

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
ELK GROVE CITY UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of**

**Carl Chapin, Respondent.**

**OAH No. 2020040006**

**DECISION**

This matter was heard by video conference before a Commission on Professional Competence (Commission) of the Elk Grove Unified School District (District) on August 17 through 24, 2020, in Sacramento, California. The Commission included Alayna Carter, Denise Lambert, and Timothy Aspinwall, Administrative Law Judge, Office of Administrative Hearings, presiding.

Gabriela D. Flowers and Katherine S. Holding, Attorneys at Law, represented the District.

Christopher O. Hammer, Attorney at Law, represented Carl Chapin (respondent), who was present throughout the hearing.

On August 26, 2020, the record was re-opened for the parties to submit motions regarding Exhibit 1 and Exhibit N, and for either party to file an opposition. The District filed a motion to admit Exhibit 1 for jurisdictional purposes, and

respondent filed a motion to withdraw Exhibit N. Neither party objected. Both motions were granted, and the record closed on September 4, 2020.

## **FACTUAL FINDINGS**

### **Background and Procedural History**

1. Respondent is a permanent certificated employee of the District. He was most recently assigned to Cosumnes Oaks High School to teach health education during the 2018-19 school year. Respondent also most recently coached the girls' tennis team at Franklin High School during the 2018-19 season.
2. On March 6, 2020, David Reilly, Associate Superintendent for Human Resources signed the Notice of Intent to Dismiss and Statement of Charges (Statement of Charges) recommending termination of respondent's employment with the District on the bases of (1) immoral conduct; (2) dishonesty; (3) evident unfitness for service; and/or (4) persistent violation of or refusal to obey school laws of the state or reasonable regulations prescribed by the governing board of the District. Respondent timely filed a Request for Hearing/Notice of Defense. On August 6, and August 11, 2020, respectively, the District filed and served a First and Second Amended Statement of Charges. This hearing proceeded on the Second Amended Statement of Charges.

### **District's Evidence**

3. The District's primary evidence includes testimony and written statements of female students at Franklin, Cosumnes Oaks, and Laguna Creek High Schools, that during 2017 and 2018, respondent inappropriately touched and made inappropriate comments to and about female students and members of the girls'

tennis team. The District's evidence also includes testimony from school and District administrators that respondent's comments and conduct violated specific rules and policies, and that respondent was dishonest during an interview with a District administrator.

### **M.E.'S TESTIMONY AND WRITTEN STATEMENT**

4. M.E. is currently a student at University of California (U.C.), Berkeley. She graduated from Franklin High School in 2019. M.E. played on the varsity girls' tennis team throughout high school, and was co-captain during her senior year.

5. Respondent arrived as the head coach of the girls' tennis team before the 2017-18 season, M.E.'s junior year. Respondent told the team they looked "rag-tag" because they did not dress uniformly. M.E. dressed more modestly in keeping with her religious beliefs. Specifically, M.E. wore a T-shirt and leggings in the team colors instead of the standard tank top and skirt or shorts. Respondent's comments to the team that they looked "rag-tag" continued into the 2018-19 season. Respondent made these comments to the entire team, but looked straight at M.E. in a way that singled her out.

6. Respondent was disrespectful of M.E.'s religious commitments, and less accommodating of her scheduling needs than he was with other team members. On one occasion, M.E. told respondent she needed to miss a non-league tennis match to attend an important religious event. Respondent told her she should attend the tennis match instead. On another occasion, respondent told M.E. that she would not be allowed to play in an upcoming tennis match if she missed part of a practice to provide tutoring to a student in advanced placement physics. In contrast, respondent

permitted other team members to miss portions of tennis practice in order to attend other school club meetings.

7. On one occasion, respondent brought a new uniform to show to the team. When the team members said they did not like it, respondent asked them whether it was because the uniform is "not sexy enough." M.E. and the other girls on the team were taken aback by this comment.

8. Respondent frequently told the girls on the team that they had "fit bodies" and "good-looking bodies." Respondent's repeated comments to the girls that they had "fit bodies" and "good-looking bodies" made M.E. feel very uncomfortable, especially given that the girls on the team were typically wearing tank tops and short skirts. Respondent would often qualify these comments with a statement that "I mean this in the most professional way possible." Such statements did not lessen the fact that his comments made M.E. and other team members feel uncomfortable.

9. Respondent frequently put his hand on M.E.'s lower back after matches when she was reporting her scores to him during her junior and senior years. He also held M.E.'s hand after a match for a length of time that made her uncomfortable.

10. On one occasion in front of the tennis team, respondent lifted the leg of his gym shorts to show the spandex he was wearing underneath and to demonstrate that the girls could keep tennis balls under their shorts or skirt if they wore spandex. The girls felt uncomfortable with respondent showing them his spandex undergarment. M.E. did not want to see what was under respondent's gym shorts.

11. At the end of the tennis season in her senior year, M.E. and three other members of the girls' tennis team, M.W., V.T., and E.C., decided to report to the school administration their concerns about respondent's comments and inappropriate

touching. The tipping point for them was the fact that respondent had missed most of an important tennis match in favor of coaching a girls' flag football team practice in their preparation for the "powder-puff" game – an annual intramural girls flag football game. M.E. and her three teammates who came forward were bothered by the fact that respondent was very strict with them regarding attendance at tennis practices and matches, yet he decided to miss most of a match to coach a girls' flag football practice.

12. M.E. and her three teammates told the school principal, Chantelle Albiani, about respondent's numerous inappropriate comments to the girls' tennis team regarding their bodies, his unwelcome touching, and his disrespect for her religious commitments. M.E. felt it was her responsibility to come forward because she was co-captain of the team and was able to articulate matters reasonably well with adults. Also, M.E. felt she was doing this for the benefit of younger players who would be on the team in coming years, and who may not have the same advocacy skills to address the issues relating to respondent's comments and conduct.

13. M.E. was also interviewed by Dean Bowen, a law enforcement liaison employed by the District. She told him of her experiences with respondent, and her concerns regarding his comments and conduct. When Officer Bowen asked her whether respondent's touching was "sexual," M.E. said it was not. Officer Bowen did not define what he meant by "sexual" when he asked the question. Today, M.E. is two years older, has a better understanding of events, and disagrees with her prior statement that none of respondent's conduct was sexual.

## **E.C.'S TESTIMONY AND WRITTEN STATEMENT**

14. E.C. is currently going into her first year at U.C. Berkeley. She graduated from Franklin High School in 2020. E.C. played on the girls' tennis team from her freshman year through the beginning of her senior year. During her sophomore and junior years, respondent was the head coach; and during her senior year, respondent was no longer the coach.

