

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
SAN DIEGO UNIFIED SCHOOL DISTRICT

In the Matter of the Proceeding to Dismiss:

JEROME SHERMAN,

Respondent.

OAH No. 2018070008

**DECISION**

This matter was heard before the Commission on Professional Competence in San Diego, California on October 16, 2018. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Debra D. Nye-Perkins, Briana Raphael, and Michal-Lynn O'Kelley.

Kari D. Sullivan, Counsel, represented San Diego Unified School District.

No appearance was made on behalf of respondent.

On October 16, 2018, the Commission met to deliberate and the matter was submitted.

**CASE SUMMARY**

Mr. Sherman has been employed by the San Diego Union School District (the district) since 2002, most recently at Morse High School as a physical education teacher. On June 1, 2016, Mr. Sherman's teaching credential expired. On August 20, 2016, the district placed Mr. Sherman on unpaid leave after he failed to provide the district with a valid teaching credential despite multiple requests for its production. The Commission found that Mr. Sherman's actions constituted persistent refusal to obey the school laws of the state or reasonable regulations prescribed by the state board or school district. Based upon the evidence presented, the Commission concluded that the allegations were sustained and warranted Mr. Sherman's dismissal from the district.

## FINDINGS OF FACT

### *Jurisdictional Matters*

1. Mr. Sherman was employed by the district beginning in the 2002-03 school year as a probationary I, full-time teacher. Records from the California Commission on Teacher Credentialing (CCTC) show that Mr. Sherman first received his preliminary single subject teaching credential authorizing him to teach the subject of physical education in grades 12 and below on October 1, 2004, and that it expired on November 1, 2009. On November 1, 2009, Mr. Sherman was again issued a preliminary single subject teaching credential for physical education, which expired on November 1, 2010. On November 1, 2010, he was again issued a preliminary single subject teaching credential for physical education, which expired on November 1, 2011. On November 8, 2011, Mr. Sherman was again issued a preliminary single subject teaching credential for physical education, which expired on December 1, 2012. On May 20, 2013, Mr. Sherman was again issued a preliminary single subject teaching credential for physical education, which expired on June 1, 2014. On June 1, 2014, he was again issued a preliminary single subject teaching credential for physical education, which expired on June 1, 2015. Finally, on June 1, 2015, Mr. Sherman was again issued a preliminary single subject teaching credential for physical education, which expired on June 1, 2016. On December 8, 2016, Mr. Sherman was issued an emergency 30-day substitute teaching permit, which expired on January 1, 2018.

2. On August 20, 2016, Mr. Sherman was placed on administrative leave without pay from his position at the district for failing to provide a valid teaching credential for his position.

3. Acacia Thede, the district's Executive Director of Human Resources, signed the Notice of Charges on May 15, 2018, in her official capacity. The notice set forth the facts and laws on which the district was relying and sought to immediately dismiss Mr. Sherman from employment with the district on the grounds of persistent violation or refusal to obey regulations and district policies (Ed. Code, § 44932, subd. (a)(8)) for his persistent refusal to provide proof of a valid teaching credential pursuant to Education Code section 44857.

4. Mr. Sherman timely appealed the dismissal action on June 15, 2018, contesting the charges. On June 15, 2018, Mr. Sherman also updated his address with the district's computer database self-service portal where Mr. Sherman's contact information, payroll and benefits information is stored to reflect his new address. On August 8, 2018, the Trial Setting Order and Notice of Hearing for this matter setting the date of hearing for October 16, 2018, at the Office of Administrative Hearings in San Diego, was properly served on Mr. Sherman at his new address of record as reflected in the district's database, which he updated on the same date he executed his request for hearing. Accordingly, the notice of hearing for this matter was properly served on Mr. Sherman.

5. On October 16, 2018, this matter was called for hearing and no appearance was made on behalf of Mr. Sherman. This hearing followed.

*Testimony of Acacia Thede and District Communications with Mr. Sherman*

6. Acacia Thede is currently employed at the district as the Executive Director of Human Resources. Her duties include oversight of all personnel matters for the district, including hiring, evaluation, and dismissal of employees. Ms. Thede is also responsible for ensuring that all teachers in the district have the required valid teaching credentials, which must be appropriate for the teacher's school and the subject matter they teach.

