

**BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
SACRAMENTO CITY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Dismissal Against:**

**JONATHAN HUBBARD, Respondent**

**OAH No. 2019120095**

**DECISION**

This matter came on for hearing before the Commission on Professional Competence (Commission) in Sacramento, California, on July 9, September 14, through September 18, and October 9, 2020. The Commission was comprised of Andrea Rodriguez, Lily Walker, and Administrative Law Judge Dena Coggins.

Ryan Harrison and Steven Ngo, Attorneys at Law, represented the Sacramento City Unified School District (District).

Michael McCallum, Attorney at Law, represented respondent Jonathan Hubbard (respondent), who was present at the hearing.

Oral and documentary evidence was received. The Commission met to deliberate. The matter was submitted for decision on December 10, 2020, following the Commission's deliberations.

## **MOTIONS TO DISMISS, OR, IN THE ALTERNATIVE, TO STRIKE**

A. On January 23, 2020, respondent moved to dismiss the charges against him asserting the District is seeking to dismiss him based upon charges that are the result of respondent's mental health issue ( [REDACTED] ). Respondent argues that dismissing him on the basis of conduct caused by his disability is akin to dismissing him for his disability, and as such, would constitute a violation of both federal and state law, specifically the Americans with Disabilities Act, and the Fair Employment and Housing Act.

As will be discussed in the Decision below, respondent failed to establish that his [REDACTED] caused his conduct at issue. Accordingly, the District is not seeking to dismiss respondent based upon charges that are the result of his mental health issue. Therefore, the motion to dismiss is denied.

B. On January 23, 2020, respondent moved to dismiss the charges against him, or, in the alternative, to strike certain charges, asserting the charges upon which the District is seeking to dismiss him were not previously included in respondent's personnel file, and thus cannot form the basis of discipline against him per *Miller v. Chico* (1979 23 Cal.3d 703) (*Miller*), and a provision of the Collective Bargaining Agreement between the District and the Teachers' Union.

*Miller* held that a school administrator must be permitted to review and comment on derogatory written material compiled and maintained by a school district even though the material was not properly in his personnel file and that an employment decision could not be based on such information unless the employee was notified of the derogatory information and was afforded an opportunity to comment on it. (*Id.* at p. 707.)

None of the authorities cited by respondent preclude discipline based on information that is not contained in respondent's personnel file. Education Code section 44031 and article 10.2 of the Bargaining Contract (Contract) simply require that an employee be permitted to review and comment on derogatory information before the information is placed in the employee's personnel file. Article 10.2.2 of the Contract further provides that if information is placed in the employee's personnel file before the employee is given an opportunity to review the information, such information cannot be used as a basis for discipline. *Miller* expands on these requirements by holding that even if information is not contained in a personnel file the employee must be given an opportunity to review and comment on it before an employment decision can be made based on the information. In this case, respondent is fully aware of the conduct that is the basis for the proposed discipline (dismissal) because he has defended it in the validation meeting, Skelly meetings, and letter to the Commission on Teacher Credentialing. Moreover, respondent is being afforded an opportunity to review and comment on all of the information that forms the basis for the proposed discipline pursuant to this dismissal proceeding, which is all that is required by the authorities cited by respondent. The motion to dismiss the charges against him, or, in the alternative, to strike certain charges, as to this issue is denied.

## **FACTUAL FINDINGS**

1. Respondent has been employed by the District as a credentialed art teacher at McClatchy High School (McClatchy), in Sacramento, California, beginning in the 2014/2015 school year. Respondent has a single subject art credential, which authorizes him to teach art in grades twelve and below, including preschool, and in classes organized primarily for adults. He also has a multiple subject teaching

credential, which authorizes him to teach all subjects in a self-contained class and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades twelve and below, including preschool, and in classes organized primarily for adults. In addition, this credential authorizes the holder to teach core classes consisting of two or more subjects to the same group of students in grades five through eight, and to teach any of the core subjects he or she is teaching to a single group of students in the same grade level as the core for less than fifty percent of his or her work day.

2. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

3. In 2018, respondent engaged in conduct involving then-current and former students, which he believes was caused by his [REDACTED]. There is no dispute that the conduct occurred. The issue that must be resolved is whether that conduct was the result of respondent's [REDACTED].

### **Statement of Charges**

4. On July 1, 2020, Cancy McArn, the Chief Human Resources Officer for the District, signed and subsequently filed the Notice of Intent to Dismiss; Placement on Immediate Unpaid Suspension Pending Outcome of Disciplinary Proceedings; and

Third Amended Statement of Charges against respondent. The Board alleged respondent violated multiple sections of the Education Code, including immoral conduct, evident unfitness for service, dishonesty, and persistent violation of or refusal to obey laws of the State or reasonable regulations prescribed for the government of the public schools by the State Board or by the governing board of the school district employing him. (Ed. Code, §§ 44932, subds. (a)(1), (4), (6), and (8), 44939.) Specifically, the Third Amended Statement of Charges alleges respondent sent unsolicited sexually explicit messages and content to current and former students on Instagram, had inappropriate conversations with students, posted inappropriate photos and photo comments on Instagram that were visible to current and former students, verbally disparaged his ex-wife during class instruction, and made dishonest statements to the District to conceal or otherwise absolve his culpability for his conduct.

5. The District served the Third Amended Statement of Charges on respondent on July 2, 2020. Respondent timely returned a demand for hearing and notice of defense. A hearing before the Commission followed.

## Mental Health History

6. [REDACTED]

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\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

8.

[REDACTED]

9. The District was unaware of respondent's [REDACTED] until January 2019, when it learned from respondent's mother that he had a mental health issue.

## **Instagram**

10. Instagram is a software application (app) photo and video sharing social networking service offered to the public. The app allows users to upload photos and videos that are posted on the user's account and can be shared publicly or to pre-approved users. Individuals that are able to view content on an Instagram user's account are called followers. Generally, followers can view content posted by an Instagram user and make comments on photos or videos posted by the user. An Instagram direct message is a private message sent between Instagram users. Instagram users can also communicate privately amongst themselves by way of direct messaging or by "reacting" to content posted by other users.