15. E.C. noticed that respondent treated M.E. more harshly than he treated the other team co-captain, A.R. If M.E. missed a practice, respondent would "get mad." If A.R. missed a practice or a game, respondent "would not scold her as much." If M.E. had to miss a practice because of a religious holiday, respondent would "get mad at her in front of the whole team" and embarrass her. E.C. also saw respondent tell M.E. in front of the team that she should "just skip" a religious holiday and come to practice.

16. E.C. also observed respondent tell the team on multiple occasions that "you have fit bodies" and other similar comments. E.C. felt uncomfortable and unsafe when respondent commented on their bodies. The fact that he qualified his comments as being said in a professional way "did not make it okay."

17. Respondent physically touched E.C. in ways that made her feel uncomfortable and unsafe. Once after she was playing during practice, he touched her arm and asked her if she was "sweating yet." On another occasion, respondent touched E.C. on the calf and congratulated her for a good game as she was walking away from him. She did not expect respondent to reach out and touch her, and this made her feel uncomfortable and unsafe.

18. E.C. also saw respondent pull up his gym shorts to show he was wearing spandex underneath. EC and other team members were taken aback by this. The assistant coach, Mark Stinson, was present and later remarked: "that was weird, and I'm a guy."

19. A male student was the manager for the girls' tennis team. On one occasion when the manager was getting water from the water jug, the spigot was close to his groin area. A member of the girls' tennis team was bent over to get some water and her head was also near the manager's groin area. Respondent said "that's just wrong," in the presence of his team. They later talked amongst themselves about respondent's inappropriate comment.

20. During E.C.'s junior year, respondent sent an email to the girls' tennis team stating in part:

I have a lot of nice dessert items left over from our wedding. You gals get some if you want tomorrow after practice. They are yummy and not too large, so your sugar intake will not be that much. You are all fit, so a nice little treat after practice #1 will be nice.

E.C. felt that this reference to portion size and the girls' physical fitness conveyed gender stereotypes regarding physical appearance, and that respondent would not have sent the same email to a boys' team.

21. E.C. often played tennis at the same racquet club as respondent. While at the racquet club, respondent once told E.C. that her seventh-grade sister is "cute" and

that "she's my little wildcat."<sup>1</sup> This comment made E.C. feel uncomfortable because she does not want her younger sister to have to face respondent's comments about her physical appearance when she starts to play tennis on the high school team.

22. During a team practice at the racquet club, the girls were looking at some new uniforms out on the tennis court. Respondent brought a blanket from his car and told the girls they could change into the new uniform on the court behind the blanket. The girls did not do so.

23. After she spoke with Ms. Albiani, E.C. was interviewed by Officer Bowen. He asked her whether any of respondent's comments were "sexual in nature." E.C. answered "no." Officer Bowen did not define what he meant by "sexual" when he asked the question. At the time she felt respondent's comments were inappropriate. Now, she believes respondent's comments had some "sexual connotation."

#### **V.T.'S TESTIMONY AND WRITTEN STATEMENT**

24. V.T. is currently going into her first year at U.C. Irvine. She graduated from Franklin High School in 2020. V.T. played on the girls' tennis team only during her junior year, 2018-19. Respondent was the head coach, and Mr. Stinson was the assistant coach.

25. V.T. was present when respondent made a pointed comment to the team that one of the players had missed a scrimmage match. M.E. was the player who missed the match because she had a religious holiday. Respondent appeared to be angry that M.E. missed the match. Respondent also told the team that he did not like that the team was not dressed uniformly during matches, and made it clear that he did

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<sup>1</sup> The Franklin High School mascot is a wildcat.

not like the fact that M.E. did not dress in the standard uniform. Respondent continued to say that the team looked "rag-tag," even after they were able to get T-shirts with the same logo as on the tank-tops, which was the standard uniform.

26. V.T. also observed respondent make comments to the girls' tennis team about their bodies, such as "I see some really fit athletic bodies." He would often preface these comments with a statement that he "does not mean it in a bad way." In V.T.'s view, respondent should not have commented about their bodies if he felt it necessary to qualify his comment that way.

27. Respondent sometimes touched V.T. on her shoulder during coaching moments. She also noticed that other team members were visibly uncomfortable with respondent touching them.

28. V.T. was also present when respondent lifted his shorts to show the girls how to store a tennis ball in a spandex undergarment. V.T. felt respondent could have explained verbally without demonstrating how to keep a tennis ball underneath his spandex. Mr. Stinson was present during the incident, and agreed that "it was a little weird."

### **M.W.'S TESTIMONY AND WRITTEN STATEMENT**

29. M.W. played on the Franklin High School girls' tennis team while respondent was the coach. M.W. noticed that respondent treated M.E. differently than he treated other players. For example, respondent said the team looked "rag-tag" in front of the team when M.E. mentioned her need to wear more modest clothing because of her religious beliefs. Also, respondent told the team they needed to make tennis a priority in response to M.E.'s request to miss a game in order to attend a religious holiday. He did not get as upset with other players who were less consistent

in their attendance than M.E., and who also wore clothing different than the usual tank top and a skirt or shorts.

30. M.W. was also present when respondent told the tennis team on multiple occasions that they had fit, athletic, or good-looking bodies. The girls were visibly uncomfortable when respondent said these things.

31. Respondent made her feel uncomfortable by placing his hand on her back and shoulder without asking permission to do so. To her observation, respondent would put his hand on the girls' backs or shoulders whenever he got close to them. She noticed that he pulled the girls in closer when he would shake hands. M.W.'s perception is that respondent took "every opportunity" to touch members of the team. She felt this was a violation of their boundaries, and that feels like respondent did not respect them at all.

32. M.W. was present when respondent lifted his shorts to show he was wearing spandex underneath. He then asked the girls whether it was "weird" for him to do that. Mr. Stinson was present when respondent lifted his shorts to show his spandex. Mr. Stinson said it was "weird."

### **C.L'S TESTIMONY**

33. C.L. attended Franklin High School, and was on the tennis team in 2017 when respondent was coach. She was present when respondent told the team they "looked good" during warm-ups and practices. She understood this to be more about their bodies than physical conditioning. These comments made her feel uncomfortable. C.L. was also present when respondent commented that some players, M.E. and M.T., dressed differently than in the standard uniform.

34. Following a tennis match respondent gave her a "high-five" but then held onto her hand above her head for what seemed like 30 seconds to a minute while he continued to talk to her about the game, before finally releasing her hand. Respondent's conduct made her feel uncomfortable.

### **H.C.'S TESTIMONY AND WRITTEN STATEMENT**

35. H.C. is currently a student at U.C. Davis, going into her sophomore year. She graduated from Laguna Creek High School in 2019, where she played on the girls' tennis team and served for a short time as a manager for the boys' tennis team during her sophomore year in 2017. Respondent was head coach of the boys' team in 2017.