7. Ms. Thede explained that in the process of monitoring all teachers in the district to ensure that they have a valid teaching credential for the subject they teach, the Human Resources department for the district receives information directly from the CCTC when a teacher's credential is about to expire, usually in the form of an email. Additionally, the Human Resources department monitors this information independently. She further explained that the district provides support to help teachers obtain a clear valid teaching credential, by assisting them with paperwork to apply for the credential, by recommending local programs necessary for the teacher to obtain the credential, and by sending multiple reminders to teachers to inform them that their credential is about to expire. Ms. Thede stated that the district checks on the status of a teacher's credentials by accessing the information from the CCTC's secure website by using the teacher's social security number and birthdate.

8. On June 7, 2016, the district sent a letter on behalf of Mr. Sherman to the CCTC requesting a one-year extension of his preliminary single subject teaching credential. The letter provided a summary of the progress Mr. Sherman had made toward clearing his credential and set forth what requirements remained for him in this regard. Ms. Thede explained that this letter is an example of the ways in which the district assists its teachers to make sure they have the required valid teaching credential necessary to maintain employment with the district. On August 18, 2016, the district received a letter from CCTC regarding Mr. Sherman's request, which provided:

You were advised in writing last year with your previous extension that it was your last and final extension and no additional would be issued under any circumstances. Below is a copy of what was sent to you.

"This is the absolute final extension that will be issued on your Preliminary Single Subject Teaching Credential! No additional extensions will be issued for any reason, including medical reasons. You are not eligible for a two-year extension because you completed your teacher preparation program outside of California (the two-year extension is only available to California prepared teachers)."

9. Ms. Thede testified that teachers with preliminary teaching credentials typically have up to five years to clear the credential. She stated that Mr. Sherman never met the requirements to clear his teaching credential with CCTC.

10. On August 29, 2016, the district sent a letter to Mr. Sherman notifying him that effective Tuesday, August 30, 2016, he was placed on an unpaid administrative leave of absence from his assignment as a physical education teacher until he clears his credential. The letter provided that he “will need to provide evidence of [his] credential clearing to the Human Resources Department in order to return to work.”

11. On February 20, 2018, the district sent a letter to Mr. Sherman by certified mail wherein the district wrote:

On August 30, 2016, you were placed on an unpaid administrative leave of absence as a physical education teacher by the Human Resources Services Division due to not having a valid California Teaching Credential. You were to remain in this status until clearing your credential with the California Commission on Teacher Credentialing.

At this time I am requiring evidence that you have taken steps towards clearing your credential. Please contact me by Monday, February 26, 2018 to provide the required documentation or if you have any questions.

12. On March 8, 2018, the district again sent a letter to Mr. Sherman by certified mail wherein the district wrote:

On August 30, 2016, you were placed on an unpaid administrative leave of absence as a physical education teacher by the Human Resources Services Division due to not having a valid California Teaching Credential. You were to remain in this status until clearing your credential with the California Commission on Teacher Credentialing.

On February 20, 2018 I mailed you a certified letter requesting evidence that you have taken steps towards clearing your credential.

To date I have not been contacted by you. As a result, I will be proceeding with a recommendation to terminate your employment.

13. Ms. Thede testified that despite these letters and multiple requests, Mr. Sherman never provided any evidence that he had taken steps to obtain or clear his teaching

credential. On July 2, 2018, the district sent an email to the CCTC requesting information regarding the credentialing history, status and renewal information for Mr. Sherman's teaching credentials in California. On July 20, 2018, the CCTC sent a letter with attachments to the district wherein Mr. Sherman's complete credentialing history and status was provided. The letter from the CCTC further provided in part:

The highlighted item shows the last issuance of his preliminary credential, a one-year extension by appeal, which expired 06/01/2016. You will note that he has had a 30-Day Emergency Substitute Permit issued since that time that would authorized [sic] him to serve in the capacity as a day to day substitute teacher but that document also has now expired (01/01/2018).

14. Ms. Thede also testified that the district last checked the CCTC secure database to obtain the status of Mr. Sherman's teaching credentials the week prior to this hearing. At that time the CCTC database showed that Mr. Sherman's teaching credentials were in the same status as that shown on the July 20, 2018, letter from the CCTC.

