

ELECTRONICALLY FILED
Superior Court of California
County of Santa Barbara
Darrel E. Parker, Executive Officer
2/26/2024 9:35 PM
By: Narzralli Baksh , Deputy

FAGEN FRIEDMAN & FULFROST, LLP
Jacqueline M. Litra, SBN 311504
jlitra@f3law.com
Lynn M. Beekman, SBN 149325
lbeekman@f3law.com
Vanessa Lee, SBN 312888
vlee@f3law.com
6300 Wilshire Boulevard, Suite 1700
Los Angeles, California 90048
Telephone: (323) 330-6300
Facsimile: (323) 330-6311
Attorneys for Petitioner
CARPINTERIA UNIFIED SCHOOL DISTRICT

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA BARBARA

CARPINTERIA UNIFIED SCHOOL
DISTRICT,

Petitioner,

vs.

THE COMMISSION ON PROFESSIONAL
COMPETENCE,

Respondent.

CASE NO. 24CV01068
[Assigned for all purposes to the Honorable
_____, Dept. ____]
**PETITION FOR WRIT OF
ADMINISTRATIVE MANDAMUS
(CCP § 1094.5)**
(Exempt from Verification pursuant to Code
Civ. Proc. § 446)

Action filed: February 26, 2024

JOHN HOTCHNER,

Real Party in Interest.

Petitioner CARPINTERIA UNIFIED SCHOOL DISTRICT (“DISTRICT”) hereby brings
this Petition for Writ of Administrative Mandamus (“Petition”) pursuant to Government Code
section 11523 and Code of Civil Procedure section 1094.5, to compel Respondent COMMISSION
ON PROFESSIONAL COMPETENCE (“COMMISSION”) to set aside its decision of December
26, 2023, ordering the DISTRICT to continue to employ Real Party in Interest JOHN HOTCHNER
(“HOTCHNER”) as a permanent certificated employee. By this Petition, the DISTRICT alleges as
follows:
///

PARTIES

1. The DISTRICT is a public school district organized and operating under the laws of the State of California, County of Santa Barbara, its purpose is to educate students and provide instruction regarding academic subjects, work and life skills, emerging technologies, and the rights and responsibilities of citizens. The DISTRICT is beneficially interested in providing an appropriate, standards-based academic environment for its students that is conducive to learning. A safe and supportive classroom culture is of the utmost importance to the DISTRICT. The DISTRICT is aggrieved by the decision of the COMMISSION in the Matter of the Dismissal of John Hotchner, a permanent certificated employee, Office of Administrative Hearings (“OAH”) Case No. 2022120218, which requires the DISTRICT to continue to employ HOTCHNER.

2. The COMMISSION consists of a three-person panel, one of whom is an administrative law judge and the other two are credentialed individuals under Education Code section 44944, subdivision (c). The hearing before the three-person panel is governed by Education Code section 44944, which provides, in relevant part, that such hearing “shall be initiated, conducted, and a decision made” in accordance with the Administrative Procedure Act, which is codified in Government Code section 11500, et seq. The COMMISSION is charged with making a decision, based on the Statement of Charges, as to whether HOTCHNER should be dismissed.

3. HOTCHNER is an individual who is and was at all relevant times a resident of the State of California, County of Santa Barbara, and a permanent certificated employee of the DISTRICT. He was most recently assigned as a Global Studies Teacher at Carpinteria Middle School (“CMS”).

JURISDICTION AND VENUE

4. This Court has jurisdiction to issue a writ of mandate in this matter under Education Code section 44945 and Government Code section 11523. Education Code section 44945 provides that a court of competent jurisdiction may, upon petition by the governing school board, review the COMMISSION’s decision in the same manner as under the Administrative Procedure Act, which includes Government Code section 11523. This Petition was timely filed pursuant to Government Code section 11523, which provides that judicial review of an administrative decision may be had

1 if a party to the decision files a petition for a writ of mandate in accordance with the provisions of
2 the Code of Civil Procedure, within thirty (30) days after the last day on which reconsideration can
3 be ordered.

4 5. Venue is proper in this Court because the COMMISSION heard this case in Santa
5 Barbara County, and the DISTRICT is based in, and conducts its business in, Santa Barbara County.

6 **BURDEN OF PROOF FOR CERTIFICATED EMPLOYEE DISMISSAL**

7 6. The burden of proof in an administrative hearing on charges to dismiss a permanent
8 certificated employee of the DISTRICT is the preponderance of evidence.

9 **STANDARD OF REVIEW OF THE COMMISSION'S DECISION**

10 7. The DISTRICT is a local agency. The COMMISSION's authority is derived from
11 Education Code section 44944. The scope of this Court's review is under the independent judgment
12 test. Under this standard of review, the Court is authorized to independently review the evidence
13 that was before the COMMISSION to determine whether the COMMISSION's findings and
14 conclusions are supported by the weight of the evidence.

15 **FACTUAL ALLEGATIONS**

16 8. On March 18, 2022, the DISTRICT issued HOTCHNER a Notice of Unprofessional
17 Conduct and Unsatisfactory Performance ("NUC/NUP") for his inappropriate and unprofessional
18 conduct. The NUC/NUP directed HOTCHNER to, among other things, maintain professional
19 boundaries with students; refrain from stating or implying that students are interested in anything
20 other than a professional teacher-student relationship with him; refrain from stating or implying that
21 he is interested in anything other than a professional teacher-student relationship; refrain from
22 making comments about students interacting with others sexually or romantically or being sexually
23 or romantically interested in others; refrain from making comments about or discussing spending
24 time with students outside of school; refrain from touching students or their belongings; refrain from
25 administering student dress code, "coding" students, or speaking or communicating with students
26 about their dress in any manner; refrain from teasing and picking on students; refrain from arguing
27 with students and/or engaging in a power struggle with them; and refrain from removing students
28 from another teacher's class or reprimanding students in another teacher's class or on campus.