## **Conduct at Issue**

### **STUDENT TESTIMONIES**

11. [REDACTED] M [REDACTED] testified at the hearing. She was a high school student at McClatchy between 2014 and 2018. Respondent was her teacher in the 2016/2017 (junior year) and 2017/2018 (senior year) school years. She was 17 years old in December 2018.

12. Ms. M [REDACTED] had an Instagram account while a junior and senior at McClatchy. Respondent also had an Instagram account, which his students (then-current and former) followed. Ms. M [REDACTED] followed respondent's Instagram account, but she did not recall whether she did so before or after she graduated high school.

13. Ms. M [REDACTED] was a member of student government during her senior year; respondent was her student government teacher. Respondent did not communicate with student government students regarding school-related activities through his Instagram account when she followed his account between 2016 and June 2018.

14. Sometime between the Summer and Fall 2018, after her graduation from McClatchy, Ms. M [REDACTED] saw a photo respondent posted of himself holding a marijuana cigarette while in boxer shorts with no other clothes. The photo had text added to it that said "hit me up," which she understood to be an invitation for others to communicate with respondent. During the same time period, she also saw a video post by respondent on his Instagram with a marijuana cigarette in his mouth. She considered these photos to be "shocking" and "odd."

15. Ms. M [REDACTED] also saw a comment made by respondent on an unknown woman's photo on September 17, 2018, that said, "betchu look amazing first thing in the morning, no makeup. no frills. no clothes." Ms. M [REDACTED] found the comment "shocking." Also, around September 26, 2018, she saw respondent post another comment on an unknown woman's photo who was in a bikini stating, "lets [s/c] go rough it somewhere in the wild[.]" Ms. M [REDACTED] described the comment as weird and inappropriate. Around the same time period, Ms. M [REDACTED] saw respondent's comment on a photo of an unknown woman, stating "I would spread you on a cracker with a touch of marmalade and caviar and swallow you with a glass of dom P to wash it all down . . . ." Regarding respondent's photo comment, Ms. M [REDACTED] said it was "not something I want to read from my teacher." The only way Ms. M [REDACTED] could have seen the photo comments was if respondent shared the comment posts on his feed for his followers to see.

16. In December 2018, respondent sent Ms. M [REDACTED] an Instagram direct message. Respondent wrote "no one can do what i [s/c] can to you. nobody." The comment made her feel "uncomfortable." Ms. M [REDACTED] responded, "No thanks I'm 17[.]" Respondent responded, "bullshit" . . . "lie. Come to santa cruz or maybe im in Santa Barbara or on some college campus." He further wrote, "gotta ditch [REDACTED] tho[,] verrry d8stespectful [s/c][,] he might end up in a bad way, [let me know] when you want 2 come thru." Ms. M [REDACTED] had a boyfriend at the time, who was a senior at M [REDACTED] and in one of respondent's classes.

17. Ms. M [REDACTED] recalled respondent talking about his personal life more than she observed with other teachers. She knew that he was on bad terms with his estranged wife and they had child custody issues.

18. K [REDACTED] B [REDACTED] testified at the hearing. She attended McClatchy from 2014 to 2018. She was not one of respondent's students but she went to his classroom to "hang out" every day during her junior and senior years of high school. She and respondent began following each other on Instagram at the end of her senior year. In June 2018, Ms. B [REDACTED] remembered observing barely clothed women, marijuana, girls in sexual positions, and bondage photos on respondent's Instagram account. She did not expect to see this sort of content on a teacher's Instagram page, which she described as "gross."

19. On December 26, 2018, respondent sent Ms. B [REDACTED] a direct message. Respondent asked respondent, "How come youre [sic] so damn fine?" He then stated, "like, fuck, youre [sic] HELLA fine . . . jus being honest sorry . . . you should slide up in this all black truck tho [sic]." Ms. B [REDACTED] responded, "1.) my names not k [REDACTED] it's K [REDACTED] 2.) youre [sic] a teacher[,] 3.) youre [sic] married." He then stated, "1.) my bad 2.) hi K [REDACTED] 3.) Not a teacher anymore 4.) Not married 5.) Sup [sic] w[ith] it, want to drink some topshelf with me?" When she responded that she does not drink and that she is underage, respondent wrote, "ok. Lets [sic] smoke . . . we can binge watch some Game of Thrones[,] you can drink some tea or eat some mushrooms[, w]hatever works." Respondent then asked Ms. B [REDACTED], "can i come swoop you? want to hit tahoe? Or we can just catch a movie[,] youre [sic] super beautiful cant [sic] lie[.]" She responded, "That wouldn't work out[.]"

20. Ms. B [REDACTED] described being surprised, put-off, and confused by the direct messages from respondent, and believed respondent to be "really old" at the time. Respondent also sent a high school photo of himself to her. Although Ms. B [REDACTED] had graduated from McClatchy at the time she received the messages, she was 19 years old and not of legal drinking age.

21. While a senior at McClatchy, Ms. B [REDACTED] remembered walking down the hallway with friends when respondent approached her and stood "close" to her. He told her he liked her makeup and that it was "really pretty" on her. She felt uncomfortable because of how close he stood to her. It made her feel "small and grossed out." She felt respondent was "invading [her] personal space."

22. D [REDACTED] W [REDACTED] testified at the hearing. She was a student at McClatchy, and graduated in 2019. She was in respondent's ceramics class during the 2017/2018 school year, her junior year, and in student government with respondent as her teacher during the 2018/2019 school year, her senior year.

23. She recalled respondent talking about his personal life in class, including calling his wife a "bitch" in front of the class on at least two occasions. She was "in shock" when respondent made these comments.

