

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
ONTARIO-MONTCLAIR SCHOOL DISTRICT  
STATE OF CALIFORNIA**

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

**MARIO JAUREGUI, Respondent**

**OAH No. 2023010420**

**DECISION**

This matter was heard before the Commission on Professional Competence (Commission) by videoconference on May 15, 2023. The Commission is comprised of the following members: Michael Curtis, Jeremy Perez, and Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, who presided over the matter.

Beverly A. Ozowara, Attorney at Law, Atkinson, Andelson, Loya, Ruud & Romo, represented the Ontario-Montclair School District (District).

Mario Jauregui, respondent, appeared on his own behalf.

Oral and documentary evidence was received. The hearing record was closed, and after the Commission completed its deliberations, the matter was submitted for decision on June 2, 2023.

## **SUMMARY**

The District seeks to dismiss respondent for specific instances of unprofessional conduct between January 2022 and October 2022. After reviewing the evidence of record and applicable sections of the Education Code and District policy, the Commission finds that the District proved that respondent engaged in unprofessional conduct under the Education Code and District policy, respondent persistently violated District Board policy, failed to adequately perform his duties as a teacher, and is evidently unfit for service as a teacher. After applying the “Morrison” factors,<sup>1</sup> the District’s decision to dismiss respondent is affirmed.

## **FINDINGS OF FACT**

### **Jurisdictional Matters**

1. Hector Macias, Assistant Superintendent, Human Resources, signed the Statement of Charges on November 30, 2022, in his official capacity.

2. The District alleges that respondent engaged in unprofessional conduct pursuant to Education Code section 44932,<sup>2</sup> subdivision (a)(2); unsatisfactorily performed his duties as a teacher pursuant to section 44932, subdivision (a)(5); is evidently unfit for service as a teacher pursuant to 44932, subdivision (a)(6); and engaged in persistent violations or refusal to obey regulations and district policies

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<sup>1</sup> Morrison v. State Board of Education (1969) 1 Cal.3d 214.

<sup>2</sup> Subsequent references are to Education Code unless otherwise stated.

pursuant to section 44932, subdivision (a)(8). The District additionally alleges that respondent's conduct violated Board Policy 4119.21. This policy directs district employees to "maintain the highest ethical standards, behave professionally, follow district policies and regulations, abide by state and federal laws and exercise good judgment when interacting with students and other members of the school community . . . " and "engage in conduct that enhances the integrity of the district, advances the goals of the district's educational programs, and contributes to a positive school climate." (Ontario-Montclair School District Board Policy, § 4119.21.)

3. The factual assertions in the statement of charges are detailed below.

4. On January 12, 2023, respondent timely filed a request for hearing and notice of defense, and this hearing followed. At the hearing respondent did not dispute the assertions in the statement of charges, and did not present evidence on his behalf.

### **The District's In Limine Motion to Preclude Respondent from Presenting Evidence on his Behalf**

5. The District filed a motion in limine to preclude respondent from presenting evidence on his behalf, including his testimony, because he did not comply with the disclosure requirements under section 44944.05. The District's motion was heard at the start of the hearing and granted in part. Respondent was precluded from presenting evidence on his behalf because he did not comply with section 44944.05. Respondent, however, was permitted to testify. As noted immediately above, respondent elected to not testify.

## **Respondent's Teaching History with the District**

6. Respondent is a permanent certificated employee of the District and is employed as a Special Education - Special Day Class Teacher. His job duties require him to provide instruction through sound instructional planning, programming, and teaching methods and strategies for students with learning disabilities. (See Exhibit 5, Job Description for Teacher Special Education: Special Day Class.) Since 2020 he has also worked in different locations at the District, including work as a substitute teacher.

7. Since 2020, respondent has been repeatedly counseled regarding problems with his teaching and instructional performance, and his professionalism. He has been provided with assistance plans to improve his scheduling and interaction with staff. On November 19, 2020, the District issued respondent a letter of reprimand due to his failure to attend coaching sessions, failure to follow scheduled instruction during parent conference week, missing a scheduled data meeting with the site administrator, and being disrespectful and unprofessional towards another teacher. Respondent was issued a second letter of reprimand on January 8, 2021, for missing a coaching session, failing to have lesson plans to ensure students meet their Individualized Education Plan goals, lacking professionalism in his communications with staff, and failing to submit lesson plans.

8. On April 2, 5, 6, 7, 8, and 9, 2021, respondent failed to report to work. His absences were marked as "unexcused," and he was placed on "unpaid status." On April 12, 2021, the District sent respondent a "Second Notice" indicating the District has begun the job abandonment process against him due to his unexcused absences. The District previously sent respondent a letter on April 7, 2021, regarding his absences on April 2, 5 and 6, 2021. The letter noted that he did not respond to calls from the school or email sent to him.