1 9. On September 13, 2022, Director of Human Resources Diana Zapata signed and filed
2 a verified Statement of Charges with the DISTRICT’s Board of Education (“Board”) charging that
3 cause exists to immediately suspend HOTCHNER without pay and dismiss him from his
4 employment. That same day, the Board approved by majority vote, in closed session at a regularly
5 scheduled meeting, the Statement of Charges against HOTCHNER. The Board specifically found
6 that there was cause to dismiss HOTCHNER under Education Code section 44932, for immoral
7 conduct, dishonesty, unprofessional conduct, and persistent violation of or refusal to obey
8 reasonable regulations prescribed by the Board or the state. The Board also found that
9 HOTCHNER’s conduct violated DISTRICT Board Policy (“BP”) 4119.21, *Professional Standards*;
10 BP 5137, *Positive School Climate*; and BP 5145.3, *Nondiscrimination/Harassment*.

11 10. On September 14, 2022, the DISTRICT served HOTCHNER with notice the Board
12 was suspending him without pay, effective immediately, and intended to dismiss him from his
13 employment at the expiration of thirty (30) days from the date of service of the notice, unless he
14 demanded a hearing.

15 11. On October 14, 2022, HOTCHNER filed a Notice of Defense and Request for
16 Hearing with the Board and a Motion for Immediate Reversal of Suspension with OAH, Case No.
17 2022100388, alleging the Statement of Charges failed to allege willful refusal to perform and/or
18 immoral conduct sufficient to support HOTCHNER’s immediate unpaid suspension. The Motion
19 was fully briefed by HOTCHNER and the DISTRICT.

20 12. On November 16, 2022, OAH denied HOTCHNER’s Motion for Immediate
21 Reversal of Suspension, finding that, “[t]he District alleged sufficient facts in the Statement of
22 Charges that, if true, would constitute immoral conduct and support immediate suspension under
23 section 44939, subdivision (b).” OAH characterized HOTCHNER’s alleged misconduct as
24 involving “two broad categories: engaging in inappropriate and sexually suggestive conversations
25 with students; and creating a hostile classroom environment.” (A true and correct copy of the Order
26 Denying Motion for Immediate Reversal of Suspension is attached hereto as **Exhibit 1.**)

27 13. On March 13-17, 20-24, August 21-25, and August 28-September 1, 2023, the matter
28 was heard by the COMMISSION via videoconference. The evidentiary dismissal hearing lasted

1 twenty (20) days. The DISTRICT called thirty-one (31) witnesses, of which twenty-four (24) were
2 students, who testified about their first-hand knowledge of HOTCHNER's misconduct. Other than
3 himself, HOTCHNER called eight (8) witnesses, none of whom had any first-hand knowledge of
4 his conduct at issue. The DISTRICT submitted over one hundred (100) exhibits and HOTCHNER
5 submitted approximately thirty-five (35) exhibits. Both parties were represented by counsel. The
6 transcript of the proceedings totaled 2,699 pages.

7 14. The DISTRICT called an expert witness, Dr. Dorit Saberi, at hearing. Dr. Saberi is
8 a psychologist at Harbor-UCLA Medical Center and the Twin Towers Correctional Facility, as well
9 as the Clinical Director of the Safe Harbor Trauma Recovery Center, in Los Angeles. She has been
10 licensed as a psychologist in the State of California since 2002 and has provided trauma services to
11 children as young as three years old. Dr. Saberi heard each day of student testimony and testified
12 regarding the effect of HOTCHNER's conduct on students' social and emotional wellbeing and
13 cognitive development.

14 **THE COMMISSION'S DECISION**

15 15. On December 26, 2023, the COMMISSION issued a decision finding HOTCHNER
16 engaged in conduct that was inappropriate, unprofessional, had no legitimate educational purpose,
17 had the effect of making students uncomfortable or embarrassing them, and/or which negatively
18 impacted students. Even though the COMMISSION concluded the DISTRICT established cause
19 for dismissal based on unprofessional conduct, the COMMISSION concluded dismissal was not
20 warranted for unprofessional conduct because the DISTRICT failed to establish HOTCHNER was
21 unfit to teach. The COMMISSION concluded the DISTRICT failed to establish HOTCHNER's
22 actions were immoral, he engaged in acts of dishonesty, he engaged in persistent violation of or
23 refusal to obey school laws, or he was evidently unfit for service. Consequently, the COMMISSION
24 dismissed the Statement of Charges against HOTCHNER and ordered the DISTRICT to continue
25 to employ HOTCHNER as a permanent certificated employee. (A true and correct copy of the
26 decision is attached hereto as **Exhibit 2.**¹)

27 _____
28 ¹ References to the COMMISSION's decision are cited herein as "Decision, p. ____."

FIRST CAUSE OF ACTION

16. The DISTRICT restates and incorporates by reference each and every allegation set forth above.

17. The COMMISSION's dismissal of the Statement of Charges against HOTCHNER constitutes a prejudicial abuse of discretion. The decision is not supported by the COMMISSION's own findings, conclusions, or the weight of the evidence in the record. The totality of the evidence compels the conclusion that the DISTRICT established by a preponderance of the evidence that HOTCHNER is unfit to teach, evidently unfit for service, and engaged in immoral conduct, dishonesty, and persistent violation of and refusal to obey school rules.

Findings and Conclusions Unsupported by the Weight of the Evidence

18. The COMMISSION made numerous factual findings² that are unsupported by, and contrary to, the totality of the evidence. The COMMISSION failed to consider all relevant evidence in reaching its factual findings. In reaching its conclusions, the COMMISSION ignored an abundance of credible testimony and other evidence.

A. The Evidence Demonstrates HOTCHNER Created a Hostile Environment

19. The COMMISSION's findings that HOTCHNER's conduct toward students was not threatening, intimidating, or menacing are against the weight of the evidence. In making its findings, the COMMISSION often did not give evidence proper weight or completely ignored the evidence in the record. In addition to HOTCHNER's inappropriate conduct discussed in the COMMISSION's Decision, students testified about numerous other ways HOTCHNER created a hostile and intimidating classroom environment. For example, students testified that HOTCHNER pushed over a student's desk (Hearing Transcript ("Tr.") 847:23-848:22); dragged a student across the room in their chair (Tr. 917:4-17 Decision, p. 28, Finding ¶ 77); intentionally kicked students desks and chairs (Tr. 1321:24-1322:8; Decision, p. 26, Finding ¶ 69); slapped his ruler on desks (Tr. 1321:24-1322:8); kicked a student's desk to knock their color coding instruments to the floor (Tr. 815:1-23, 816:12-20; Decision, p 26, Finding ¶ 69); threw a student's notebook because they did not

² References to the COMMISSION's findings are cited herein as "Finding ¶ ____."