36. Respondent made comments to H.C. that made her uncomfortable while she was serving as a team manager. On one occasion when she was picking up tennis balls from the court, respondent told her to pick them up faster because she looked "athletic." On another occasion when she was cleaning some dirt from around a net, respondent told her to use a tool because he did not want her to "ruin [her] pretty little fingernails."

37. H.C. also observed respondent make numerous comments to another female manager, L.V. Respondent frequently complimented L.V. about her make-up and clothing.

38. H.C. felt that respondent's comments to her and L.V. were "over the line" of professional conduct. H.C. decided to stop working as a team manager in part because of respondent's conduct toward herself and L.V., and in part to allow more time to study.

## **L.V.'S TESTIMONY**

39. L.V. graduated from Laguna Creek High School. She was a manager for the boys' tennis team from her sophomore year in 2015 through her senior year. Respondent was the head coach during that time.

40. Respondent made numerous comments that made L.V. feel uncomfortable. He would frequently make comments to her about what she was wearing. On one occasion respondent made a comment to the entire boys' team about what she was wearing as a tactic to get their attention during roll call. Specifically, respondent called out to the team to look at the "really cute skirt" she was wearing. The team became very quiet, and L.V. felt very uncomfortable. Respondent then said to them: "Don't be weird, I have a daughter."

41. On another occasion, while they were at another school for a tennis match, respondent told the female managers he wanted to take them to dinner. He did not say why he was asking them, and she did not know his intentions. Respondent's statement made L.V. feel very uncomfortable. Respondent again tried to make it seem okay by saying: "I have a daughter." This did not make it any less uncomfortable for L.V.

42. L.V. would not serve as a team manager for respondent again. During the time she served as the team manager under respondent, she was "going through a lot of things" and did not understand how inappropriate his conduct was. Now, as she looks back, his conduct was really inappropriate.

## **M.H.2'S TESTIMONY AND INTERVIEW STATEMENT**

43. M.H.2 graduated from Cosumnes Oaks High School. She will enter her first year at Cosumnes River College this fall.

44. Respondent was M.H.2's driver education teacher at Cosumnes Oaks High School. Respondent would frequently "stare" at her "up and down" and call her "cute" and "beautiful." This happened every week. When she saw respondent coming, all she could think about was him calling her "cute" and "beautiful." Respondent's comments would go "too far" and made M.H.2 uncomfortable.

45. Because of respondent's behavior, M.H.2 would not ask respondent when she had a question, but rather she would figure it out on her own. She did not want to be near respondent during class, and avoided him before and after class so as not to be alone with him.

## **JACQUELYN WOOLDRIDGE'S TESTIMONY**

46. Jacquelyn Wooldridge is a vice principal at Cosumnes Oaks High School. Her responsibilities include ensuring that teachers behave appropriately with students. To follow-up on concerns regarding respondent's conduct, Ms. Wooldridge and another vice principal, Jesse Champion, interviewed a random selection of students from Cosumnes Oaks High School. Ms. Wooldridge wrote the student's responses to a standard set of interview questions. Several of the responses were concerning to Ms. Wooldridge, as set forth below.

D.W. was a student in respondent's driver education class and advocacy class during the 2017-18 school year. On one occasion, D.W. had her hair in a bun and her fingernails polished in pink. Respondent looked at her and said: "You have your bun

done and your nails done, you look good." Respondent also frequently told the students "you're a threesome" as students broke into groups, and "I'm going to get real anal with you guys." D.W. felt respondent was making these comments intentionally because "he always did it."

M.H. was a student in respondent's driver education class during the 2017-18 school year. M.H. was on the cheer team. Respondent told her that their "uniforms look good," that their "dancing was nice," and that they "were on point with [their] skills."

M.U. was a student in respondent's driver education class during the 2017-18 school year. M.H. remembered that respondent would sometimes touch students' hair, most often "African American girls."

47. Ms. Wooldridge interviewed other students in addition to those referenced above. Most of the students said positive things about respondent.

### **CHANTELLE ALBIANI'S TESTIMONY**

48. Chantelle Albiani has been the principal of Franklin High School for almost seven years. She knows respondent as a tennis coach at Franklin High School. In addition, she knew respondent when they both taught at Florin High School many years ago.

49. In October 2018, the school athletic director brought M.E. and M.W. to Ms. Albiani's office directly after they had come to his office and told him they were uncomfortable with respondent's comments and conduct. M.E. and M.W. told Ms. Albiani that two other students, V.T. and E.C., were also uncomfortable with respondent's comments and conduct. Ms. Albiani then met with all four girls together

in her office. At Ms. Albiani's request, the four students sat at her conference table and wrote their statements. She then interviewed each of them, and took notes of what they told her.

50. Based on her interviews of the students and their written statements, Ms. Albiani believes respondent violated numerous standards in the Secondary Coaches Handbook (Handbook) that is given to the coaches every year. All coaches in the District are expected to be familiar with and adhere to the standards included in the Handbook. The Statement of Philosophy in the Handbook says, in part, that "[t]he primary aim of the programs is the positive development of the participant." The Handbook also provides a section titled Athletic Guidelines – Sportsmanship, which includes "six core principles: trustworthiness, respect, responsibility, fairness, caring, and good citizenship."

51. Ms. Albiani believes respondent's comments and conduct with the girls' tennis team failed to meet these and other provisions of the Handbook. Specifically, the girls on the team felt uncomfortable with and disrespected by respondent's frequent comments about their bodies and attire, frequent touching, showing his spandex undergarment, and disrespectful treatment of M.E. regarding her request to miss a tennis match to attend a religious holiday and her choice to wear more modest clothing consistent with her religious beliefs.

52. Ms. Albiani would not trust respondent to behave appropriately around students. She could not assign him to work in a class with any certainty that he would not make inappropriate comments, inappropriately touch students, or disrespect their religious practices. No students should ever be put in a position where they have to worry whether a teacher will make inappropriate comments, touch them without permission, or disrespect their religious practices.

## **KERI VAN DE STAR'S TESTIMONY**

53. Keri Van de Star is employed as the director of human resources of the District. She has been employed in that capacity since August 2008. She was previously employed as a school principal at various schools for a total of 11 years, as a vice principal for several years, and as a teacher.

54. Ms. Van de Star learned of the concerns regarding respondent from a District legal compliance specialist who had obtained information from Ms. Albiani. Ms. Van de Star read the written statements that M.E., E.C., M.W., and V.T. prepared, and Ms. Albiani's interview notes from her meetings with them. Ms. Van de Star also reviewed the written statements generated through the investigations at Laguna Creek and Cosumnes Oaks High Schools. Ms. Van de Star was concerned by the number and nature of respondent's comments to students, which were inappropriate and disrespectful to the students.