15. Ms. Thede stated that based on the information she received from the CCTC in the July 20, 2018, letter, as well as the information obtained from the CCTC secure website, Mr. Sherman does not have a valid teaching credential to perform his job as a physical education teacher at the district's Morse High School. Also, Mr. Sherman has failed to respond to multiple requests by the district to provide evidence of a valid teaching credential in California to perform his job as a physical education teacher. Accordingly, the district began termination proceedings to terminate his employment with the district as a physical education teacher.

## LEGAL CONCLUSIONS

### *Applicable Code Sections Regarding Dismissal Actions*

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(8) authorizes dismissal for persistent violation or refusal to obey regulations and district policies.

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

4. Education Code section 44938 outlines the procedures the district's governing board must follow before acting on any charges brought against a permanent employee.

5. Education Code section 44857 provides:

Each person employed by the governing board of a school district for a position requiring certification qualifications shall, not later than 60 days after the date fixed by the governing board of the district for the commencement of the person's service, register, in the manner prescribed by Section 44330, a valid certification document issued on or before that date, authorizing the person to serve in the position for which he or she was employed, and shall, not later than 60 days after the renewal thereof, register the renewed certification document in the manner prescribed by Section 44330. If any person so employed is the holder of a California State University, or state teachers college, diploma accompanied by the certificate of the State Board of Education, or of an educational or life diploma of this state, and has presented the diploma to, and has had his or her name recorded by, the county superintendent of schools of the county, the person shall be deemed to have registered the diploma under Section 44330.

6. Education Code section 44330 provides:

Except where such service is provided by a school district pursuant to Section 44332.5, each county or city and county board of education may provide for the registration of any valid certification or other document authorizing the holder thereof to serve in a position requiring certification qualifications as an employee of the county superintendent of schools of such county or city and county or of a school district under the jurisdiction of such county superintendent of schools. Such registration shall authorize the service of the holder as an employee of the county superintendent of schools or of any school district under his jurisdiction in the capacity in which and for the period of time for which the certification or other document is valid.

*Burden and Standard of Proof*

7. 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.

8. 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.)

### *Relevant Judicial Authority*

9. A violation of Education Code section 44932, subdivision (a)(8), must also be established by reference to the *Morrison* factors.<sup>1</sup> 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.)

10. 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 Codes section 44932, subdivision (a)(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*

11. 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.

12. 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

---

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

offensive conduct. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

13. 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*

14. 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.)

15. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

#### *Evaluation of the Charges*

16. The evidence demonstrates that Mr. Sherman's preliminary single subject teaching credential authorizing him to teach physical education most recently expired on June 1, 2016. While Mr. Sherman held an emergency 30-day substitute teacher permit from December 8, 2016, to January 1, 2018, there is no evidence he currently has any valid teaching credential from California. Furthermore, there is no evidence that Mr. Sherman ever provided any evidence of a valid teaching credential to the district despite multiple requests by the district that he do so. Mr. Sherman was first issued his preliminary single subject teaching credential on October 1, 2004, and was given many years in which he could clear that preliminary credential. However, he failed to do so, and the final expiration of that preliminary single subject teaching credential occurred on June 1, 2016. Accordingly, the evidence demonstrates that Mr. Sherman has persistently refused to follow the state's and district's requirement that he have a valid teaching credential in the subject he teaches, namely physical education, and that he provide that teaching credential to the district. Mr. Sherman's refusal to do so is cause for his dismissal.

#### *Cause Exists to Dismiss Mr. Sherman*

17. Cause exists to dismiss Mr. Sherman pursuant to Education Code section 44932, subdivision (a)(8), because the evidence established that Mr. Sherman persistently violated district policies, regulations and school directives by failing to provide a valid teaching credential to teach physical education despite multiple requests by the district.

//



## ORDER

Mr. Sherman's appeal of his dismissal from employment with the San Diego Unified School District is denied. The district's request to dismiss Mr. Sherman is granted. Mr. Sherman shall be dismissed from the district.

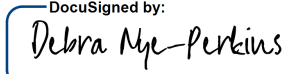
DATED: January 22, 2019

DocuSigned by:  
  
17E1A9F450B349F...  
BRIANNA RAPHAEL  
Commission Member

DATED: January 22, 2019

DocuSigned by:  
  
9705E7BF1B1C466...  
MICHAL-LYNN O'KELLEY  
Commission Member

DATED: January 22, 2019

DocuSigned by:  
  
73AD8C62D0DE42D...  
DEBRA D. NYE-PERKINS  
Administrative Law Judge  
Office of Administrative Hearings