1 have “the right paper” (Tr. 873:12-24); threw a student’s backpack (Tr. 134:21-25, 847:24-848:6,
2 1357:5-1358:10; Hearing Exhibit (“Hr. Ex.”) 100); forcefully yanked a backpack out of student’s hand
3 (Tr. 785:11-786:1, 787:2-20); chased a student down and took their backpack (Tr. 820:4-11); snatched
4 students’ phones out of their hands, including when a parent was calling them about a doctor’s
5 appointment (Tr. 783:7-784:18, 818:9-819:8); threw papers at students and forced them to pick the
6 papers up off the floor (Tr. 883:17-20, 1365:8-14; Decision, pp. 30-31, Finding ¶ 87B); threw pencils,
7 markers, or crayons at students (Tr. 709:15-25; Decision, pp. 30-31, Finding ¶ 87B); crumpled up
8 students’ work in front of them and threw it in the trash (Tr. 700:10-701:3, 815:1-23, 816:1-11, 826:1-
9 18, 883:21-884:2); intentionally stepped on students’ shoes when they wore new shoes (Tr. 815:1-
10 23); forced students to spit their gum into their hand and hold it (Tr. 948:25-949:12, 1166:16-1167:15,
11 1310:22-1312:18; Decision, p. 29, Finding ¶ 79); yelled at students (Tr. 693:3-11, 694:3-7, 702:19-
12 703:5, 704:11-705:6, 725:14-17, 805:25-807:4, 820:14-15, 837:7-20, 851:13-852:4, 872:1-7, 872:10-
13 25, 877:6-15, 948:6-13, 994:2-14, 1164:20-1165:12, 1170:3-20, 1221:12-22, 1251:12-23, 1291:4-7,
14 1308:9-16, 1312:21-1313:1, 1334:20-25, 1356:16-1357:2, 1368:18-24, 1369:10-1370:1); told
15 students to “shut [their] mouth” (Tr. 2086:25-2087:16); shut students’ laptops on their fingers and
16 slammed their laptop screens backward (Tr. 1309:18-1310:21, 1378:21-25; Decision, p. 30, Finding
17 ¶ 86); used his body to physically block a student from entering his classroom because she was
18 chewing gum (Tr. 418:9-419:2, 420:1-15; 1166:16-1168:19); aggressively pulled students’ hats and
19 hoodies off their heads (Tr. 692:6-10, 711:23-712:25, 793:13-23;); told students that he knew where
20 they lived and whispered students’ addresses to them (Decision, p. 67, Finding ¶ 180); and publicly
21 asked if anyone could help a student because they had a low grade in the class (Tr. 1306:18-1307:4).

22 20. Multiple students and two DISTRICT teachers testified about HOTCHNER
23 mistreating students with educational or cognitive challenges. (Tr. 1027:11-1029:21; 1031:15-
24 1032:6; 1039:16-24; 1041:21-1042:13; 1831:17-1832:12.) For example, multiple students testified
25 that HOTCHNER tormented student A.C. in class, treated him really harshly, was “very unfair,”
26 called him names, yelled at him, excluded him from class, and responded, “I don’t care” when A.C.
27 asked him a question. (Tr. 1253:10-20, 1312:21-1313:1, 1313:20-24, 1368:18-24.) HOTCHNER
28 shared A.C.’s grades in class and commented that he is going nowhere because of how stupid he is.

1 (Tr. 1313:20-24.) HOTCHNER made comments insinuating A.C. was stupid. (Decision, p. 25,
2 Finding ¶ 65.) Several students perceived that HOTCHNER disliked students A.C. and S.A. because
3 he treated them more harshly and said negative things about them in front of the class. (Decision,
4 p. 31, Finding ¶ 87F.) HOTCHNER also picked on another student who only spoke Spanish.
5 HOTCHNER was “really mean” to him and shut his computer on his hands. (Tr. 1317:16-20;
6 1373:25-1374:14.) Multiple students testified about how HOTCHNER persecuted Student C.G.
7 HOTCHNER “always” kicked student C.G. out of class “everyday” for “small things”. (Tr. 702:23-
8 703:19, 724:23-725:23; 737:24-738:2; 747:7-17.) If C.G. made a mistake on accident,
9 HOTCHNER would send him outside. Fifteen (15) minutes or more would pass and C.G. would
10 still be outside. (Tr. 756:23-757:15.) HOTCHNER was “really rude” and strict with C.G. and
11 treated him unfairly. (Tr. 757:13-15.) HOTCHNER’s treatment of C.G. demonstrated to students
12 that HOTCHNER “really didn’t want [C.G.] in the class.” (Tr. 737:24-738:2.) Witnesses testified
13 they felt bad for and/or were concerned about HOTCHNER’s treatment of these and other students.
14 (E.g., Tr. 1039:16-24; 1041:21-1042:13; 1313:20-1314:6.)

15 21. Multiple students testified that HOTCHNER routinely excluded students from class
16 for minimal disruptions and/or minor infractions during remote and in-person instruction. (Tr.
17 694:3-12, 696:2-15.) HOTCHNER “screamed” at students and excluded them from instruction over
18 trivial issues like not having their camera on during remote instruction, having their phone out, or
19 not having adequate supplies during in-person instruction. (Tr. 694:3-12, 696:2-15; 702:23-703:19,
20 724:23-725:23; 747:7-17; 787:25-788:8; 1251:12-23; 1310:22-1311:25; 1371:19-1372:1; Hr. Ex.
21 100.) HOTCHNER also kicked students out if they tried to throw their gum away, instead of spitting
22 it into their hand and holding it as HOTCHNER instructed. (Tr. 1310:22-1311:25.) Teachers are
23 expected to provide students compassion, support, and instruction, not isolation and domination.
24 HOTCHNER’s conduct did not serve any educational purpose, successfully reengage students in
25 learning, or positively contribute to the classroom environment. Instead, it was another way
26 HOTCHNER maintained a hostile and intimidating classroom environment.