55. Ms. Van de Star interviewed respondent in October 2018. Respondent's statements during the interview are accurately set forth in paragraphs 16 through 18 of the Statement of Charges. Some of respondent's statements during the interview were concerning to Ms. Van de Star, such as his statement that he did not think lifting his shorts to show his spandex undergarment would make the girls feel uncomfortable, and continued to think that it should not make them feel uncomfortable.

56. Based on respondent's comments and conduct, Ms. Van de Star believes he violated the District's Human Dignity Policy, which includes the statement that part of the District's mission is to "provide a positive harmonious environment in which

student unity and respect for the diverse makeup of the school community is promoted." His conduct and comments detracted from these objectives.

57. Based on the seriousness of respondent's conduct, and the District's responsibility to ensure the safety of students, termination is the appropriate discipline in this matter. In reaching this conclusion, Ms. Van de Star took into consideration the fact that respondent does not have prior discipline in the District.

### **DAVID REILLY'S TESTIMONY**

58. David Reilly is employed as the District associate superintendent for human resources. He has held this position for approximately five years. His responsibilities include employee discipline, recruitment, and labor negotiations. He was previously employed as an assistant superintendent at Sequoia Unified School District, and also worked in different districts as a principal, vice principal, and high school English teacher.

59. Mr. Reilly's understanding of respondent's conduct is based on his review of written information including statements prepared by students, summaries of student interviews, Ms. Albiani's interview notes, Mr. Bowen's report regarding his student interviews, and letters of support submitted in favor of respondent.

60. Based on respondent's comments and conduct, Mr. Reilly believes that respondent failed to meet the District's job description for a teacher. Specifically, respondent failed to: model "standards of pupil behavior," maintain a "positive and professional image," "[d]isplay the use of good judgment," or to "[m]aintain professional relationships with pupils."

61. Based on respondent's comments and conduct, Mr. Reilly believes respondent violated the District's Board Policy (B.P.) against sexual harassment (B.P. 5145.7), which includes but is not limited to "verbal, visual or physical conduct of a sexual nature" when the conduct has the effect of "creating an intimidating, hostile or offensive educational or work environment." Types of conduct which may constitute sexual harassment include "unwelcome leering [and] sexual flirtations," "sexual jokes," and "teasing or sexual remarks about students."

62. Mr. Reilly believes respondent violated the District's code of ethics (BP 4119.21), which states that a teacher shall not "intentionally expose the student to embarrassment or disparagement" or "exclude any student from participation" on the basis of "race . . . gender . . . or religious beliefs." In addition, the standards require that the teacher "shall make reasonable effort to protect the student from conditions harmful to learning or to health and safety."

63. Mr. Reilly believes respondent violated the District's nondiscrimination policy (BP 0410), and nondiscrimination/harassment/intimidation/bullying policy (BP 5145.3), both of which prohibit unlawful discrimination against an individual or group based on categories including race, religion, and gender.

64. Based on Mr. Reilly's review of the evidence including respondent's comments and conduct, and the letters of support on respondent's behalf, Mr. Reilly believes that termination of respondent's employment is appropriate and necessary to ensure the safety of students.

## **Respondent's Evidence**

### **RESPONDENT'S TESTIMONY**

65. Respondent earned a Bachelor of Arts in physical education in 1985, and a teaching credential in 1986, from California State University (CSU) Chico. He earned a driver education and driver training credential in 1987, and a Master of Science in physical education in 1999, from CSU Sacramento.

66. Respondent has worked for the District as a contracted teacher for approximately 34 years. He started as a substitute teacher in 1987, and was hired in a permanent position as a physical education and driver education teacher at Elk Grove High School in 1988. He has since taught driver education, physical education, and health education at District high schools, most recently at Cosumnes Oaks High School. Respondent also worked as a coach for boys' and girls' teams in various sports. Most recently, he worked as the head coach of the girls' tennis team at Franklin High School (2017 through 2018) and the boys' tennis team at Laguna Creek High School (2014 through 2018). Respondent also coached boys' and girls' football, basketball, and softball at various times. Taken as a whole, respondent coached 57 seasons in the District, including 13 seasons as a varsity coach in boys' and girls' sports.

67. Respondent enjoys teaching. He knew from his senior year in high school he wanted to be a teacher. His greatest role models in life were his teachers and coaches. Respondent received positive evaluations (meets or exceeds standards) in 2014 and 2018 for his teaching of health education.

68. In 2002, respondent completed a coaching education program which was required to work as a coach in the District. The coaching manual for the course lists a set of appropriate nonverbal behaviors, including touching such as "pats on the back,

taking someone's hand, putting an arm around the player shoulder, and so forth." Respondent utilizes these types of nonverbal positive reinforcement with both male and female athletes, patting them on the shoulder or back. He may also touch an athlete when demonstrating proper athletic technique.

69. Respondent initially became concerned about the Franklin High School tennis team uniforms in 2017, after one of the fans at a tennis match asked him why his team was not dressed uniformly. Respondent later spoke with the team and told them "we don't want to look rag-tag." During the 2017 season, respondent asked assistant coach Eva Wilson-Lee to coordinate the selection and acquisition of team uniforms. In 2018, the team co-captain A.R. took charge of the uniforms. Respondent's only concern was that the uniforms have the team logo and be color coordinated. Some of the girls ordered tank tops and skirts, and some wore T-shirts and leggings.

70. Respondent testified that he had no problem with the fact that M.E. chose to wear a T-shirt and leggings as her uniform, and that he never criticized her about that. She did her best to dress consistently with her religious beliefs, which was "outstanding." Respondent also testified that he never discouraged her from attending a religious event or pressured her to attend a tennis match instead of a religious holiday. Respondent denied that he treated M.E. differently than other players, including A.R. Respondent testified that it was either a misunderstanding or M.E. "is not being entirely truthful" in her statements against him.

71. In 2018, respondent sent the team written rules and policies regarding attendance at practices and tennis matches. Concerning practices, the rules were that no other extracurricular activity would take priority over an in-season practice. If there was a school-related meeting that overlapped with practice, a player would be

required to attend at least half of the team practice. The only valid excuse to miss a tennis match was a physical injury verified by a physician's note.

72. Respondent testified that he did not enforce the attendance policies as written, and that physical injury was not the only reason a team member could miss a tennis match. Respondent also considered illness, academics, and religious holidays to be valid reasons to miss a match. He never told the girls they should miss an academic obligation for a tennis match, though he would sometimes ask whether they could do both by showing up a little late to the match or the academic event. Respondent also testified that he never showed favoritism regarding attendance requirements, and never disciplined a player for missing a practice.

