing the provision of assistance and guidance to respondent. Under the Notice of Unsatisfactory Acts and the Notice of Suspension, a school administrator recommended that respondent be dismissed from the District and suspended for 15 days. Respondent received copies of the Notices and attachments thereto at the conference.

(C) On June 3, 2014, the District held a Skelly hearing or meeting on the charges contained in the Notice of Unsatisfactory Acts and Notice of Suspension. The charges were affirmed following the Skelly hearing or meeting. On June 5, 2014, respondent acknowledged that he received the Notice of Unsatisfactory Acts and Notice of Suspension.

(D) On August 4, 2014, respondent was directed to remain at home during his re-assignment to the Educational Service Center South. On November 17, 2014, respondent took a two-day leave of absence from his job with the District due to illness, injury, disability, or a medical appointment.

39. (A) On October 31, 2014, the Statement of Charges was made and filed by Justo H. Avila in his official capacity as the Chief Human Resources Officer of the District. Said administrator alleged that cause existed under Education Code sections 44932 and 44939 to suspend and dismiss respondent from his employment, and verified on information and belief that the charges were true and correct.

(B) On November 18, 2014, the Statement of Charges was presented and filed with the Board of Education of the District at a closed session meeting. Pursuant to the

action and resolution of the Board of Education, the District duly notified respondent of the Board's intention to dismiss him from his employment within 30 days unless he demanded a hearing.

(C) On or about December 1, 2014, respondent filed a Request for Hearing, acknowledging receipt of the Notice of Intention to Dismiss and Statement of Charges and demanding a hearing under Education Code sections 44930 through 44988 to determine whether there was cause to dismiss him from his employment with the District. This matter ensued.

Respondent's Evidence

40. (A) On May 19, 2003, respondent received a satisfactory evaluation of his teaching performance at the Lomita Math and Science Magnet School for the spring 2003 semester. The evaluation showed, in part, that respondent adhered to curricular objectives, provided an effective classroom environment, and maintained appropriate professional relationships and communications with students, parents, and staff. He was commended for delivering a standards-based curriculum to students of diverse backgrounds and abilities.

(B) On June 13, 2005, the assistant principal at Lomita Math and Science Magnet School conducted an evaluation of respondent's teaching of reading and math during the spring 2005 semester and issued an Evaluation of Instructional Personnel. Respondent was observed in the classroom on two occasions and had two conferences. He was found to have met all expectations or standards. For example, he was found to have prepared lessons designed to stimulate and challenge his students and implemented classroom procedures and routines that supported student learning. Respondent was commended for his teaching strategies and promotion of a high level of student achievement.

(C) On December 17, 2008, due to an allegation regarding a student, the District temporarily assigned respondent to the Local District 8 Office in Gardena. He was directed, in part, not to go to the campus of the Lomita Math and Science Magnet School. On October 5, 2009, after an investigation of the student's allegation was completed, the District re-assigned respondent to Amestoy Elementary School as a contract pool teacher.

(D) On June 21, 2010, respondent received a satisfactory evaluation of his performance as a contract pool teacher in English Language Arts and reading laboratory at Amestoy Elementary School. He met all of the performance standards, including supporting student learning and planning and designing instruction. Respondent was commended for being helpful in ancillary work duties.

(E) On July 1, 2010, respondent was re-assigned to Compton Elementary School. For the 2011-2012 school year, he was assigned to be a contract pool teacher at Crestwood Elementary School.

41. In support of his desired continued employment with the District, respondent presented several complimentary notes written by students from a class that he taught in December 2013. In addition, respondent presented a character reference letter from Madelyn Luera dated December 10, 2012. Luera was or is a teacher of special education students in the fourth through sixth grades at Crestwood Street Elementary School. Respondent collaborated with and helped Luera for two school years. Luera found respondent was a very helpful and knowledgeable teacher who was able to modify and compartmentalize the lessons or curriculum to meet the students' individual goals. He prepared many structured lessons in math, implemented behavioral strategies, and provided praise and encouragement to the students. Luera described respondent as a well organized, hard working, and great teacher. Respondent presented one witness, Martin Oghigian, Jr., a former certificated employee of the District. Respondent and Oghigian met in 2008 when they were both reassigned to the Local District 8 Office. Respondent attempted to elicit testimony from Oghigian about his own disciplinary case and his personal opinions about the District, but those lines of inquiry were not allowed on the grounds of relevance.