27 22. The COMMISSION did not consider all relevant evidence when determining
28 whether HOTCHNER engaged in threatening, intimidating, harassing or menacing conduct. The

1 weight of the evidence demonstrates HOTCHNER regularly engaged in this conduct.

2 23. The COMMISSION's findings also mischaracterized the evidence in an effort to
3 tone down the aggressive nature of the event. For example, the COMMISSION described
4 HOTCHNER pulling a backpack out of a student's hand and dropping it next to HOTCHNER's
5 desk, damaging the student's Chromebook inside the backpack. (Decision, p. 17, Finding ¶ 38.)
6 However, multiple students testified that HOTCHNER grabbed or yanked a student's backpack out
7 of the student's hand and threw the backpack across the room, thereby damaging the Chromebook.
8 (Tr. 785:11-786:1, 787:2-20, 847:24-848:6, 1357:5-1358:10; Hr. Ex. 100.)

9 24. The COMMISSION described HOTCHNER tossing papers to students when
10 handing them out, and not picking them up off the floor. (Decision, pp. 30-31, Finding ¶ 87B.)
11 However, students testified that HOTCHNER threw papers at them and forced them to pick them
12 up off the floor. (Tr. 883:17-20, 1365:8-14.)

13 25. The COMMISSION described HOTCHNER crumpling up student work more than
14 once when he handed it in and did not say anything while doing this. (Decision, p. 31, Finding ¶
15 87D.) However, students testified that HOTCHNER crumpled up students' work in front of them
16 and threw it in the trash. (Tr. 700:10-701:3, 815:1-23, 816:1-11, 826:1-18, 883:21-884:2.)

17 26. The COMMISSION's mischaracterization of the evidence downplayed the gravity
18 and offensiveness of HOTCHNER's conduct and, therefore, its resulting impact on students and the
19 classroom environment.

20 27. The preponderance of the evidence demonstrates that HOTCHNER regularly
21 escalated student behaviors by being combative, aggressive, and disrespectful to middle school
22 students. He bullied and ridiculed them in front of their peers and consciously disregarded their
23 feelings, privacy, personal space, and dignity. The COMMISSION's findings that HOTCHNER's
24 conduct toward students was not threatening, intimidating, or menacing are unsupported by the
25 record.

26 **B. The Evidence Shows HOTCHNER Engaged in Innuendo and Boundary Invasions**

27 28. The COMMISSION's findings that the DISTRICT failed to establish HOTCHNER's
28 conduct and comments were sexual in nature, sexual innuendo, sexualized students, or implied

1 students were interested in something other than a teacher-student relationship with him are not
2 supported by the weight of the evidence.

3 29. The COMMISSION found that the DISTRICT failed to demonstrate that
4 HOTCHNER inappropriately stared at female students. However, multiple students testified about
5 HOTCHNER staring at female students. (*E.g.*, Tr. 707:11-708:6, 892:1-3, 986:16-987:11, 1204:3-
6 17, 1231:11-23.) Student S.C. testified HOTCHNER was staring at her while she was running in
7 PE and he said, “Don’t worry. I’m not looking,” but he was looking at her. (Tr. 850:14-25.) One
8 male student testified HOTCHNER would stare at girls and they would get uncomfortable. (Tr.
9 707:11-17.) He testified he remembered HOTCHNER staring at a female student who got very
10 uncomfortable and would go wash her hands to get away from it. (Tr. 707:25-708:6.) Another
11 student observed HOTCHNER looking at a female student’s chest when she wore revealing
12 clothing. (Tr. 1204:3-17.) Another female student testified HOTCHNER complimented her on a
13 v-neck shirt she wore – a shirt she described as a “showy shirt.” (Tr. 1091:1-18.) Student M.A.
14 testified HOTCHNER would watch her in class, comment whenever she shook her leg, and look at
15 her a lot because he always focused himself on her. (Tr. 1230:24-1231:23.) Student L.M. described
16 feeling uncomfortable because HOTCHNER commented on her clothing and how she was “too
17 mature for [her] age” and how he would look her up and down so she wore nothing but hoodies.
18 (Tr. 1314:15-1315:25.) She testified that she knew HOTCHNER’s conduct was wrong because her
19 other teachers did not engage in similar conduct and she did not feel uncomfortable in other classes.
20 (*Ibid.*) Student V.P. described feeling uncomfortable because starting when she was only eleven
21 years old, HOTCHNER was looking at her clothing in a “weird way,” scanning her, and “kind of
22 sexualizing” her. (Tr. 1359:10-1360:23.) Students testified to feeling “uncomfortable,” “nervous,”
23 unsafe, and wanting to just “cover up.” (*E.g.*, Tr. 848:24-849:24; 1102:7-10, 1223:12-16, 1234:13-
24 14, 1244:8-12, 1246:4-13, 1379:6-7.) One student testified “when I go to school, I expect to be in
25 a safe environment, and I didn’t feel safe because I always felt like I had to put my guard up. [...]”
26 when, like, someone looks at you and, you know, it’s not in the same way as he looks at other people,
27 or just a flirtatious way.” (Tr. 1246:4-13.) The weight of the evidence established a pattern of
28 HOTCHNER staring at and watching female students.

1 30. The COMMISSION determined student J.S.’ testimony that HOTCHNER would
2 come close to her and look at her chest when she wore certain clothes, such as v-neck shirts, “did
3 not preponderate over [HOTCHNER’s] denial.” (Decision, p. 32, Finding ¶ 89.) The
4 COMMISSION gave no explanation for this conclusion, which is required given there was so much
5 corroborating testimony that HOTCHNER stared at female students, as set forth above. The
6 testimony of J.S. is reinforced by testimony from many of her peers describing similar conduct by
7 HOTCHNER. The COMMISSION’s erroneous conclusion that J.S.’ testimony did not
8 preponderate over HOTCHNER’s denial failed to consider the totality of the evidence in the record.

9 31. The COMMISSION found the DISTRICT did not establish that HOTCHNER
10 instructed student V.P. to pick up her paper to look at student V.P. in a sexual way. (Decision, p.
11 29, Finding ¶ 82.) However, three (3) students testified about HOTCHNER directing students V.P.
12 and S.C. – two students whom the COMMISSION found were portrayed as HOTCHNER’s favorites
13 – to bend over and pick up a piece of paper off the floor while he stood behind them. (Tr. 854:3-
14 20, 886:10-17, 890:20-892:23, 1365:15-1366:5.) One student explained she felt bad for her peer
15 when this happened and thought her peer was uncomfortable because HOTCHNER told her to bend
16 over in “a weird way.” (Tr. 891:10-25.) The totality of this student testimony cannot be disregarded.