24. During her senior year, she saw the photo respondent posted on Instagram of himself holding a marijuana cigarette; the same photo Ms. M [REDACTED] saw on Instagram. Ms. W [REDACTED] had been following respondent's Instagram account since her junior year, and respondent followed Ms. W [REDACTED] Instagram account. She also saw the pictures respondent posted on Instagram of himself in boxer shorts while smoking marijuana and of respondent with a marijuana cigarette in his mouth. She saw the same comments as Ms. B [REDACTED] that respondent made on photos of unknown women in the Fall 2018.

25. Z [REDACTED] P [REDACTED] testified at the hearing. She was a high school student at McClatchy during the 2016/2017 school year, her junior year; and the 2017/2018 school year, her senior year. She graduated in June 2018. Respondent taught her art design computer class during her senior year. Ms. P [REDACTED] followed respondent's

Instagram account her senior year, and he followed her back. She thought he was a "cool" teacher at the time. She described thinking of him back then as a friend, outgoing and positive. He talked to her about her interest in motocross and he encouraged her to continue pursuing a motocross career. During her senior year, respondent told Ms. P ■ he wanted to buy her a dirt bike, which costs between \$6,000 and \$8,000. Also, during the last two weeks of her senior year, respondent invited Ms. P ■ on a beach vacation to Santa Cruz; the conversation occurred after class at respondent's desk.

26. During the summer following her high school graduation in 2018, respondent sent Ms. P ■ direct messages on Instagram. In those messages, he wrote that he missed her and asked her to come smoke with him. He also said "come kick it" and "I can swoop." He called her "beautiful" and "fine as fuck." He also sent her a photo of himself. He sent Ms. P ■ a "kissy face" emoji after she posted a picture of herself at the gym. In November 2018, respondent sent other messages to Ms. P ■ telling her that he was in London and planned to get a place in Santa Cruz in December.

27. T ■ W ■ testified at the hearing. She graduated from McClatchy in 2017; respondent was her art teacher during the 2016/2017 school year, her senior year. She followed him on Instagram during her senior year, and continued to follow him after she graduated. She saw sexual content on respondent's Instagram account in the Fall 2018.

28. In November 2018, respondent sent Ms. W ■ a direct message, telling her she was "beautiful." The message made her feel uncomfortable. She asked him to stop messaging her. He responded by calling her a "punk" and told her to stop

following his Instagram account. He also said, "u should really hang out tho [sic]." Ms. W■■ contacted law enforcement regarding the messages from respondent.

### **TESTIMONY OF PARENTS**

29. K■■ M■■ testified at the hearing. She is the mother of B■■ J■■, a former student of respondent at McClatchy. Respondent sent Ms. J■■ an Instagram direct message on December 21, 2018, asking her if she wanted to "kick it this Sunday" to "catch a movie or something." He asked her to text message him and told her "[i]f you tell D■■ we're hanging out or anyone else for that matter it's a no go." He wrote, "you know youre [sic] gorgeous right?" He also sent her hyperlinks to two songs, titled "Fucking" and "Front, Back and Side to Side." The lyrics of Fucking are the following, in part:

[G]irl, you know what I think you should do right now?

You should just take off all your clothes, every article of clothing

Except for the, leave the pumps on girl, I like that . . .  
(We should be fuckin)

On da bed on da couch now . . .

Let the boys make love, let me fuck ya from da back

Hair pullin', hot wax, they won't do it like dat . . .

30. B■■ J■■ was a student at McClatchy between 2015 and 2019, she graduated in June 2019. Ms. J■■ prepared a declaration that was admitted in evidence at the hearing that detailed her interaction with respondent on Instagram.

She resides out of the state, so was unable to attend the hearing. She was in student government with respondent during the 2017/2018 school year and 2018/2019 school year.

31. Ms. J [REDACTED] informed her mother, Ms. M [REDACTED], of what had occurred on Instagram between herself and respondent. Also, Ms. J [REDACTED] notified several teachers at school and filed an incident report at McClatchy detailing the Instagram conversation with respondent. Ms. J [REDACTED] was 17 years old at the time respondent sent the messages and songs to her. Ms. M [REDACTED] was emotional and visibly angry and upset when she testified about the songs respondent sent to her minor daughter.

32. Ms. J [REDACTED]'s father, S [REDACTED] J [REDACTED] W [REDACTED], testified at the hearing. He was aware of the Instagram messages respondent sent to his daughter. He described feeling infuriated, enraged, disappointed, and upset. He felt heartbroken that this incident occurred by a teacher he trusted to care for his daughter. His trust in the school was betrayed and his daughter was victimized.

### **TESTIMONIES OF PHYSICIANS**

33. Luz Contreras Arroyo, M.D., testified at the hearing. She has been a family medicine physician and psychiatrist at One Community Health, in Sacramento, California, since January 2020. She was a resident at University of California, Davis, between 2014 and 2019, after completing medical school. During her residency, she worked in a psychiatric hospital, in-patient psychiatric medicine, and in the emergency room. She has seen patients with [REDACTED]

34. Dr. Arroyo treated respondent between August 2017 and August 2018, and communicated with him by telephone in November 2018 and April 2019. She had

been a resident for four years at the time she started treating respondent. Dr. Arroyo provided medication management and therapy to respondent during his appointments with her.

35. It is a part of Dr. Arroyo's regular practice to document treatment plans for her patients. Her visit notes summarize patient statements, her own observations, diagnoses, assessments, mental status examinations, medical history, and medication information, among other information.

36. In August 2017, she diagnosed respondent with [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

37. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

38. Respondent continued to see Dr. Arroyo, but cancelled or did not show up to eight subsequent appointments scheduled between June 2018 and October 2018. Respondent met with Dr. Arroyo once in March 2018, three times in April 2018, once in May 2018 and once in June 2018. She conducted mental status examinations at all six appointments, and did not note any concerns that he was experiencing [REDACTED]

39. On August 17, 2018, respondent attended an appointment with Dr. Arroyo. Dr. Arroyo performed a mental status examination and assessment on respondent. Respondent did not have [REDACTED] symptoms that day, nor at any other appointment with her. Dr. Arroyo noted in her assessment notes:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

40. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] Dr. Arroyo did not recall respondent telling her he was going to go to Burning Man, a music festival, the following month and did not recall him saying he did not take his medication at times. She would have been concerned had he told her he was going to Burning Man because of the potential presence of illicit drugs there.