42. During his case-in-chief, respondent took the witness stand but then stated that he was not going to present any direct testimony but would answer questions on cross-examination by the District's counsel. As established by his testimony, with respect to his substitute teaching assignment at Cabrillo Elementary School in October 2012, respondent admitted that he whistled loudly at the students in class but he did so because the students were loud and he wanted to quiet them down and gain their attention. He does not believe that whistling at the students was demeaning. He denied yelling at the students but stated that he raised his voice so that he could gain control of the classroom. He denied telling the students that they were the "worst class ever" but admitted using the word "stupid" to possibly refer to lesson plans and to attempt to be humorous.

43. (A) As further established by his testimony, respondent is familiar with and knows the requirements of the California Standards and the District's Employee Code of Ethics, Code of Conduct with Students, and Policy against corporal punishment, and the Board Resolution abolishing corporal punishment. Respondent testified that he did not violate any of the District's policies. He stated that he did not throw objects at students or engage in corporal punishment. Respondent testified that classrooms were not clean and he was not given reasonable accommodations for his disability or medical condition or sufficient time to prepare for classes. He stated that he had cause to refuse a substitute teaching assignment due to the lack of reasonable accommodations.

(B) Respondent presented no probative evidence about any medical condition or work-related injury or any requests for reasonable accommodations. He did wear a neck brace and a medication patch on his neck at times during the hearing and appeared at times to be in discomfort. While he was relatively candid in his testimony and argument, respondent demonstrated no remorse for or insight into any of his actions that were the subject of the Accusation and Statement of Charges, and he was, at times during the hearing, not respectful of the proceedings.

44. In his closing argument, respondent argued that he has always wanted to be a teacher but the District prevented him from doing his job as a teacher by maintaining unkempt and disorganized classrooms, allowing teachers to prepare inadequate lesson plans, and having inadequate educational supplies. He contended that he was prevented from becoming a full-time teacher and was not provided with professional development training. He argued that he was afforded no respect as a pool or substitute teacher and was subjected to harassment and discrimination due to his disability or work-related injury and his status as a veteran teacher earning a higher salary. None of respondent's arguments or contentions that he made during his closing argument were established or supported by the evidence in this matter. During his closing argument, respondent did state that he tossed keys to a student and said "shut it," but did not say "shut up" to students.

45. Allegations contained in the Accusation and Statement of Charges for which there are no specific findings in this Decision were deemed unproven or considered irrelevant or surplussage upon consideration of all of the evidence.

* * * * *

Pursuant to the foregoing findings of fact, the Commission on Professional Competence makes the following determination of issues:

LEGAL CONCLUSIONS

1. Complainant has the burden of proof in this matter because the District is seeking to dismiss respondent from his employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(4), for unsatisfactory performance as a contract pool teacher and substitute teacher for the District, based on Findings 1 – 44 above.

Under Education Code section 44938, subdivision (b), the governing board of a school district shall not act upon any charges of unsatisfactory performance, unless it acts in accordance with the provisions of either subdivision (b)(1) or (b)(2). Under subdivision (b)(1), the governing board or its authorized representative must give written notice of the unsatisfactory performance at least 90 calendar days prior to the date of the filing, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and to overcome the grounds for the charge. The written notice shall include the evaluation and assessment of the performance of the certificated employee under Education Code section 44660 et seq.

Under section 44938, subdivision (b)(2), the governing board or its authorized representative may act during the time period composed of the last one-fourth of the school days it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the governing board or its authorized representative has given the employee written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and to overcome the grounds for the charge. The written notice shall include the evaluation and assessment of the performance of the certificated employee under Education Code section 44660 et seq.

In this matter, on May 8, 2014, a school administrator held a conference with respondent and served him with the Notice of Unsatisfactory Acts and the Notice of Suspension. The notices alleged causes for dismissal and suspension and set forth 45 charges or incidents and included conference memoranda, written witness statements, evaluations, and notices containing assistance and guidance that were previously provided to respondent. Six months later, on November 18, 2014, and following a Skelly hearing or meeting, the District filed the Statement of Charges with the governing board and notified respondent of the intention to dismiss him from his employment. On December 12, 2014, the Accusation and Statement of Charges was duly made and filed. The evidence demonstrated that the District gave prior written notice to respondent of the charges of unsatisfactory performance as required by Education Code section 44938 and may act upon the charges. Respondent's conduct as a contract pool teacher and substitute teacher demonstrated unsatisfactory performance, as forth in Conclusions of Law 3 – 7 below.

3. Cause exists to dismiss respondent from his employment pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, for immoral conduct in that it respondent inflicted physical abuse and corporal punishment upon elementary school students, based on Finding 30(B) above.