17 32. The COMMISSION found HOTCHNER did not make heart symbols and married
18 man comments to students with any ill intent and that his actions/comments were not inappropriate.
19 (Decision, pp. 27-28, Finding ¶ 75.) However, the manifest weight of the evidence shows that
20 HOTCHNER’s comments were suggestive of students being interested in him in a manner that was
21 inappropriate due to his marital status. Student L.J. testified that HOTCHNER made “inappropriate
22 comments,” such as stating that “if he wasn’t with his wife, he would be, like, interested or
23 something like that.” (Tr. 868:19-869:11.) Multiple students testified that HOTCHNER would
24 make heart symbols to students in class and state, “Aw, I love you too. But be careful; I’m a married
25 man,” “Oh, if I wasn’t a married man, right back at you,” “If I was not married, you wouldn’t know
26 what I would do,” “I can’t do that, I’m a married man,” “I can’t be together with you. I’m a married
27 man,” or “I’m kidding unless you don’t want me to be kidding.” (E.g., Tr. 858:24-860:6, 882:14-
28 22, 1367:1-17, Hr. Ex. 100.) There was no reason for HOTCHNER to reference his marital status,

1 other than to rebuff their implied romantic interest/love for him. HOTCHNER's marital status is
2 only relevant in the context of his comments to imply students are expressing an interest in him to
3 students by allegedly sending him hearts. Students recognized the inappropriateness of the
4 implication he was making, as they consistently described his comments as "inappropriate" and
5 "weird." (*E.g.*, Tr. 791:13-792:7, 868:19-869:11.) In fact, students testified that HOTCHNER's
6 references to his marital status were "sexual" or "romantic" in nature and meant that if he wasn't
7 married, he would try to "get at [them]." (Tr. 805:8-21, 868:19-869:11, 1334:7-12.)

8 33. The preponderance of the evidence demonstrates that HOTCHNER's inappropriate
9 conduct created an environment that gave students the impression he was sexualizing them. They
10 consistently perceived that he was staring at female students' bodies, paying particular attention to
11 certain female students, and insinuating students were romantically interested in him.

12 34. The COMMISSION's conclusion that HOTCHNER made the heart gestures and
13 married man comments without ill intent is irrelevant in determining whether it was inappropriate.
14 Whether HOTCHNER was engaging in this conduct to normalize inappropriate adult-child
15 relationships or to poke fun at students by implying they "liked" him is immaterial. Preventing
16 abuse and misconduct directed at students requires the DISTRICT to recognize and prohibit
17 innuendo and other behaviors that put students at risk. Prevention of abuse requires schools to
18 prohibit and punish unsafe behaviors. The only way to consistently protect students is to eliminate
19 *all* suggestive innuendo by employees and not tolerate any failure to adhere to that expectation by
20 employees. HOTCHNER was directed to not engage in suggestive innuendo and given an
21 opportunity to comply, but he continued to engage in the conduct despite the DISTRICT's
22 explanations, instruction, and guidance.

23 35. For example, students testified that HOTCHNER made sexual innuendos, such as
24 stating, "[student] C.J. really wants to put his worm in [student] F.M.'s dirt" during a lesson on
25 feudalism and manorialism. (Tr. 1144:19-1145:10, 1148:17-24.) In one classroom exercise, he
26 distributed a photocopy of his hand to each student in class and compared his hand to students'
27 hands in a manner that made students uncomfortable. (Tr. 139:1 - 20.) Students removed their
28 hands from their desks to avoid HOTCHNER's touch. Student D.E. pulled his hand back when

1 HOTCHNER “grabbed” his hand. (Decision, p. 19, Finding ¶ 44.) During this exercise,
2 HOTCHNER made comments such as “You have my hand, so you can remember me over the
3 summer,” “You can put my hand on the dinner table for company,” “You can take my hand on a
4 date,” and “You can put it on your face,” “You don’t know where my hand has been.” (Decision,
5 p. 19, Finding ¶ 45; see also, Tr. 159:8–163:7.) Students testified that HOTCHNER said that if
6 students felt lonely over the summer, they could hold his hand or take his hand on a date. (Tr.
7 828:12 – 829:3; 1363: 1-22.) An administrator testified that students reported that he gave them a
8 photocopy of his hand so they could “take it home over the summer and sleep with it if they got
9 lonely.” (Tr. 139:1-20.)

10 36. The weight of the evidence compels the conclusion that HOTCHNER’s conduct and
11 comments were sexually suggestive and inappropriate. HOTCHNER’s intentions in making those
12 comments and engaging in such conduct is not relevant to whether it was appropriate conduct for a
13 teacher. Even after listening to students testify about the impact of his behavior during the OAH
14 hearing, he exhibited no remorse or recognition of the wrongdoing and testified that it had no impact
15 on his perception of his conduct. The classroom environment was harmed by HOTCHNER’s
16 inappropriate comments and actions.

17 37. The COMMISSION’s finding the DISTRICT did not establish that HOTCHNER
18 engaged in grooming behavior is unsupported by the weight of the evidence. Grooming behaviors
19 include inappropriate, flirtatious, and/or sexually suggestive comments towards students, engaging
20 in peer-like behavior (e.g., teasing about a “crush”, discussing personal lives), and sexualizing
21 clothing. (Hr. Ex. 64.) The term grooming behaviors describes conduct scientific research
22 identified as commonly, but not exclusively, engaged in by adults who victimize children.

23 38. The DISTRICT’s expert witness, Dr. Saberi, explained grooming is behavior that
24 starts slowly and subtly builds trust, desensitizes the victim to any type of boundary violation, and
25 gains or capitalizes on a victim’s trust and compliance to lower the victim’s defenses and exploit
26 their vulnerabilities. (Tr. 1477:2-1478:1, 1482:15-1483:10.) She explained the outcome of
27 grooming does not need to be molestation and can be any kind of boundary invasion. (Tr. 1482:15-
28 1483:10.) She explained exposure to grooming behavior can increase likelihood for future abuse.