41. Dr. Arroyo did not see respondent in person following this appointment. He did not follow up with her about tapering his medication or inform her that he had ingested an ecstasy pill when he went to Burning Man in September 2018. In November 2018, respondent requested Dr. Arroyo write a letter on his behalf to the court for his child custody case. He needed the letter for a court hearing the following day. Dr. Arroyo wrote a letter to the court after speaking with him by telephone, but had not seen him since August 2018. During the call, respondent did not appear to be manic. There was no sign of fast pressured speech, a symptom of mania. In the letter, Dr. Arroyo explained that she was respondent's treating psychiatrist and noted that he had stable mental health and had been compliant with his medications.

42. Dr. Arroyo next spoke with respondent in April 2019, during a telephone appointment. [REDACTED]

[REDACTED] Respondent was requesting Dr. Arroyo write him a letter giving some information to the District about his mental illness so he could try to get reinstated to his teaching position. [REDACTED]  
[REDACTED]

43. John Green, M.D., testified at the hearing. Dr. Green is licensed to practice medicine in California and is board certified in general psychiatry and forensic psychiatry. He has been in private practice in general psychiatry and forensic psychiatry since June 2003. [REDACTED]  
[REDACTED]  
[REDACTED]

44. Dr. Green has not physically examined respondent. However, he referred to the DSM-5 in reviewing respondent's medical records and deposition testimony and making opinions relating to respondent's conduct.

45. Dr. Green did not have any concern with Dr. Arroyo's recommendation for respondent [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

46. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

## **District's Human Resources Department**

47. Christina Villegas testified at the hearing. She is the Human Resources Director for the District; she has been in her position for seven years. She supports the District's administrators with performance and grievance matters with District employees.

48. Between August 2018 and October 2018, despite working 30 days, no one from McClatchy raised concerns about respondent's behavior.

49. The 2018/2019 school year started August 30, 2018. In September 2018, respondent did not work three days; he worked all other work days during the month. In October 2018, respondent did not work 12 days of the 20 work days. Respondent did not report back to work after October 22, 2018. In total, between August 2018 and October 2018, respondent worked 30 days.

50. On January 8, 2019, Ms. Villegas wrote respondent a letter concerning his failure to report to work. At the time, the District was unaware of respondent's [REDACTED]. The District was not made aware respondent had a mental health condition until January 17, 2019, when respondent's mother sent an email informing the District that he was in jail.

51. In December 2018, a student newspaper article, entitled "Questions Raised about McClatchy Teacher's Absence and Social Media Use" was published. The article made allegations about respondent's behavior on social media. It was at this time that the Human Resources Department became aware of potential misconduct by

respondent involving students. The Human Resources Department had not received any previous reports of concern relating to respondent before October 2018.

52. A verification meeting between respondent and the District's Human Resources personnel occurred on May 21, 2019, wherein respondent was presented with the District's concerns and he was allowed to comment on the alleged conduct. At the verification meeting, respondent received Ms. J. [REDACTED]'s December 2018 incident report provided to the school and copies of his Instagram photo comments and direct messages to Ms. J. [REDACTED]. Respondent admitted to the interaction with Ms. J. [REDACTED]. At the meeting, respondent did not inform anyone he was self-titrating from his [REDACTED] medication or that he had been drinking alcohol and had taken ecstasy at the start of the school year. The district later became informed of additional inappropriate Instagram messages and conversations with then-current and former students and respondent.

53. District Board Policy 4119.11 prohibits sexual harassment of students. Specifically, "any district employee who permits, engages in or participates in sexual harassment of . . . [a] student shall be in violation of this policy and is subject to disciplinary action, up to and including dismissal."

54. In August 2019, respondent was notified six days in advance that the District planned to hold a closed session to discuss complaints or charges against respondent. He was informed how he could be heard on the matter. On September 12, 2019, the District notified respondent of the filing of written charges against him with the District's Board of Education and set a predisciplinary Skelly meeting for two weeks later. Respondent did not reply to the statement of charges that were provided to him. On September 24, 2019, respondent requested a hearing to contest the allegations against him; this hearing ensued.

55. Ms. Villegas maintained some of respondent's personnel file in her personnel services office, as she is responsible for maintaining disciplinary records. In September 2019 and December 2019, Ms. Villegas provided the disciplinary documents maintained in her office to respondent so he could defend himself against the charges in the Statement of Charges filed against him.

## **Respondent's Evidence**

56. Respondent testified at the hearing. Respondent is 38 years old and has two minor children. He is currently separated from his estranged wife. Respondent graduated from the University of California, Berkeley in 2009. After graduating from college, respondent received his teaching credentials and became a substitute teacher in Hayward, California, from 2009 to 2010. He taught at a charter school in 2011 and 2012, before being hired as an art teacher at McClatchy during the 2014/2015 school year.

57. While at McClatchy, respondent taught ceramics, 2D art, then piloted a graphic design program. He was the Students Activities Director (SAD) beginning the 2015/2016 school year through the Fall 2018. As the SAD, respondent functioned as the main hub for students and teachers in planning and implementing student activities, communicated with parents, and handled paperwork. Respondent also taught student government, was responsible for rallies, spirit week, fundraising, club activities, and music festivals, among other things. Prior to the issues raised in this matter, respondent had never been disciplined by the District.

58. Respondent [REDACTED]  
[REDACTED]. During his first [REDACTED],  
respondent described it as a "blur of ridiculousness." He was in Los Angeles

auditioning for a reality show and ran out of gas in south central Los Angeles. He encountered a man that gave him crack cocaine, which respondent used. Respondent later jumped out of a two-story window and broke his leg. He crawled to a nearby gas station then was taken to a psychiatric hospital by law enforcement. Respondent took the following year off of college, as it took him months to stabilize. His ability to remember things that happened [REDACTED] is limited. [REDACTED]  
[REDACTED]

59. [REDACTED]  
[REDACTED]

Respondent experimented with drugs and alcohol in college, including marijuana, ecstasy, cocaine, and alcohol.

60. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

61. [REDACTED]  
[REDACTED]

[REDACTED] In June 2018, respondent took trips to Montana, Oregon, and Idaho.

Respondent [REDACTED]  
recalled "feeling really good" and "excited about life." He missed appointments with Dr. Arroyo during Summer 2018, because of his trips and because Dr. Arroyo cancelled some appointments. After his appointment with Dr. Arroyo on August 17, 2018, respondent began to titrate down from the medication. Respondent then went to

Burning Man where he took ecstasy; [REDACTED]

[REDACTED] Respondent taught school for two days, went to Burning Man over the weekend, then went back to school.

62. In Fall 2018, respondent entered a leadership program conducted by the Sacramento County Office of Education. Respondent believes he was succumbing to his illness and missed the mandatory classes before leaving the program entirely. In October 2018, respondent went to Europe to meet up with a woman he met at Burning Man. At the time he went, he was feeling grandiose. He purchased plane tickets, rented a car, and secured a short term room by himself. Respondent does not recall if he stopped taking his medication while he was in Europe.

63. In late Fall 2018, respondent's estranged wife obtained a restraining order against him based upon aggressive inappropriate text messages he sent to her. Respondent continued to send inappropriate messages to her. Respondent failed to appear at a court hearing to address his violation of the restraining order. Respondent was arrested in January 2019, for felony stalking. Respondent entered into a mental health court program after pleading no contest to the felony stalking charge in April 2019. He was required to abstain from alcohol and drugs, attend therapy and counseling, and make court appearances for one year. Respondent completed the program and, in May 2020, the charge was reduced to a misdemeanor.

64. According to respondent, he used Instagram to communicate with students relating to his role as the SAD. He allowed students who graduated McClatchy to follow his personal Instagram account and allowed his student government students to also follow him so that he could communicate with them. He did not maintain a separate Instagram account for school-related activities.



65. Respondent does not dispute that he sent the Instagram direct messages and made the comments on Instagram that are at issue in this matter, although he does not remember his Instagram activity at that time. Respondent admitted to having a long history of vacationing in Santa Cruz and testified it is a place he goes when he wants to go to the beach. Respondent remembered telling Ms. P [REDACTED] that if she was a couple hundred dollars short in getting dirt bike, he would help her. He believed this was just one of many conversations he had in passing with her. He was trying to direct her energies in a positive direction because she missed class often and had issues with her home life, but was passionate about motocross racing. He did not remember inviting her to go to a beach house in Santa Cruz with him. Regarding the comments he made to Ms. B [REDACTED] about her makeup and her looks, respondent said that as a teacher his job was to engage and promote the well-being of his students. He knew her hobby was putting on makeup, so he may have commented on her makeup. He did not recall invading Ms. B [REDACTED] space when he made the comment.

66. He testified that it was possible that he called his wife a derogatory name in front of students during the 2017/2018 school year. He was going through a rough time with the divorce. He further testified "this saddening situation that [he has] been put under" is not indicative of his behavior as a person.

67. Between August 2018 and December 2018, respondent admitted to consuming alcohol and marijuana. At hearing, respondent was unsure how well he was complying with his medication regimen during that time. He drinks once per month, usually only one to two drinks. However, respondent believes that reducing his medication at the recommendation of Dr. Arroyo was the primary reason for his [REDACTED] in Fall 2018, not the ecstasy he took at Burning Man.

68. On November 26, 2018, respondent requested a letter from Dr. Arroyo regarding his mental stability to present to the Superior Court on the following day for his custody case. On the following day, respondent attended the court hearing and also sent a direct message to Ms. W[REDACTED] saying that she was beautiful.

69. Respondent understands that he will be on medication for [REDACTED] for the remainder of his life. He is also aware drug use can exacerbate or lead to [REDACTED]. Respondent has been abstaining from drugs since he was released from jail and began the mental health program.

70. Regarding the messages and songs he sent to Ms. J [REDACTED], respondent does not remember sending the messages or the incident. He feels "ashamed" and never thought he would be in this situation. Respondent sent the same song to celebrities' Instagram accounts in December 2018.

71. James A. Margolis, M.D., testified at the hearing. Dr. Margolis completed medical school and residency training, and is board certified in general psychiatry, psychiatry, and quality assurance and utilization review. He is semi-retired, but works at two community mental health clinics two days per week. In his private practice, his patients are primarily children, adolescents, and young adults. He has had patients with [REDACTED] in his practice, approximately 10 percent of his patients.

72. Dr. Margolis treated respondent on four occasions between May 2019 and February 2020. After July 2019, Dr. Margolis became a consultant in preparation for this hearing.

73. [REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

[REDACTED]

74. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

75. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

76. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

77. Elizabeth Pataki, respondent's mother, testified at the hearing. She was a registered nurse before retiring. She previously worked with Dr. Margolis, although Dr. Margolis denied working with her during his testimony. Respondent has been living with his mother since April 2019, when he was released from jail. When respondent is not [REDACTED], Ms. Pataki described respondent as thoughtful, caring, kind, humorous, gracious, gentle, and warm.

78. Respondent lived with his parents from 2017 through Fall 2018. During the summer of 2018, Ms. Pataki observed respondent talking more, being unfocused, spending more money than usual, and going out more with his friends. She remembered respondent going to Burning Man in September 2018, because he said he needed to get away and had an artistic interest in the event. When respondent returned from Burning Man, Ms. Pataki observed respondent to be more intense, emotional, having mood swings, and being excitable. She believed he presented as lacking logic in his thinking.

79. Ms. Pataki became concerned about respondent based on her observations of respondent's behavior beginning in summer 2018 through Fall 2018. She remembered respondent traveling to Europe in October 2018, and upon his return he was grandiose and illogical and it was stressful living with him. She asked respondent to move out of her home because he refused to see a psychiatrist in mid-November 2018.