In general, immoral conduct has been defined as that which is hostile to the welfare of the general public and contrary to good morals. Immorality is not confined to sexual matters but also includes conduct indicative of corruption, indecency, depravity, dissoluteness, willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community and an inconsiderate attitude towards good order in the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811.) Respondent inflicted physical abuse and corporal punishment upon elementary school students by throwing a spelling packet and scratching a student's face, hitting a student on his head with keys, and not allowing a student to go to the restroom. Respondent's disregard of the safety of the students as well as the District's policy for the abolition of corporal punishment demonstrated a callousness and predilection to use physical force that was immoral for a school teacher.

4. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(7), for his persistent violation of

or refusal to obey reasonable regulations prescribed for the governance of the schools of the District by its governing board, based on Findings 12, 18, 29, 30(A), 35, and 36 above.

Under Education Code section 44932, subdivision (a)(7), the violation must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

On several occasions from October 2012 through June 2013 and at four separate elementary schools, respondent violated the District’s Employee Code of Ethics, Code of Conduct with Students, Board Resolution for the respectful treatment of others, and the District’s policy for the Abolition of Corporal Punishment. Respondent’s violations of these policies and regulations of the District were persistent and ongoing throughout the 2012-2013 school year. He persisted in and continued disregarding and violating these policies and regulations despite having been counseled and directed to comply with the policies and regulations in conferences with school site administrators. Respondent ignored the assistance, guidance, and directives and did not reform his conduct.

5. Cause exists to dismiss respondent from his employment with the District pursuant to Education Code section 44932, subdivision (a)(1), for unprofessional conduct, based on Findings 12, 18, 29, 30, 35, and 36 above. In this matter, the clear preponderance of the evidence showed that respondent, a substitute elementary school teacher, engaged in unprofessional conduct by speaking disrespectfully to and about administrators and colleagues, disobeying directives of administrators, failing to follow or to implement lesson plans prepared by the regular classroom teachers, yelling at and speaking in a demeaning manner to students, and engaging in corporal punishment or physical abuse of students.

Under Education Code section 44938, subdivision (a), the governing board of a school district shall not act upon any charges of unprofessional conduct, unless at least 45 calendar days prior to the date of the filing, the governing board or its authorized representative has given the employee written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. Thus, section 44938, subdivision (a), requires a school district to give a 45-day written notice of the charges of unprofessional conduct against a permanent certificated employee. Here, the District gave respondent the requisite prior written notice of the charges of unprofessional conduct, as discussed in Conclusions of Law 2 above.

As one of the specific grounds for which a permanent certificated employee may be dismissed from employment under Education Code section 44932, unprofessional

conduct has a broad import, for it refers generally to conduct demonstrating unfitness. However, a particular act or omission on the part of a teacher may constitute not only unprofessional conduct but also evident unfitness for service and a persistent violation of or refusal to obey prescribed rules and regulations. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174-1175; *Board of Education v. Swan* (1953) 41 Cal.2d 546, 551.) Unprofessional conduct may be viewed as a lesser included form of proscribed behavior within evident unfitness for service. Conduct constituting evident unfitness for service will often constitute unprofessional conduct, but the converse is not true. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445.)

6. Cause exists to dismiss respondent from his employment pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service in that respondent engaged in conduct which demonstrated that he is not fit to be a teacher due to a defect in temperament that cannot be remedied, based on Findings 12, 18, 29, 30, 35, and 36 above.

Evident unfitness for service means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th at pp. 1444-1445.) Unlike unprofessional conduct, evident unfitness for service connotes a fixed character trait, not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Id.* at 1444.)

In general, the determination of evident unfitness requires an analysis based on the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, to decide whether, as a threshold matter, the questioned conduct of a permanent certificated employee indicates unfitness for service. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) 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 Joint Unified School Dist.*, *supra*, 2 Cal.App.4th at p. 1445.)

In the *Morrison* case, the California Supreme Court held that where charges of immorality or unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the person is fit to teach. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d. at p. 229.) The terms immoral or unprofessional conduct have been held too vague, standing alone, and must be applied to a specific occupation and given context by reference to fitness for the performance of that occupation. (*Basset Unified School Dist. v. Commission on Professional Competence* (1988) 201 CalApp.3d 1444, 1453.) The *Morrison* case requires that the determination whether a person is fit to teach be based on an objective and analytical approach consisting of a review of the teacher's conduct and an assessment of a variety of specific criteria which include: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the respondent; (4) the existence of extenuating or aggravating circumstances and publicity,

if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. These factors assist a board of education in determining whether a teacher's fitness to teach, and whether the teacher's future classroom performance and overall impact on his or her students are likely to meet the standards of the board of education. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at pp. 229- 230.)