73. Respondent does not recall touching E.C. on her calf, but may have done so if he was sitting on the 18-inch deck next to the court when she reported her scores to him. Respondent recalls telling E.C. that her younger sister is "cute." His intent was to show a positive attitude. Respondent denied that he referred to E.C.'s younger sister as "my little wildcat."

74. Respondent sometimes told the team that he wants to see them "all sweating" to help motivate them before practice. During practice, he would sometimes grab someone's wrist who was nearby and ask "are you sweating yet?"

75. Respondent sometimes told the team that they have "fit, athletic bodies." Respondent was "trying to be nice" in saying this. He did not use the phrase "good-looking bodies." He would preface his comments about their "fit, athletic bodies" with a statement that he means this "in the most professional way possible" because he knew some girls would potentially take it the wrong way. Respondent now regrets making such comments as he is aware they could make some girls uncomfortable.

76. Respondent pulled up his gym shorts approximately four inches above his knee to demonstrate how the girls could keep tennis balls underneath their compression shorts. He did this because some of the younger players would set tennis balls on the ground near their feet while practicing their serves, which presented a tripping hazard. Respondent now understands how his conduct could make some girls uncomfortable, because he is an adult exposing his body to some degree. He now realizes that he should have verbally described how to keep a tennis ball in one's spandex, rather than demonstrating how to do so.

77. Respondent denied putting his hand on the girls' backs or shoulders whenever he was close to them, or pulling them closer in after shaking hands. Respondent acknowledged touching the girls when they were reporting scores to him following a tennis match. Respondent also acknowledged that he asked two different girls, A.B. and T.N., for hugs after their tennis matches in 2018. He gave both side hugs.

78. Respondent does not specifically recall telling H.C. to run and pick up tennis balls because it made her "look athletic" but may have done so with the idea that he was "trying to be nice." He recalls telling H.C. something about her "little fingers" while she was cleaning out the anchor holes for the tennis nets. He now sees how his comment could be construed as sexist.

79. Respondent does not recall commenting about L.V.'s makeup or outfits, but he may have complemented her in an effort "to be nice." Respondent acknowledged it was a bad choice on his part if he did so. Respondent does not recall calling attention to L.V.'s skirt with the boys' tennis team, though he could have done so. Respondent testified that if he did, it was a poor attempt on his part "to be nice."

80. Respondent offered take a group of the tennis team managers to lunch to thank them for their service. He never took them to lunch, and testified that he would never take only one manager to lunch.

81. Respondent acknowledged that he said "that looks wrong" when a male was dispensing water from a cooler because it looked like he was urinating. He "owns" that it was wrong for him to say this.

82. Respondent denied telling the girls they could try on a new uniform on the tennis court, or bringing a blanket out onto the court for them cover-up while they were changing into the new uniform. The uniform vendor brought one blouse and one skirt for the girls to look at. Respondent walked away and let the girls look at the uniform.

83. Respondent acknowledged that he sent an email to the girls' tennis team offering to share some dessert from his wedding. He was "trying to be nice" and wanted to share his excitement about the beginning of the tennis season. He now sees how the email referencing portions of the dessert and the girls' physical fitness would make them feel uncomfortable.

84. Respondent sometimes told students they would be a "threesome" when they were breaking into groups. He also sometimes told students he was "anal" as a way of letting them know he is rigid and meticulous. He did not intend any sexual innuendo by these comments, and he does not believe there is anything wrong for him to use such words in these contexts.

85. Respondent testified that M.H.2's account of events is "way overdone." He did not look at her "up and down" or take his comments "too far" as she said. He might have called her "cute" as a way "to be nice." He understands now that it can

make a student uncomfortable to call her "cute" and that it is not okay to do so.

Respondent acknowledged that he was "too loose" in calling students "cute."

86. Respondent sometimes touched female students' hair – maybe three or four times – because he thought it looked "good or cute." He testified that he would never touch a student's hair without their permission, and that this was his "old school way" of trying to "be nice" by letting them know their hair looks good.

87. Respondent asserted he did not realize his conduct and comments were inappropriate at the time. He has since realized his conduct was unacceptable because his wife, who is a human resources manager, has helped open his eyes to these matters. Respondent and his wife have engaged in role-play, which has helped him better understand how others may perceive his conduct and comments.

88. Respondent testified that watching the students testify in this matter was "traumatic" and helped him to understand the impact of his conduct. He wishes a team captain or an adult had let him know he was making them uncomfortable.

89. Respondent believes that he was "naïve" during this time of his career. He "pushed the envelope on being nice" and realizes he has "room for improvement." Respondent testified that if he returns to teaching, he would not engage in similar conduct again and would do a much better job adhering to the District's written standards. In respondent's view, "everybody would be fine" if he returns to teaching.

90. That being said, respondent testified that some of the girls on the Franklin High School tennis team were "intentionally untruthful" and that there was some "collaboration" on their part to make up false allegations. He testified that some of the allegations are not true. For example, he contended that he was never biased with respect to religious holidays or any of the girls' requests to wear more modest

clothing; he never suggested that the girls try on a new uniform by changing behind a blanket on the tennis court; he never held a girl's hand for an extended time in a high-five; and never tried to pull girls closer while shaking their hand. He further testified that some of the girls may have been motivated to make false allegations about him when "they ended up not liking" him because they felt he was inconsistent with his own attendance rules and for this reason "wanted to get rid of" him.

### **HALLIE WILSON'S TESTIMONY AND LETTER OF SUPPORT**

91. Hallie Wilson is currently a student at the University of San Francisco. She graduated from Franklin High School, where she played varsity tennis. Respondent was her coach, and her mother, Eva Wilson-Lee, was the assistant coach in her senior year. She prepared a letter of support for respondent after her mother told her about his situation with the District. In her letter, she wrote that respondent "isn't the man that some of the girls on the team claim he is; he really is just a passionate coach who gave high-fives and pats on the back and that's really all there is to it."

92. Ms. Wilson testified that some of the girls did not like respondent because they wanted to attend to their schoolwork rather than come to practice, and others did not like him because of his "overly enthusiastic" demeanor. She does not recall that respondent expressed any concern about the tennis uniforms, other than he wanted the girls to wear school colors. She was never uncomfortable around respondent and never heard him say anything inappropriate. She did, however, acknowledge that it would be inappropriate if he said a girl is "cute."

### **EVA WILSON-LEE'S TESTIMONY AND LETTER OF SUPPORT**

93. Eva Wilson-Lee is employed in the field of real estate and mortgage loans. She knows respondent through their mutual interest in tennis. They met at

Laguna Creek Racquet Club, where they sometimes played as doubles partners. When he became head coach of the girls' tennis team at Franklin High School, she offered to serve as his assistant coach, which he accepted. She does not see respondent outside of tennis.