1 (Tr. 1446:18-23.) The expert explained unwelcome conduct like “touching a t-shirt,” “talking about
2 petting a sweater,” compliments, flirty comments, favoritism, promoting a special relationship with
3 a student, doing extra work are all grooming. (Tr. 1477:2-15, 1478:2-1479:6, 1482:15-1483:10.)
4 The COMMISSION found that HOTCHNER engaged in all this conduct, even after specific
5 instruction not to do so. (Decision, pp. 23, 27-28, 29, 31, 63-64, Findings ¶¶ 23, 75-76, 81, 87E,
6 88, 165-169.)

7 39. The expert explained grooming includes spending time with a student outside of
8 school or after class, focus and attention on the body, intrusive physical proximity, and innuendo.
9 (Tr. 1482:15-1483:10.) She explained HOTCHNER’s staring and verbal behaviors are a more
10 collective example of innuendos that cause discomfort and are grooming behaviors. (Tr. 1478:2-
11 1479:6.)

12 40. The COMMISSION found HOTCHNER suggested that he and a female student have
13 a sleepover for their birthdays (Decision, p. 14, Finding ¶ 32); that he asked a student to put a fuzzy
14 sweater on because he wanted to “pet” her (Decision, p. 29, Finding ¶ 81); that his words and actions
15 gave students the impression he had favorite female students, specifically students S.C. and V.P.
16 (Decision, p. 31, Finding ¶ 87E); that he touched Student C.C. on his chest (Decision, p. 31, Finding
17 ¶ 88); that he visited select students’ homes, unsolicited and unannounced, to give them gifts
18 (Decision, p. 13, Finding ¶ 27); and that he had the class write “Happy Birthday” messages to student
19 M.A.2 on the board and asked to be invited to her birthday party, even though he did not typically
20 do that for other students (Decision, p. 64, Finding ¶ 169); that he said to students, “thanks for the
21 love, but I’m married,” “I am a married man, but we can still go for a walk after school,” and “I am
22 a married, but we can get ice cream after school” (Decision, pp. 27-28, Finding ¶ 75-76.) Despite
23 all this evidence, the COMMISSION found the evidence did not establish that HOTCHNER
24 engaged in grooming behavior. (Decision, pp. 98-99, Finding ¶ 305.) Beyond this conduct, the
25 record demonstrates numerous other comments and conduct by HOTCHNER reflecting consistent
26 boundary invasions and peer-like behavior.

27 41. The DISTRICT notified HOTCHNER these behaviors he was engaging in were
28 inappropriate and explained they are considered grooming behavior because those behaviors are

commonly used by adults pursuing inappropriate interactions with children to neutralize the idea of inappropriate relationships between children and adults. (Hr. Ex. 64.) The DISTRICT notified HOTCHNER that DISTRICT employees are prohibited from engaging in grooming behaviors. Despite receiving copious examples of the behaviors considered inappropriate, and clear direction not to engage in them and why, HOTCHNER persisted in engaging in the prohibited conduct. The DISTRICT has a duty to protect its students from adults who expose them to and normalize such conduct, especially given his status as a teacher and role model.³ HOTCHNER continuing to engage in the conduct after being notified it was grooming behavior demonstrates he intentionally disregarded DISTRICT directives not to engage in grooming behaviors or was unable to stop doing so.

C. The Evidence Demonstrates Fixation on Female Students' Bodies and Attire

42. The COMMISSION's finding the evidence did not establish that HOTCHNER targeted or was fixated on female students' dress is contrary to the weight of the evidence. (*E.g.*, Hr. Ex. 107; Tr. 852:17-25, 862:24-863:9, 1185:17-1186:12, 1222:12-23, 1300:6-11, 1359:10-1360:23) The evidence demonstrates that in less than forty-five (45) school days, HOTCHNER reported more than thirty (30) alleged dress code violations, of which twenty-six (26) concerned female students allegedly wearing crop tops or "exposing themselves beyond [HOTCHNER's] expectations." (Hr. Ex. 8-8a, 10-11, 11b, 12-17, 19-24; Decision, pp. 38-49, Finding ¶¶ 100-126.) None of these alleged dress code violations were found to be actual violations by the administration. (*Ibid.*) HOTCHNER's descriptions of female students' clothing was starkly different from how they were actually dressed and the photographs depicting the students' attire.

43. Multiple students testified that HOTCHNER told female students to cover up or made negative comments about their clothing if their shirt was slightly above their pants, and they found his overreactions confusing. (*E.g.*, Tr. 852:17-25, 862:24-863:9, 1185:17-1186:12, 1222:12-1224:4, 1359:10-1360:23.) Student V.P. testified that when she was 11 years old, HOTCHNER

³ The COMMISSION acknowledged that HOTCHNER taught impressionable middle school students for whom he was required to serve as an appropriate role model. (Decision, p. 107, Legal Conclusion ¶ 17.)

1 said her shirt was too short, she said “No, it isn’t. It is touching my pants.” In front of the whole
2 class, HOTCHNER announced “I wouldn’t let my daughter wear that.” V.P. testified she felt
3 uncomfortable because “he was looking at [her] clothes in a weird way”, “trying to make something
4 bad” out of what she was wearing, and “kind of sexualizing” her. (Tr. 1359:10-1360:23.) In an
5 email, HOTCHNER referred to female students J.S. and B.I as “hyper-sexualized” and continuing
6 to wear “revealing clothing.” (Hr. Ex. 76.) HOTCHNER referring to these students as
7 “hypersexualized” because of their clothing further demonstrates he was sexualizing them and their
8 clothing, instead of looking at them as students wanting to learn. The record (and findings) reflect
9 that HOTCHNER found himself unable to teach a female student that was not dressed to his
10 expectations because he was too distracted and believed her attire distracted others. (Decision, p.
11 44, Findings ¶¶ 111-13.) The evidence in the record demonstrates HOTCHNER was monitoring
12 and scrutinizing female students’ clothing in a variety of ways which made many female students
13 feel uncomfortable, afraid, anxious, vulnerable, and uneasy. (E.g., Tr. 1091:1-18; 1204:3-17;
14 1314:15-1315:25; 1359:10-1360:23.) There are two incidents where HOTCHNER called several
15 students out of class to evaluate another female student’s allegedly offending attire with
16 HOTCHNER directing them to tell her how to fix her alleged dress code violations. (Decision, p.
17 22, Findings ¶¶ 55 & 56.) He was, and continued to be, hyper-focused on conforming student
18 apparel to what he believed the dress code should require. This obsession caused him to spend an
19 inordinate amount of time scanning female clothing and bodies in an effort to satisfy his own need
20 to control students and their dress.