Based on the mandatory application of the *Morrison* standard, the Commission on Professional Competence has broad discretion in matters of teacher discipline and dismissal. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220.)

7. Discussion—The preponderance of the evidence showed that, during the 2012-2013 school year, respondent engaged in inappropriate conduct with students, teachers, and administrators, which violated the District's policies and codes for ethical conduct, professional conduct with students, respectful conduct towards others, and avoidance of corporal punishment. Respondent engaged in his conduct on several occasions at four schools and even after he was given assistance and guidance not to engage in such conduct.

A review of respondent's conduct under the *Morrison* factors demonstrates that his conduct was unprofessional and that he is unfit for service as a teacher. First, respondent's conduct in the classroom adversely affected students and fellow teachers. Students were made to feel sad and scared by respondent's yelling. One student's face was scratched when respondent threw her spelling packet. Students became frustrated when respondent failed to follow their regular routine and the lesson plan suggested by the regular teacher. A teacher was made to feel uncomfortable by respondent's inappropriate comments and gestures. Another teacher found that posters that he placed in his classroom had been torn down by respondent and left on the floor. Second, respondent's conduct was proximate in time, having occurred over the course of one school year from October 2012 through June 2013, which was only two years ago. Third, respondent holds a credential to teach elementary school, which allows him to continue to teach and affect young students.

Fourth, there were aggravating factors to respondent's conduct. He hurt children by throwing objects such as keys and a work packet. He yelled at students and spoke to them in derogatory and demeaning ways. He introduced himself to a class as "Mr. Bee Quiet," which was inappropriate, for such a name would have suggested to the children that he did not want to hear anything from them. He taught math to students that was beyond their grade level or cognitive ability. Fifth, respondent's motives for engaging in his unprofessional conduct were not praiseworthy but selfish. He was apparently frustrated by his assignment as a contract pool teacher and substitute teacher and his inability to find or to move into a full-time teaching position at an elementary school within the District. Rather than perform his substitute teaching assignments in a professional manner and try to build a

reputation as an effective and thoughtful teacher who is respectful and trustworthy, respondent chose to take out his frustrations on young students who were impressionable and vulnerable. In addition, respondent demonstrated that he is incapable of being a cooperative and helpful member of a school faculty. He constantly spoke in a disrespectful tone and manner to site administrators and failed to comply with their directives, such as to follow lesson plans and not to give out candy to students.

Sixth, there is a strong likelihood that respondent's unprofessional conduct would recur or continue despite the passage of time or even with additional assistance or guidance or professional development. On several occasions, respondent sat for conferences with school administrators and given guidance and assistance. In those conferences and in the hearing in this matter, respondent failed to take responsibility for his actions which were detrimental to the educational process and the development of the children. He tended to blame the students for talking too much and for not paying attention to him, the regular classroom teachers for purportedly being unprepared or incompetent, and the administrators for allegedly interfering with his assignments. Respondent did not demonstrate any insight into the effect that his conduct could have on the students or show any remorse for his actions. Seventh, disciplinary action would not have an adverse impact or chilling effect on respondent's constitutional rights.

Based on the foregoing analysis under the factors set forth in the *Morrison* case, the preponderance of the evidence demonstrated that respondent's conduct was unprofessional and indicative of unfitness for service. Respondent's yelling at and speaking to the students in a demeaning manner and his infliction of corporal punishment on students were particularly troubling, for such conduct shows that he lacks the compassion and patience to be an effective teacher of children. He is also easily frustrated and can become confrontational and argumentative with administrators. Respondent's unfitness for service is evident, arises from these defects in his temperament, and cannot be remedied with further guidance or training, especially in the absence of any recognition on his part of his wrongdoing. As such, respondent is deemed evidently unfit to serve as a certificated employee for the District and must be terminated from his employment with the District.

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WHEREFORE, the Commission on Professional Competence makes the following Order:

ORDER

Accusation and Statement of Charges, Case Number 2014120109, filed and issued by complainant Justo H. Avila, Chief Human Resources Officer, on behalf of the Board of Education of the Los Angeles Unified School District, and against respondent Robert Beliveau, is sustained, based on Conclusions of Law 1 – 7 above, jointly and for all. Respondent Robert Beliveau is terminated or dismissed as a permanent certificated employee of the Los Angeles Unified School District.

Dated: 5/4/2015



Kristi Harabedian, Commission Member
Teacher, Los Angeles County Office of Education

Dated: 5/4/2015



Jeffrey Jacobs, Commission Member
Retired Teacher
Long Beach Unified School District

Dated: May 4, 2015



Vincent Nafarrete, Commission Member
Administrative Law Judge
Office of Administrative Hearings