94. Ms. Wilson-Lee's impression of respondent as a coach is that he is very organized and very enthusiastic. During her year as assistant coach, she was present at most practices and matches. She was also present when respondent would talk with the team before and after practices and matches. She does not recall respondent saying anything inappropriate. She saw him pat girls on the back, give high-fives, and fist bumps. She saw respondent give a side hug to a player after a very difficult match, with the player's permission. She did not feel these actions were inappropriate. She also heard respondent tell the girls "you have fit athletic bodies." She did not feel this was inappropriate.

95. Ms. Wilson-Lee was in charge of coordinating the selection of team uniforms. Respondent was not involved in this by his own choice. Respondent did not care whether players wore tank tops or T-shirts, or shorts or miniskirts. He did not complain in front of Ms. Wilson-Lee about the fact that M.E. wore a T-shirt and leggings. There were also other girls who did not wear the team uniform.

96. Ms. Wilson-Lee did not hear respondent make any inappropriate statements to the girls. She acknowledged it would not be appropriate for respondent to call attention to a girl's skirt in front of a group of boys. She also acknowledged it would not be appropriate if respondent repeatedly called a girl "beautiful." It would also concern her if the girls felt uncomfortable around him.

## **MARK STINSON'S TESTIMONY AND LETTER OF SUPPORT**

97. Mark Stinson retired three years ago as the chief of police in the City of Sonora. During the 2017-18 school year, he volunteered as a team parent with the Franklin High School girls' tennis team. He attended approximately 80 to 90 percent of the matches. During the 2018-19 school year, he served as assistant coach. In that capacity he attended all matches and practices, except for one practice. He was present a majority of the time when respondent would speak with the girls before and after practices, and before matches.

98. Respondent expressed frustration during the 2017-18 season that the uniform was "hodgepodge" with team members wearing whatever they wanted. During the 2018-2019 season, respondent told everyone that he wanted the team to look a little more "uniform" with the team logo and colors. He also told them they could wear a skirt, shorts, or leggings.

99. Mr. Stinson heard respondent tell the girls on three or four occasions that they have "fit athletic looking bodies." He did not think this was an inappropriate complement. Mr. Stinson saw respondent pull up his shorts in front of the team to show how they could put a tennis ball under their spandex. He did not perceive any sexual innuendo, but thinks it might have been better for him to explain verbally rather than providing a physical demonstration.

100. Mr. Stinson did not see respondent treat M.E. differently than any of the other girls. He never heard respondent tell M.E. he she should attend a tennis match instead of a religious event, and does not believe he would do so.

101. Some of the girls, including A.R., E.B., and E.C., complained about respondent's attendance policies. None of the players ever complained to Mr. Stinson,

though he overheard the girls complaining amongst each other that respondent was too aggressive, and that they felt forced to practice when it was too hot or that they had to miss other school events. Mr. Stinson did not hear or receive complaints that respondent said or did things that made them uncomfortable.

102. Mr. Stinson wrote in his letter of support that it is possible some of the allegations "might be in retaliation for his stricter attendance guidelines" and that some of the allegations "may have been embellished to make them sound more egregious." At the time Mr. Stinson wrote his letter, he had not read the charges against respondent and did not know what the allegations were.

### **BRIAN BROWNE'S TESTIMONY AND LETTER OF SUPPORT**

103. Brian Browne is employed as a special education teacher at Laguna Creek High School. Mr. Browne met respondent approximately five years ago when respondent was head coach of the boys' tennis team at Laguna Creek High School. Mr. Browne served as assistant coach of the boys' team with respondent. Mr. Browne wrote his letter of support on behalf of respondent while he was still serving as his assistant coach. Mr. Browne is now the head coach for the boys' and girls' tennis teams at Laguna Creek High School.

104. Mr. Browne's observations of respondent as a tennis coach are all positive. He did not see respondent say anything inappropriate to the members of the boys' team or the team managers, who were typically members of the girls' tennis team.

105. One of the team managers, H.C., told Mr. Browne that respondent had said inappropriate things to her, which Mr. Browne reported to the school administration. Mr. Browne wrote his letter of support for respondent before H.C. had

told him of her concerns. Mr. Browne has “only good things to say” about H.C. and he made her team captain of the girls’ tennis team.

106. Mr. Browne believes it would be inappropriate for a coach to ask female team managers out to lunch, and would not do so. He also believes it would be inappropriate for a coach to tell girls that they have “fit athletic bodies,” that they are “beautiful,” or that they have “pretty little fingernails.”

#### **LYNDA BETTENCOURT’S TESTIMONY AND LETTER OF SUPPORT**

107. Lynda Bettencourt is employed as a teacher at James Rutter Middle School, in Elk Grove Unified School District. She was previously employed at Cosumnes Oaks High School, where she taught health, focus on college and career, and AVID for students preparing for college. Ms. Bettencourt coached girls’ softball at Cosumnes Oaks and Elk Grove High Schools. She also coached girls’ powder-puff football with respondent for five years at Cosumnes Oaks High School.

108. Ms. Bettencourt worked with respondent as a teacher for 11 years. She was chair of the Health Department at Cosumnes Oaks, where both she and respondent taught classes in health. Ms. Bettencourt and respondent worked collaboratively developing lessons and talking about best practices. She has been in his classroom approximately 50 times while class was in session. She observed that respondent was very engaged with his students in a positive way. Ms. Bettencourt never heard students complain about respondent.

109. Ms. Bettencourt coached powder-puff football with respondent for five consecutive years. The powder-puff season includes approximately four weeks of practice before the game, and there were approximately 60 to 70 girls on the team. Ms. Bettencourt observed respondent interacting with the girls. He was very clear and

structured in his directions, and gave a lot of praise for good performance. The girls appreciated the structure and high expectations. Ms. Bettencourt never saw respondent touch students inappropriately or heard him make any inappropriate comments.

110. Ms. Bettencourt is familiar with some of the allegations in this matter. She would advise him not to tell girls that they have "fit athletic bodies." He should find other ways to encourage physical fitness. She would also advise against commenting that a girl is "cute." Comments to students should be based on achievements rather than physical appearance. It would not be appropriate for a teacher to repeatedly call a female student "beautiful." She would also advise against talking to the girls' tennis team about food portion size. Finally, she would not use the word "anal" outside the context of a sex education class.

### **MICHAEL BRADLEY'S TESTIMONY AND LETTER OF SUPPORT**

111. Michael Bradley retired from the California Highway Patrol (CHP) in 2019. He now works at special events with the Santa Clara Police Department.

112. Mr. Bradley has known respondent since 2002, when they were both coaching girls' basketball at Sheldon High School. Respondent served as an assistant coach for the girls' varsity basketball team, and Mr. Bradley served as head coach for the girls' junior varsity basketball team. They had direct contact as girls' basketball coaches through 2005.