9. On April 15, 2021, the District issued respondent a Notice of Unprofessional Performance and Unprofessional Conduct for his behavior. Respondent was placed on a 90-day review period and directed to improve his performance and overall professionalism. Among these directives, he was expected to work the minimum number of hours required per the Ontario-Montclair Teachers Association Contract.

10. On December 15, 2021, the District issued to respondent a second Notice of Unprofessional Performance and Unprofessional Conduct because he did not make substantial improvements in his performance and professionalism during the 90-day review period from the first notice. The Notice further identified specific instances of unprofessional conduct: respondent was found asleep at his desk on August 31, 2021, and November 9, 2021, two of his students went to another classroom unsupervised, and he failed to follow lesson plans. He was directed to improve his performance, prepare lesson plans in advance, and work the minimum number of hours required per the Ontario-Montclair Teachers Association Contract.

### **Factual Bases of the District's Action as Detailed in the Suspension Charges**

11. The reasons to dismiss respondent based on his conduct are detailed in the statement of charges. This conduct occurred between January 2022 and October 28, 2022. Respondent, it is again noted, does not dispute that he engaged in this conduct. He did not offer a response, or argument, to the charges, though he was given the opportunity to testify at the hearing but declined the opportunity.

12. The District established the factual bases of respondent's conduct as detailed in the statement of charges from the following evidence of record: the

testimony of Mr. Macias, Jessica Perry, Principal at Lincoln Elementary School (Lincoln), Robert Gallagher, Executive Director of Human Resources, and the following documents which were received as evidence: The affidavits of James Cameron, a kindergarten teacher at Hawthorne Elementary (Hawthorne) where respondent worked as a substitute teacher; Celeste Saldana, an attendance technician at De Anza Middle School (De Anza); Anthony Fernandez, a teacher at Lincoln; Veronica Chavez, a special needs program assistant at Lincoln; Fabiola Agustin, a special needs program assistant at Lincoln; Jennifer Chavez, a teacher on assignment at De Anza; Willie Johnson, a coordinator for Think Together, an organization that partners with school districts to provide extended learning opportunities for underprivileged children; and Kathryn Bartosh, a principal at Berlyn Elementary School, where respondent worked in 2020 and 2021 as a Special Education - Special Day Class Teacher. In addition, the following documentary evidence was admitted: statements from Veronica Chavez, Fabiola Agustin, Anthony Fernandez, Maria Luisa Silverstre, Special Needs Program Assistant; an email from Jessica Perry, Principal at Lincoln; a conference summary dated January 23, 2020, from Ms. Perry and signed by her and respondent; an assistance plan dated January 23, 2020, from Ms. Perry signed and dated January 23, 2020; a handwritten note from a Ms. Rodriguez dated January 21, 2020; a statement from Ms. Silverstre dated January 21, 2020; an unsigned statement regarding the January 21, 2020, incident; another unsigned statement regarding the January 21, 2020, incident; and an email statement from Lauren Goodman, a special education teacher, regarding a March 9, 2022, incident. In addition, letters of reprimand dated November 19, 2020, and January 8, 2021, and Notices of Unprofessional Conduct issued to respondent on April 15, 2021, and December 1, 2021, were received as evidence.

In summary, this evidence showed the following:

## **Specific Instances of Respondent's Conduct**

### **RESPONDENT'S ABSENCE WITHOUT APPROVED LEAVE**

13. From January 13 to January 28, 2022, respondent was absent without approved leave as a teacher at the District. To obtain approved leave, respondent was required to follow the Ontario-Montclair Teachers Association Collective Bargaining Agreement, Article XIII, Leaves of Absence, B(2). This section states as follows:

Unit member shall submit notice of the need for personal necessity leave to the immediate supervisor at least two (2) days prior to the beginning date of the leave, except where extenuating circumstances make this impossible. . . all unit members taking personal necessity leave must sign a Petition for Leave . . .

14. Respondent failed to follow these steps to obtain approved leave. His failure to inform administrators in advance of his unapproved leave impeded their ability to request and acquire a substitute teacher to fulfill his daily duties with students.

15. Respondent, further, failed to submit appropriate leave forms, and he violated District rules and procedures and directives the District issued to respondent in the April 15, 2021, and December 1, 2021, notices of unprofessional conduct. He was specifically directed in the notices to work the minimum hours and days per the Collective Bargaining Agreement.

### **FAILURE TO TIMELY RETRIEVE STUDENTS FROM BREAKFAST TABLES**

16. As part of his duties, respondent was required to timely retrieve students at the breakfast tables. On February 23, 2022, respondent failed to go to the breakfast tables to retrieve another teacher's class at the 8:30 a.m. expected time for him to retrieve the students. Instead of retrieving the students at 8:30 a.m., he retrieved them around 8:40 or 8:45 a.m. Further, when he retrieved them, he did not engage with the students or support the other teacher.