80. In April 2019, upon his release from jail, Ms. Pataki observed respondent to be coherent, calm, pleasant, and lucid. He has continued to live with her since that time. She has not seen signs of [REDACTED] in respondent since he was released from jail.

81. Cole Dutcher testified at the hearing. He has been respondent's friend since childhood. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

82. Mr. Dutcher saw respondent during Fall 2018. He met with respondent in September 2018, when respondent returned from Burning Man. When they met, respondent was sweating, thinking hard, emphatic about music, art and education, and it seemed respondent was having difficulty being present in the moment.

83. When respondent returned from Europe, eight of respondent's friends, including Mr. Dutcher, got together in December 2018, to let respondent know they were concerned about his behavior and his intent to discontinue his medication. Also, they were concerned that respondent had a more frequent presence on social media, including photos of models and women. They wanted to have an intervention with him to "stop him from going off the tracks." At the intervention, respondent was "very persuasive" and reassured his friends that he was "good" when they raised concerns about him.

84. Since April 2019, Mr. Dutcher has seen respondent weekly, but has not had any concerns [REDACTED].

85. Ryan Stemmler testified at the hearing. Mr. Stemmler has been a “good friend” of respondent since eighth grade. He saw respondent in 2005, [REDACTED]. He noticed respondent was acting out of character, had shifting priorities, strange interactions, and was spending money. He did not notice respondent exhibiting inappropriate sexual behaviors. When respondent is not [REDACTED], Mr. Stemmler described him as generous, kind, thoughtful, and charming.

86. Mr. Stemmler was in contact with respondent once per month in the summer and fall of 2018. In August 2018, Mr. Stemmler noticed respondent had shifting priorities, was focused on being a rapper, and phrased things in a concerning way. Prior to going to Burning Man, Mr. Stemmler found respondent to be excitable and defensive. Before respondent went to Europe, he saw Mr. Stemmler; Mr. Stemmler believed respondent was exhibiting [REDACTED] symptoms.

87. Mr. Stemmler attended the intervention with respondent and Mr. Dutcher. Mr. Stemmler was aware of respondent’s substance use and alcohol use since high school, including mushrooms, ecstasy, marijuana, and cocaine.

## **Discussion**

88. A teacher is an educator that is in a position of trust with students, parents, administrators, and the teaching community. Teachers are entrusted to maintain appropriate boundaries and relationships with their impressionable students. A teacher must always maintain the highest level of ethics, judgment, and professionalism in their position as a role model to their students.

89. In 2018, respondent sent inappropriate direct messages and had inappropriate conversations with his current and former students, inviting them to out-of-town vacations, sending sexually explicit songs, offering to make at least one

expensive purchase for a student, inviting them to meet up, offering them alcohol and drugs, and being inappropriately flirtatious with them. Those students bravely, persuasively, and credibly testified about the shock and discomfort they felt about respondent's behavior.

90. Respondent did not dispute his Instagram activity, but he did not recall inviting students to come with him to Santa Cruz or violating the personal space of Ms. B [REDACTED]. Nevertheless, given his fondness of Santa Cruz and the students' credible testimonies, it is more likely than not that he invited those students to Santa Cruz with him.

91. Respondent defended his misconduct by shifting blame to his [REDACTED] as the cause of his conduct. Specifically, respondent asserted that he was in the throes of [REDACTED] [REDACTED] in the Fall 2018, that left him helpless and unable to control his actions. According to respondent, he was experiencing [REDACTED] in the spring and summer of 2018.

92. However, the evidence did not establish that he was experiencing [REDACTED] during the time of his misconduct because the Commission could not rule out that the alleged [REDACTED] were not attributable to the psychological effects of a substance, such as alcohol, marijuana, and/or ecstasy. Additionally, Dr. Arroyo was the only qualified medical provider who performed mental status examinations, therapy, and assessments of respondent between 2017 and 2018. At no time did she have concerns that respondent was experiencing symptoms of [REDACTED]. In fact, because respondent had been stable on his [REDACTED] medication since 2009, in August 2018, she recommended he titrate his medication from 100 milligrams to 50 milligrams daily. During her treatment of respondent, she continued to advise him to limit his consumption of alcohol and

drugs in order to avoid a substance-induced [REDACTED]; he did not comply with her advice. The witnesses who testified that respondent was experiencing [REDACTED] in the Fall 2018, were individuals who were not qualified to make such an assessment and who had not seen respondent consistently during the period at issue. Although respondent testified that he was experiencing [REDACTED] symptoms during the relevant period, respondent testified on numerous occasions that he did not know when he was experiencing [REDACTED] and he could not remember things that occurred during those episodes. Therefore, his testimony based on memories that allegedly occurred during a [REDACTED] episode does not have the reliability necessary to find that they occurred.

93. Beginning in the summer 2018, respondent stopped taking his medication sporadically and ingested ecstasy, smoked marijuana and consumed alcohol through the remainder of the year. He did not contest his awareness that marijuana and alcohol could negatively affect his [REDACTED], as he increased his medication to “counteract” their effects on his mental stability. He failed to inform Dr. Arroyo of his noncompliance with her recommendation and cancelled numerous appointments with her.

94. Although both parties provided experts to opine whether respondent’s conduct was the result of his [REDACTED], none of those experts examined respondent during the period of his misconduct, so their opinions regarding whether he was or was not [REDACTED] at the time of his misconduct was not as persuasive as Dr. Arroyo’s opinions. Therefore, the Commission gave great weight to Dr. Arroyo’s opinion that respondent was not [REDACTED] during the relevant period. Additionally, during the alleged periods of [REDACTED], in fall 2018, respondent’s ability to attend court hearings, request documentation for court, plan an elaborate European vacation, and attend Burning



Man show he was functional and raise serious doubt about his claim that he was manic. Moreover, despite teaching 30 days during the relevant period, no teacher or student complained about his allegedly [REDACTED] behavior.