21 44. The weight of the evidence demonstrates HOTCHNER was fixated on and
22 sexualizing female students’ clothing which also demonstrates a fixed character trait that is not
23 remediable. The COMMISSION’s findings are contrary to the weight of the evidence.

24 **D. The Evidence Demonstrates HOTCHNER Violated the Directives in NUC/NUP**

25 45. The COMMISSION found HOTCHNER only violated the NUC/NUP in three (3)
26 instances – when he confiscated student A.S.’ cell phone from her, confiscated student M.B.’s fidget
27 spinner from him when he was not in HOTCHNER’s class, and when he told the class he had seen
28 student A.Z. outside of school. (Decision, pp. 54, 65, 67, Findings ¶¶ 142, 170, 178.) The weight

1 of the evidence demonstrates HOTCHNER violated the directives in his NUC/NUP on numerous
2 other occasions, between April 11, 2022, and June 9, 2022, including but not limited to, the directive
3 to not engage in intimidating conduct, the directive to not embarrass students, the directive to not
4 engage in grooming type behaviors, the directive to not speak or communicate with students about
5 their dress, and the directives to not reprimand students in another teacher's class or on campus.

6 46. In the NUC/NUP, the DISTRICT directed HOTCHNER to not engage in grooming
7 type behaviors, which included making inappropriate, flirtatious, and/or sexually suggestive
8 comments towards students, remarking on their clothing, and suggesting to students that they were
9 interested in pursuing intimate or romantic relationships with him. (Hr. Ex. 64 at A299.) Contrary
10 to this directive, the evidence shows that after receiving his NUC/NUP (April 11-June 9, 2022),
11 HOTCHNER persistently implied students were sexually interested in him, singled out female
12 students, and commented on female students' appearances. For example:

- 13 a. Students testified that when HOTCHNER played a school video in class, he
14 continuously paused the video on student L.M., zoomed in on her, commented
15 on "how [student L.M.] looked so different" and "how much [student] L.M.'s
16 grown up," and stated he was going to watch the video whenever he was lonely
17 or missed her. (Tr. 1247:3-15; 1326:13-1327:1, 1375:10-25; Hr. Ex. 55.)
- 18 b. Nine (9) students testified and/or submitted statements reporting HOTCHNER
19 asked students to raise their hand if they felt a "love connection" with him, stated
20 students had "love towards him". HOTCHNER informed students L.J. and L.M.
21 they "don't really know when [they're] going to find love" and, then, stated that he
22 was "still attractive," even with gray hair. (Tr. 1255:6-15.)
- 23 c. Student L.J. testified that HOTCHNER repeatedly complimented her on her
24 outfit, eyes, and hair, asked her where and what time she runs on the beach each
25 morning, and demanded to know the location of her soccer games. (Tr. 1244:8-
26 25, 1245:1-9, 1248:19-24, 1258:10-1259:4.)
- 27 d. Students testified that HOTCHNER sat students M.A. and M.A.2 right next to his
28 desk, had a conversation with them every day, always seemed to be trying to talk

1 to them, even when they did not need help, and routinely asked them to stay after
2 class to tell them how good they were doing. (Tr. 951:9-24, 951:25-952:12,
3 1229:8-19, 1232:11-20.) When HOTCHNER talked to student M.A., he stood
4 uncomfortably close to her – approximately 6 inches away. (Tr. 1229:20-1230:23.)
5 For student M.A.2’s birthday, HOTCHNER drew pictures and wrote “Happy
6 Birthday” on the whiteboard, and asked to be invited to her birthday party,
7 something he did not do for any other student. (Tr. 943:12-944:2, 1235:8-21.)

8 The COMMISSION failed to consider any of this conduct when determining whether HOTCHNER
9 violated the directive in his NUC/NUP to refrain from engaging in grooming type behaviors.

10 47. The COMMISSION found the DISTRICT did not establish that HOTCHNER’S
11 “love connection” statements constituted sexual innuendo or suggested HOTCHNER had an
12 intimate relationship with students. (Decision, p. 65., Finding ¶ 171.) However, nine (9) of
13 HOTCHNER’s fifteen (15) advisory students submitted statements regarding the conduct, which
14 stated HOTCHNER’s comments were “awkward,” “weird,” “seemed off,” and “seemed very flirty.”
15 (Hr. Ex. 56.) The COMMISSION disregarded this evidence entirely when analyzing whether
16 HOTCHNER’s comments were inappropriate and failed to consider whether the statements violated
17 the NUC/NUP entirely. (Decision, pp. 98-99, Finding ¶ 305.)

18 48. The NUC/NUP directed HOTCHNER to refrain from administering student dress
19 code, “coding” students, or speaking or communicating with students about their dress *in any*
20 *manner*. (Hr. Ex. 64.) HOTCHNER was also specifically advised that he did “not need to concern
21 [him]self with [the dress code] policy.” (Hr. Ex. 77 at A1017; *see also* Hr. Ex. 9 at A32.) The
22 COMMISSION determined that HOTCHNER did not violate these directives because he did not
23 enforce the dress code or speak with students about the clothing they were wearing. (Decision, p.
24 38, Finding ¶ 99.) The weight of the evidence and the COMMISSION’s own findings demonstrate
25 otherwise.

26 49. The COMMISSION found that between April 11-13, 2022, HOTCHNER distributed
27 and reviewed a dress code packet to students and reported more than thirty (30) dress code
28 violations. (Decision, p. 38, Findings ¶¶ 98, 100.) Students also testified HOTCHNER distributed

1 dress code materials with pictures and talked about it “a lot” in class. (Tr. 1100:1-6, 1222:3-11;
2 1314:12-1315:3.) He discussed with students what clothing was appropriate, such as when a
3 student’s shirt meets their pants, and what clothing was not. (Tr. 1100:1-6, 1222:3-11; 1314:12-
4 1315:3.) The COMMISSION determined HOTCHNER distributing the dress code packet and
5 reviewing it with students in his first three days at work after receiving the NUC/NUP, did not
6 violate the directive because he “did not enforce the dress code or speak with students about the
7 clothing they were wearing.” The COMMISSION erred in determining this conduct did not violate
8 the NUC/NUP directives based on this finding.