### **FAILURE TO ADEQUATELY SUPERVISE STUDENTS ON MARCH 1, 2022**

17. On March 1, 2022, respondent accompanied a group of students and was walking a few steps in front of them. He failed to notice that one student, who needed supervision, tripped and fell when walking in the grass. A teacher from another class had to come to help and support the student while respondent continued walking without noticing that the student fell.

### **FAILURE TO BRING STUDENTS INTO CLASSROOM FOR INSTRUCTION**

18. On March 9, 2022, at 8:55 a.m., at the breakfast tables, after the students had finished their breakfast, with instructional aides waiting for his direction, respondent failed to bring his class inside for classroom instruction. Principal Perry saw the students sitting idly at the tables and went outside. She asked respondent why his class was not inside for instruction. He told Principal Perry he was waiting for directions, even though he had access to lesson plans inside the classroom.

### **FAILURE TO ADEQUATELY SUPERVISE STUDENTS ON MARCH 9, 2022**

19. Also on March 9, 2022, respondent left the classroom with a student who needed to use the restroom and walked the student only partially to the restroom. This



student in his class needed help to go to the restroom and could not go to the restroom on their own. Classroom aides reminded respondent of this. Nonetheless, respondent only pointed the student to the restroom and walked back to class. A teacher later that day found another one of respondent's students from his class in the hallway alone.

### **FAILURE TO ADEQUATELY SUPERVISE STUDENTS ON APRIL 27, 2022**

20. On April 27, 2022, respondent was serving as a substitute teacher at Hawthorne kindergarten class. During instructional time, multiple students pulled down their pants and took pictures with their iPad of their buttocks while respondent was supposedly supervising them. He then failed to notify site administrators of the incident. Respondent, further, did not attend multiple meetings with Human Resources to discuss the incident. As a result of the incident, administrators spent significant time reacting to parent concerns about the lack of supervision of their children.

### **ABSENCES WITHOUT APPROVED LEAVE AT START OF THE 2022/2023 SCHOOL YEAR**

21. On three consecutive days, August 5, 8, and 9, 2022, at the start of the 2022-2023 school year, and without prior notification, authorization, or appropriate leave requests filed with the District, respondent failed to report to work. He was listed as a "no-call no show." His absences were marked as unexcused, and he was placed on unpaid leave. In a letter dated August 9, 2022, the District advised respondent that he had abandoned his job without approved leave. When asked about the absences, respondent stated, "Can we go onto the next topic?" Respondent said this in a meeting with Mr. Gallagher on August 15, 2022.

## **RESPONDENT'S INTERACTION WITH HEAD OF HUMAN RESOURCES ON AUGUST 12, 2022**

22. On August 12, 2022, Mr. Gallagher approached respondent in the parking lot and asked him multiple times to sign an absence slip. Instead of signing, respondent refused to speak to or acknowledge Mr. Gallagher, and walked away from him. When Mr. Gallagher approached respondent, while respondent was in his car, respondent did not roll down his window and moved his car in an aggressive manner to keep Mr. Gallagher from approaching. When asked about the incident three days later, respondent said he didn't remember the incident.

## **RESPONDENT ALLOWED STUDENTS TO PLAY VIDEO GAMES ON OCTOBER 13, 2022**

23. On October 13, 2022, respondent allowed students to play video games on the computer instead of utilizing lesson plans to instruct students.

## **RESPONDENT ENGAGED IN DISRESPECTFUL BEHAVIOR WITH STAFF AT DE ANZA MIDDLE SCHOOL**

24. On multiple occasions, when he worked at De Anza Middle School on assignment, respondent engaged in the following disrespectful, inappropriate and unprofessional behavior:

- He "flipped off," or raised his middle finger, to Mr. Johnson, the Think Together Site Coordinator, and the School Custodian;
- He spoke loudly and threw paperwork at the school's attendance technician while she was on the phone with a parent;

- He did not properly return keys to school staff, but gave the keys to another teacher after he refused to open a classroom for a student who needed to get his or her personal items;
- He refused to follow teachers' lesson plans, even when students asked what work had been assigned;
- He sent a student to the office twice after the front office told him that no one was at the school to pick up the student;
- He walked off the campus after office staff members and ancillary staff called for him to return to complete his shift and finish the daily substitute exit process.

25. Respondent did not provide evidence on his own behalf. At the hearing he was given the chance to testify and chose not to do so.