95. Respondent lacked insight into his misconduct and did not appreciate the gravity of his actions. He took no responsibility for his behavior; rather, he appeared more concerned about the inconvenience of the matter. Respondent provided inadequate assurances that similar conduct would not occur in the future. Respondent's demeanor at hearing was of arrogance, disinterest, and lacked emotion. He did not recognize how his communications with students via Instagram using his personal account to post and send inappropriate and sexually charged messages and photo comments viewable by his students was troublesome. Respondent's testimony was unpersuasive and evasive, and his defense was not supported by the evidence.

### **Morrison Criteria**

96. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District's choice. It has broad discretion in disciplinary matters. Its role is not limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education (Morrison)* (1969) 1 Cal.3d 214, 229-30. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 219-22.) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

97. Before a decision can be made as to whether respondent's conduct was immoral (Ed. Code, § 44932, subd. (a)(1)), dishonest (Ed. Code, § 44932, subd. (a)(4)), constituted evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), and/or was a persistent violation of or refusal to obey the school laws of the State or reasonable regulations prescribed for the government of the public schools by the State Board or by the governing board of the school district employing him (Ed. Code, § 44932, subd. (a)(8)), the Commission must determine whether respondent's conduct demonstrated he was unfit to teach using the *Morrison* criteria. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 696.) The *Morrison* criteria are: (1) the likelihood the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the party involved; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education, supra*, 1 Cal.3d at p. 229.)

### **LIKELIHOOD CONDUCT MAY HAVE ADVERSELY AFFECTED STUDENTS OR TEACHERS**

98. Respondent's former students who testified described his behavior in messaging them and posting photos and photo comments on Instagram as inappropriate, shocking, uncomfortable, and gross. The school community was fully aware of respondent's Instagram activity by reading a student newspaper article and through students' discussions. Respondent's behavior resulted in distrust of authority, as was made clear by Ms. J [REDACTED]'s parents. His messages to students were appalling and damage the community's perception of the safety of schools and teachers.

Students' faith in teachers and the administration is undoubtedly affected by respondent's conduct. His conduct reflects poorly on the District and teachers as a whole.

### **THE DEGREE OF THE ADVERSE EFFECT**

99. Respondent's inappropriate conduct aimed at young, impressionable, vulnerable minor female students will undoubtedly cause a severe adverse effect on them. He used his position of trust to gain access to them and crossed known boundaries with those students with no concern about how his conduct would affect them. Respondent's behavior caused his former students to be forced to testify at the hearing regarding his inappropriate behavior towards them. That experience will have a lasting adverse effect on them. District and school administrators aware of respondent's conduct toward numerous female students may result in them questioning their own ability to protect students and ensure their safety if respondent is permitted to return to school. Respondent's behavior will also have a significant adverse effect on the teaching community, as students and parents will question the amount of trust and faith they should have in educators.

### **PROXIMITY OR REMOTENESS IN TIME OF THE CONDUCT**

100. The conduct at issue took place only two years ago, in 2018. The conduct at issue is not remote in time.

### **TYPE OF TEACHING CREDENTIAL**

101. Respondent is a multi-subject and single-subject credentialed teacher with about seven years of teaching experience.

## **EXTENUATING AND AGGRAVATING CIRCUMSTANCES**

102. Respondent is a credentialed teacher. He was trusted to be a liaison between teachers and students as the SAD. As the SAD, he had frequent contact with students, not only for academics, but relating to all on-campus and off-campus activities. He used his position of trust to gain access to students through his Instagram account. Respondent should have known better than to send inappropriate messages to his students and post inappropriate photos and comments on his Instagram account.

103. Additionally, respondent's conduct of using ecstasy at Burning Man during the school year and returning to work the following school week is deeply concerning and shows respondent's continued lack of judgment as a teacher. Likewise, his offer to purchase expensive gifts for at least one student and comment on another's looks also shows his lack of judgment, professionalism, and inability to recognize boundaries between teacher and student.

## **LIKELIHOOD OF RECURRENCE**

104. The likelihood of recurrence is high. Respondent failed to comply with the medication regimen ordered by Dr. Arroyo; both when she recommended he titrate to 50 milligrams and to take his medication daily. He did not provide the panel any assurances that he would comply with his doctor's future orders relating to his medication. He did not provide a prevention plan for reducing the risk of having a [REDACTED] and did not appear to appreciate the increased risk of a [REDACTED] when using alcohol and marijuana. Respondent's lack of insight into his own conduct and failure to take responsibility for his actions increases the likelihood of recurrence of his misconduct.

## **ADVERSE IMPACT OF CHILLING EFFECT UPON THE CONSTITUTIONAL RIGHTS OF THE TEACHER INVOLVED OR OTHER TEACHERS**

105. There was no evidence that dismissing respondent would inflict an adverse impact or chilling effect upon the constitutional rights of respondent or other teachers.

### **CONCLUSION**

106. After considering the *Morrison* criteria outlined above, the evidence established that respondent is unfit to teach.

## **Causes of Action**

### **IMMORAL CONDUCT**

107. In general, the term "immoral" is defined as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare." (*Board Of Education Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.) The immoral conduct of a teacher has been compared to the unprofessional conduct or moral turpitude of an attorney. "Moral turpitude is sometimes used synonymously with dishonesty or a high degree of unfairness." (*Ibid.*)



108. The District met its burden of establishing that respondent engaged in immoral conduct in December 2018, when he sent direct messages to Ms. J [REDACTED], which included inappropriate and sexually explicit song lyrics. The District further established respondent engaged in immoral conduct when he invited a 17-year-old Ms. M [REDACTED] to Sana Cruz and made inappropriate comments to her via Instagram direct message. The District additionally established respondent engaged in immoral conduct when he offered an underage former student, Ms. B [REDACTED], alcohol via Instagram direct message.

### **DISHONESTY**

109. Dishonesty indicates a lack of honesty; a disposition to lie, cheat, or steal (www.dictionary.com); or to deceive. (*Midway School District of Kern County v. Griffeath* (1946) 29 Cal.2d 13, 18.) "Dishonesty necessarily includes the element of bad faith." (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456.) "[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Ibid.*) "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Fontana Unified School Dist. v. Burman (Fontana)* (1998) 45 Cal.3d 208, 220, fn. 12.)