113. Mr. Bradley's impressions of respondent as a coach are that he was very professional and very structured such that the girls knew what to expect. He was always very encouraging and helped the girls learn from their mistakes. He saw

respondent touch the girls with "hugs of celebration" and "taps on the shoulder." He never saw anything about respondent's coaching that would "raise his eyebrows."

114. Mr. Bradley also visited respondent's driver education classes at Cosumnes Oaks High School to give presentations as a CHP officer during 2009 through 2019. Mr. Bradley observed that respondent ran a very structured class, held students accountable, and did not allow excessive talking. Mr. Bradley never saw respondent do or say anything harmful to a student.

115. As a coach, Mr. Bradley would not make a direct statement to girls about their bodies. He would not tell a girl she is "beautiful." He would not touch a girl's calf as a form of congratulations.

### **ANNETTE STRINGER'S TESTIMONY AND LETTER OF SUPPORT**

116. Annette Stringer is employed as a school counselor at Cosumnes Oaks High School. She has known and worked with respondent since 1999, first at Sheldon High School where she worked as a counselor, and now at Cosumnes Oaks where she has worked for over 10 years.

117. Ms. Stringer frequently receives complaints from students about teachers. She has not received complaints from students about respondent acting inappropriately. Her impression of respondent as a teacher is that he is very passionate and tries to do the right thing by students.

### **Discussion**

118. The testimony and written statements of the students from Franklin, Cosumnes Oaks, and Laguna Creek High Schools, are credible and convincing. Each of the students who testified were sincere and honest. Each provided an account of

events that is consistent with the others, yet sufficiently distinct that they are not contrived or rehearsed. Their testimony and written statements considered as a whole, provide an accurate account of respondent's conduct and comments – which were clearly inappropriate and violated specific rules and policies in the District.

119. The testimony of school and District administrators was also clear and convincing regarding how respondent's comments and conduct violated Board Policies and District requirements as alleged in the Statement of Charges, and why termination of respondent's employment is the appropriate discipline. They clearly considered the evidence regarding respondent's comments and conduct, and took into account respondent's statements and letters of support. Based on the evidence as a whole, the District reasonably determined that termination of respondent's employment is the appropriate discipline.

120. Respondent advanced a number of arguments regarding the merits of the allegations and the appropriate level of discipline. These are discussed below, not necessarily in the order presented at hearing.

121. First, respondent argued that some of the girls from Franklin High School were "intentionally untruthful" and that there was some "collaboration" because they "wanted to get rid of" him. The evidence does not support this argument. The four girls who came forward to Ms. Albiani are known to her as being highly responsible and respected, and they appeared to be sincere in their statements to her. There is no meaningful evidence that their statements or testimony were untruthful or the product of illicit collaboration. Rather, they each gave their own honest account of what they witnessed regarding respondent's comments and conduct. Based on the evidence as a whole, respondent's argument that the witnesses from Franklin High School were

motivated to give false statements and testimony on the theory that they resented his strict attendance policies is unconvincing.

122. Second, with respect to the alleged comments and conduct which respondent either admitted or testified might have occurred, respondent testified he now understands his conduct and comments were inappropriate, and that he will not engage in similar misconduct in the future. Respondent testified that his wife, a human resources professional, helped him become more aware of his conduct through discussions and role-play. Respondent's testimony in this regard did not demonstrate an increased level of understanding and acceptance of responsibility sufficient to ensure that he will not engage in similar misconduct in the future. Respondent also testified that the testimony from the students in this matter helped him better understand and appreciate the impact of his conduct and comments, to the point that it was "traumatic" for him to hear them testify. This is a human response to the students' compelling testimony. However, respondent's testimony that he learned from and was affected by their testimony does not provide sufficient assurance that he would not engage in similar misconduct in the future.

123. Third, respondent admitted he told students that he was about to "get anal" with them, and that students who were breaking into groups were a "threesome." He testified that it was "not wrong" for him say these things to his students, when considered in context. Respondent's testimony is concerning. The words "get anal" and "threesome" have sexual connotations which are inappropriate for a classroom. If respondent wanted to tell his students, as he testified, that he is "meticulous" he could have used that or another word with a similar meaning. If he wanted students to organize into a group of three, he could have told them just that. The fact that respondent does not, even now, accept that he was wrong to use the words "get anal"

and "threesome" in a normal classroom context demonstrates that he cannot or chooses not to appropriately monitor his own language.

124. Fourth, respondent argued that his conduct and comments were not sexual in nature, and that his intent was to encourage and compliment students. Respondent's argument is not persuasive. Some of his conduct and many of his comments were clearly sexual in nature. For example, respondent asked the tennis team if they disliked the uniforms because they were "not sexy enough." By its own terms, this comment was sexual in nature. Other comments such as telling the boys' tennis team to look at L.V.'s "really cute skirt," repeatedly telling M.H.2 that she is "cute" and "beautiful," and joking that it "looks wrong" when a male student was dispensing water near his groin, are all sexual in nature. Respondent's conduct was also sexual in nature when he looked at M.H.2 "up and down" and touched female students' hair.

125. Fifth, respondent argued that he was not dishonest in his interview with Ms. Van de Star, and that he provided honest answers to the extent he could recall the information requested. This argument is persuasive with respect to the alleged falsehoods set forth in the Statement of Charges.

126. Finally, respondent argued that his conduct was, at worst, unprofessional conduct under Education Code section 44932, subdivision (a)(2), and that the District must therefore employ progressive discipline. It is not necessary to a decision in this matter to determine whether respondent's conduct constitutes unprofessional conduct within the meaning of the Education Code. The District did not charge respondent with unprofessional conduct. Rather, the District alleged as grounds for dismissal immoral conduct, dishonesty, evident unfitness for service, and persistent violations, none of which require progressive discipline. The determination of whether cause to dismiss

exists under these grounds is set forth in the Legal Conclusions below. Preliminarily, it is necessary to determine whether respondent is unfit to teach.

## **Fitness to Teach**

127. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235 (*Morrison*), the California Supreme Court held an individual can be removed from the teaching profession only upon a showing that he is not fit to teach. The court listed the following factors as relevant when determining whether a teacher's conduct indicates that he is fit to teach: "[1] the likelihood that 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 praiseworthiness or blameworthiness of the motives resulting in the conduct, [7] the likelihood of the recurrence of the questioned conduct, and [8] 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." (*Id.* at pp. 229-230.) As set forth below, when respondent's conduct is considered in light of the *Morrison* factors, the District established respondent's unfitness to teach.