## **LEGAL CONCLUSIONS**

### **Applicable Education Code Sections**

1. Education Code section 44932 provides the grounds for imposing discipline against a permanent employee. Pursuant to Subdivision (a)(2), a permanent employee may be disciplined for unprofessional conduct; under Subdivision (a)(5), for unsatisfactory performance; under Subdivision (a)(6) for evident unfitness for service; and under Subdivision (a)(8), a permanent employee may be disciplined for 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 or District polices.

2. "Evident unfitness for service" means, "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Comm'n on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The term "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." (*Ibid.*) The court held that the *Morrison* factors "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service." (*Id.* p. 1445.) As the court in *Woodland* explained, "[i]f 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." (*Ibid.*)

3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its decision.

4. Education Code sections 44934 and 44938 outline the procedures the District must follow before acting on any charges brought against a permanent employee. (Education Code, §§ 44934 and 44938.)

## **Burden and Standard of Proof**

5. The "burden of proof" means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The District has the burden of proof to establish cause to dismiss its employee.

6. The standard of proof in a teacher disciplinary 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.)

## **Relevant Judicial Authority**

7. The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. There the Supreme Court held that where persistent refusal to obey regulations or policies is raised in teacher dismissal cases, the applicable standard is whether the person is fit to teach. The factors outlined in *Morrison* must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. (*Id.* at p.229.)

8. A violation of Education Code section 44932, subdivisions (a)(2), (a)(5), and (a)(8), must be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

9. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly

repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Education Code section 44932, subdivision (8), pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it is the persistent disregard" of school rules that the subdivision is designed to regulate. (*Id.* at p.84.)

## **Morrison Factors**

10. In *Morrison, supra*, the Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed: (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 teacher; (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 the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

11. The *Morrison* factors may be applied to the charges in the aggregate. When a camel's back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland, supra*, pps.1456-1457.) Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

## **Other Disciplinary Considerations**

12. An administrator's loss of confidence in the educator and doubt regarding the educator's ability to serve as a role model for students are factors that may be considered. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

## **Evaluation of the Charges and Disposition**

13. The Commission finds that the preponderance of the evidence has established that respondent repeatedly and persistently violated District policy and/or refused to obey this policy, his performance as a teacher was unsatisfactory, and he engaged in unprofessional conduct. As found above, respondent was absent without leave for 12 days, from January 13 to 28, 2022, and at the start of the 2022/2023 school year on August 5, 8, and 9, 2022, despite being directed in notices of unprofessional conduct issued to him on April 15, 2021, and December 1, 2021, to work the hours required under the teachers' association contract with the District. Respondent further failed to adequately supervise students on multiple occasions leaving students unsupervised, which threatened their well-being and safety, with one student falling on the campus without respondent noticing, and another student found wandering the halls of the school. As an indication of the degree of his failure to supervise students adequately, while he was responsible for the supervision of kindergarten students, students took photos of their buttocks in class. He then compounded his failure by not informing site administrators of their behavior. In addition, respondent did not timely pick up students from the breakfast tables, did not timely bring students inside the classroom for instruction until reminded to do so, and did not engage students. Respondent, also, was unprofessional with colleagues and staff at De Anza Elementary School, and he acted unprofessionally towards Mr.

Gallagher, Director of Human Resources, when Mr. Gallagher tried to communicate with him regarding an absence slip he wanted respondent to complete. Respondent, overall, did not satisfactorily perform his duties as a teacher.

14. After giving due consideration to the applicable "Morrison" factors, the Commission finds that respondent's dismissal is warranted. Respondent is evidently unfit for service as a teacher due to his lack of basic organizational and effective communication skills, and his temperament; and his conduct adversely affected students and teachers and the District's educational mission due to his unexcused absences, his inability to adequately supervise students, and his ineffective and unprofessional communication with colleagues, administrators, and supervisors. Additionally, it is likely respondent would engage in the same conduct if he were to remain employed at the District.

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## ORDER

The determination of the Board of the Ontario-Montclair School District in the Statement of Charges to dismiss respondent Mario Jauregui is upheld. Respondent Mario Jauregui is dismissed as a permanent certificated employee of the Ontario-Montclair School District.

DATE: 06/06/2023

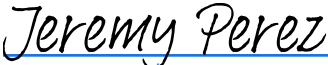
  
[Michael Curtis \(Jun 6, 2023 13:55 PDT\)](#)

MICHAEL CURTIS

Member

Commission on Professional Competence

DATE: 06/06/2023


  
[Jeremy Perez \(Jun 6, 2023 13:59 PDT\)](#)

JEREMY PEREZ

Member

Commission on Professional Competence

DATE: 06/06/2023

  
[Abraham M. Levy \(Jun 6, 2023 14:02 PDT\)](#)

ABRAHAM M. LEVY

Administrative Law Judge, Chair

Commission on Professional Competence