110. The District alleges respondent was dishonest with the District during his May 21, 2019 validation meeting about the cause of his misconduct and during the Skelly hearing process, and in his statement to the Commission on Teacher Credentialing stating that his misconduct was caused by his [REDACTED]. Respondent failed to establish that his misconduct was caused by his [REDACTED]; however, the evidence did not

establish that he was dishonest in his belief that this was the cause of his misconduct. Therefore, this allegation is dismissed.

### **PERSISTENT VIOLATIONS**

111. The school district board has the right to adopt rules governing the conduct of its employees and to require the employees to observe the rules. However, a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (a)(8) of section 44932. (*Governing Board of the Oakdale Union School Dist. v. Seaman (Seaman)* (1972) 28 Cal.App.3d 77, 84.) The Legislature, apparently to allow an opportunity for correction, has decreed that a single violation is insufficient to warrant dismissal; "it is the persistent disregard" of school rules that subdivision (a)(8) is designed to regulate. (*Board of Ed. of Richmond School Dist. v. Mathews* (1957) 149 Cal.App.2d 265, 272.) As such, the District must establish that an employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School Dist. 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.) The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Seaman, supra*, 28 Cal.App.3d at 82.) In other judicial decisions, the word has been interpreted to mean "continuing or constant." (*Ibid.*)

112. Here, the District met its burden of establishing respondent violated the District's Board Policy 4119.11, by sexually harassing students through direct messages to students' Instagram accounts that were sexually explicit and inappropriate. The District did not establish any other violations of Board rules and regulations.



## **EVIDENT UNFITNESS FOR SERVICE**

113. Evident unfitness for service means:

[C]learly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. 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.

(*Woodland Joint Unified School Dist. v. Commission on Professional Competence (Woodland)* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* criteria must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* criteria are met, the next step is to determine if the teacher's unfitness is "'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

114. The Commission finds respondent engaged in improper and inappropriate communications with District students, while those students were still enrolled at McClatchy or were former students who were underage, but propositioned by respondent nonetheless. Respondent invited students to out-of-town vacations, offered alcohol and drugs to them, offered to purchase expensive gifts, sent sexually explicit songs to at least one student, and crossed known boundaries between a teacher and his students. Respondent engaged in misconduct that was willful, flagrant, and shameless, and attempted to shift blame to his mental health disorder, instead of accepting responsibility for his actions. Respondent lacked good judgment and failed



to maintain professional boundaries when interacting with then-current District students. Respondent's conduct displayed a fixed character trait inconsistent with the tenets of teaching. Given the above, a preponderance of the evidence established that respondent's conduct was immoral, a persistent violation of Board policy, and involved an evident unfitness for service.

115. Finally, all arguments and evidence presented to support respondent's asserted affirmative defenses have been considered and are rejected.

## **LEGAL CONCLUSIONS**

1. A permanent employee may be dismissed for cause. (Ed. Code, § 44934.) Causes include: immoral conduct, dishonesty, persistent violation of Board policy, and evident unfitness for service. (Ed. Code, §§ 44932, subds. (a)(1), (4), (6), & (8).)

2. A permanent employee served with a Notice of Dismissal is entitled to a due process hearing. (Ed. Code, § 44934.) Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member CPC, and sets forth the CPC's authority to issue a final decision. 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.)

## Causes for Discipline

3. A trier of fact may consider the totality of the offensive conduct, evaluating facts in the aggregate. (*Woodland, supra*, 2 Cal.App.4th at p. 1456-1457.) 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. Second, causes can be consolidated. "It is true that a particular act or omission on the part of a teacher may constitute more than one of the causes for his removal specified in Education Code section 13403, [now 44932]." (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 260.) "Acts that are unprofessional conduct may at the same time be evidence of evident unfitness, i.e. a fixed character trait or temperamental defect which renders the teacher incapable of avoiding acts that are unprofessional." (*Ibid.*) "The prohibitions against immoral, and unprofessional conduct, and conduct involving moral turpitude by a teacher constitutes a general ban on conduct which would indicate his unfitness to teach." (*Morrison, supra* 1 Cal.3d at p. 233.) "Unprofessional conduct," as used in section 44932, subdivision (a), has been viewed broadly as 'conduct such as to indicate unfitness to teach.'" (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. Based upon the Factual Findings as a whole, cause exists to dismiss respondent under Education Code section 44932 for immoral conduct, persistent violations of Board policy, and an evident unfitness for service based upon his inappropriate communications and propositions to District students. No cause exists to dismiss respondent for dishonesty.

## Discipline

5. Here, the Commission has only two choices: to dismiss or not to dismiss. (Ed. Code, § 44932, subd. (a).) "The commission shall not have the power to dispose of [a] charge of dismissal by imposing probation or other alternative sanctions. The imposition of suspension . . . shall be available only in a suspension proceeding authorized pursuant to subdivision (b) of Section 44932 or Section 44933." (*Fontana, supra*, 45 Cal.3d at p. 216.)

6. Based upon the Factual Findings as a whole, the District proved, by a preponderance of the evidence, that respondent violated sections 44932, subdivisions (a)(1), (6), and (8), and the conduct supports dismissal of respondent.

## ORDER

The Sacramento City Unified School District dismissal of respondent Jonathan Hubbard from his employment as a teacher at McClatchy High School is UPHELD. Respondent's appeal of his dismissal from employment with the Sacramento City Unified School District is DENIED.

DATE: January 8, 2021

  
Andrea Rodriguez (Jan 8, 2021 16:05 PST)

ANDREA RODRIGUEZ

Commission Member

DATE: January 8, 2021

  
Lily Walker (Jan 8, 2021 15:31 PST)

LILY WALKER

Commission Member

DATE: January 8, 2021

  
Dena Coggins (Jan 8, 2021 15:29 PST)

DENA COGGINS

Administrative Law Judge

Office of Administrative Hearings