128. Adverse Effect of Respondent's Conduct. Respondent's conduct clearly had an adverse effect on students, as is evident by their testimony. Respondent's comments and conduct caused significant stress and discomfort for girls on the tennis team, managers of the boys' tennis team, and students in his classes. In addition, respondent set a poor example of male behavior for both boys and girls, such as when he called attention to L.V.'s "really cute skirt" in front of the boys' tennis team. A teacher is often described as "... an exemplar, whose words and actions are likely to

be followed by the children coming under [his] care and protection.'" (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.) Respondent violated the trust placed in him by his inappropriate comments and conduct.

129. Degree of Adversity Anticipated. Respondent's repeated inappropriate comments and conduct sent a message to students that it is acceptable for a teacher or coach to engage in the types of misconduct he displayed. For these reasons, there is a substantial likelihood respondent's conduct had a significant adverse effect on students who observed and experienced his conduct.

130. Proximity or Remoteness in Time of Respondent's Conduct. Respondent engaged in misconduct during 2017 and 2018. The District investigated the allegations beginning in October 2018, and served respondent with a Notice of Intent to Dismiss and Statement of Charges in March 2020. Respondent's misconduct is not remote in time.

131. Respondent's Teaching Certificate. Respondent teaches high school students in health and driver education, and serves as a coach. High school students are impressionable. Respondent, as a teacher and coach, is expected to display appropriate adult behavior. Instead, his inappropriate comments and conduct, caused teen girls to feel uncomfortable in his presence and set a poor example for all teens who observed or experienced his misconduct.

132. Extenuating or Aggravating Circumstances. There is no justification or excuse for respondent's misconduct. There are no aggravating circumstances beyond the misconduct alleged in the Statement of Charges.

133. Praiseworthiness or Blameworthiness of Respondent's Motives. The evidence is mixed with respect to respondent's motives. On the one hand, there was

substantial testimony from respondent's supporting witnesses that he is an enthusiastic coach and teacher, that he provides good structure and direction to athletes, and that he gives appropriate encouragement. On the other hand, respondent admitted to making comments about girls' physical appearance that even his supporters would view as inappropriate and inadvisable. The evidence is not clear what respondent's motives were in telling girls they are "beautiful," "cute," that they have "athletic-looking bodies," or the other comments he made. The effect was to make them feel uncomfortable around him. Respondent's motives are clearer regarding his treatment of M.E. For example, when he directed comments at M.E. regarding the "rag-tag" appearance of the team, and the absence of a team member from a match, respondent's motive, at least in part, was to single her out in front of her teammates. The effect was to unfairly single her out and impermissibly burden her religious practices. Respondent's motives in this respect are blameworthy.

134. Likelihood of Recurrence. Respondent did not demonstrate substantial rehabilitation. While respondent's conversations with his wife and his increased understanding of his conduct are steps in the right direction, they do not demonstrate rehabilitation sufficient to ensure he would not engage in similar misconduct in the future. It is also concerning that respondent failed to fully acknowledge his misconduct with respect to M.E., and that he still believes it was "not wrong" to use the words "get anal" and "threesome" in the classroom. In addition, respondent engaged in misconduct both as a coach and in the classroom. Thus, even if the District terminated his coaching responsibilities, a substantial likelihood remains that he would again engage in classroom misconduct.

135. Chilling Effect of Discipline. There is no evidence that dismissal of respondent will have an adverse or chilling effect upon respondent's constitutional rights or the constitutional rights of any other teachers.

136. When all the *Morrison* factors are considered, the District established that respondent is unfit to teach.

## **LEGAL CONCLUSIONS**

1. A school district seeking to dismiss a permanent certificated employee from its employment bears the burden of proof by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.) The term preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

2. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for "immoral" conduct. In *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, the court explained that:

A teacher may . . . be dismissed for "[i]mmoral or unprofessional conduct." (§ 44932, subd. (a)(1).) "The term "immoral" has been defined generally 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 . . . an inconsiderate attitude toward good order and the public welfare." (*Board of Education v.*

*Weiland* (1960) 179 Cal.App.2d 808, 811, 4 Cal.Rptr. 286.)

Moreover, the definition of immoral or unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed "responsibilities and limitations on freedom of action which do not exist in regard to other callings." (*Board of Trustees v. Stubblefield, supra*, 16 Cal.App.3d at p. 824, 94 Cal.Rptr. 318.)

3. Based on the Factual Findings as a whole, respondent showed a moral indifference and an inconsiderate attitude toward good order and the public welfare. His conduct was inconsistent with the reasonable expectations society places upon teachers to model appropriate adult conduct to the students they teach, and to protect the safety of students and advance their educational welfare. Consequently, based on the Factual Findings as a whole, the District established cause to dismiss respondent for immoral conduct pursuant to Education Code section 44932, subdivision (a)(1).

4. Pursuant to Education Code section 44932, subdivision (a)(6), a school district may discipline a permanent certificated employee for "evident unfitness for service." In *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, the Third District Court of Appeal stated that the term "evident unfitness for service" as used in Education Code section 44932, subdivision (a)(6), "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.*) In other words, "[e]vident unfitness for service' requires that

unfitness for service be attributable to a defect in temperament . . ." such that it is unlikely the teacher will reform. (*Id.* at p. 1445.)

5. Respondent's comments and conduct, as alleged and proven at hearing, and his failure to fully acknowledge his comments and conduct during his testimony, demonstrate that he is unsuitable for teaching due to a fixed character trait, not remediable merely on notice that his conduct failed to meet the District's expectations. Consequently, based on the Factual Findings as a whole, the District established cause to dismiss respondent for evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(6).

6. Pursuant to Education Code section 44932, subdivision (a)(8), a school district may discipline a permanent certificated employee for persistent violations of or refusal to obey reasonable regulations prescribed by the District's governing board. The evidence established that respondent, by his comments and conduct, committed acts constituting persistent violations of the rules of the District, and that such acts demonstrated an evident unfitness to teach. Consequently, based on the Factual Findings as a whole, the District established cause to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(8).

7. Pursuant to Education Code section 44932, subdivision (a)(4), a school district may discipline a permanent certificated employee for "dishonesty." As set forth in Factual Finding 125, the District did not establish that respondent engaged in dishonesty as alleged in the Statement of Charges. Consequently, the District did not establish cause to dismiss respondent for dishonesty pursuant to Education Code section 44932, subdivision (a)(4).

## ORDER

Respondent Carl Chapin is DISMISSED from his position as a certificated employee of the Elk Grove Unified School District pursuant to Legal Conclusions 1 through 6, jointly and individually.

DATE: September 29, 2020

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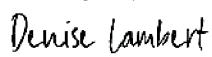
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ALAYNA CARTER, Member

Commission on Professional  
Competence

DATE: September 29, 2020

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DENISE LAMBERT, Member

Commission on Professional  
Competence

DATE: September 29, 2020

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TIMOTHY J. ASPINWALL, Chair

Commission on Professional  
Competence