9 50. The record reflects that HOTCHNER stopped class to approach students on the track
10 about their dress. (Tr. 1314:12-1315:3.) Some students reported that the dress code was
11 HOTCHNER’s “main focus” when he returned to the classroom. (*E.g.*, Tr. 1314:12-1315:3.) The
12 COMMISSION disregarded this evidence entirely when analyzing whether HOTCHNER violated
13 the directive in his NUC/NUP to refrain from speaking or communicating with students about their
14 dress in any manner.

15 51. The NUC/NUP directed HOTCHNER to not reprimand students in another teacher’s
16 class or on campus. (Hr. Ex. 64 at A312.) Contrary to this directive, the evidence shows that in the
17 less than eight (8) weeks of school remaining after he returned to work after receiving his
18 NUC/NUP, HOTCHNER reprimanded three (3) different students outside his classroom for having
19 their phones out. (Tr. 2665:16-2666:3, 2667:8-2668:3, 1163:9-1165:12, 1168:25-1169:15; Hr. Ex.
20 46-48.) He also addressed concerns about student conduct not in his classroom with students
21 directly on several occasions, in violation of the directives in his NUC/NUP.

22 52. The COMMISSION determined some of HOTCHNER’s conduct did not violate the
23 NUC/NUP. (Decision, pp. 54-56. 60-61, Findings ¶¶ 142, 145-146, 155-160.) However, the
24 COMMISSION failed to consider whether the bulk of HOTCHNER’s post-NUC/NUP conduct
25 violated the directives. The COMMISSION only analyzed incidents involving HOTCHNER
26 confronting students on campus for whether HOTCHNER had confiscated students’ phones,
27 misrepresented students’ behavior, and/or disregarded students’ explanations, in violation of the
28 NUC/NUP. (Decision, p. 61, Findings ¶ 160.) The COMMISSION did not consider whether this

1 conduct violated the NUC/NUP's directive that HOTCHNER not reprimand students outside his
2 classroom. The only conduct the COMMISSION considered related to this directive was an incident
3 on May 16, 2022, involving E.H. and C.G. (Decision, p. 61, Finding ¶ 160.)

4 53. Even where the COMMISSION considered HOTCHNER's conduct in the context
5 of the directive not to reprimand students outside his classroom, the COMMISSION's findings were
6 contrary to the weight of the evidence. The COMMISSION found that students C.G. and E.H. were
7 not in HOTCHNER's class at the time HOTCHNER interacted with them. (Decision, p. 61, Finding
8 ¶ 160.) HOTCHNER approached students E.H. and C.G. in the main hall, buildings away from his
9 classroom, and reprimanded them for allegedly yelling in the hallway. (*Ibid.*, Tr. 794:13-796:7,
10 2146:2-13, Hr. Ex. 53.) Nonetheless, it found that HOTCHNER did not violate the NUC/NUP's
11 directive to not reprimand students outside his classroom because it was not unreasonable for him
12 to approach students to ask them to speak quietly in the hallway while classes were in session.
13 (*Ibid.*) The COMMISSION does not have the discretion to excuse HOTCHNER from complying
14 with a directive.

15 54. The COMMISSION failed to consider all relevant evidence and mischaracterized
16 evidence that established HOTCHNER violated the directives in his NUC/NUP, including, but not
17 limited to, not reprimanding students in another teacher's class or on campus, not engaging in
18 grooming type behaviors, and not speaking or communicating with students about their dress.
19 Accordingly, the COMMISSION's finding that the preponderance of the evidence only established
20 HOTCHNER violated the NUC/NUP in three (3) instances is unsupported by the weight of the
21 evidence.

22 **E. The Evidence Demonstrates HOTCHNER Engaged in Dishonesty, Even Under Oath**

23 55. The COMMISSION found the evidence did not establish HOTCHNER engaged in
24 acts of dishonesty. (Decision, p. 98-99, Finding ¶ 305.) However, the weight of the evidence
25 demonstrates HOTCHNER has a propensity for dishonesty, even under oath. The weight of the
26 evidence demonstrates HOTCHNER intentionally disregarded the expectations and directives
27 communicated to him regarding his treatment of students, and misrepresented his conduct and
28 students' conduct. HOTCHNER made up evidence or characterized events to fit the story line he

1 wanted to promote. What he didn't count on was that students would have the courage to take the
2 stand and speak the truth at the dismissal hearing, credibly testifying to observations and interactions
3 they had with HOTCHNER over the schoolyears.

4 56. HOTCHNER disregarded the DISTRICT's directives designed to build a safe and
5 supportive classroom environment for students. HOTCHNER submitted a "Plan of Assistance"
6 pursuant to the first two directives in his NUC, which consisted of four (4) sentences and did not
7 incorporate any of the elements expressly directed. (Hr. Ex. 64 at A310; Hr. Ex. 81 at A1038.)
8 HOTCHNER attempted to deflect from his deficient plan by asserting he did not know how, but he
9 did not even bother to try. (Hr. Ex. 81 at A1038.) The expectations for HOTCHNER's plans are
10 consistent with the evaluation criteria of domain two that all teachers in the DISTRICT are expected
11 to perform satisfactorily, and reflect the basic aspects of classroom management essential to teaching.
12 (Hr. Ex. 1406 at B2417.) The DISTRICT provided HOTCHNER various resources and guidance
13 beyond sufficient for a professional educator to develop such plans. HOTCHNER could have sought
14 independent resources and training if he felt unqualified to comply with any of the directives in his
15 NUC/NUP. (Tr. 2410:9-2411:19; Hr. Ex. 81 at A1038.)

16 57. HOTCHNER relentlessly challenged the DISTRICT's directives, especially the
17 directive not to concern himself with student dress, often masquerading his communications as
18 seeking clarification. (Hr. Ex. 77 at A1014, A1017 ["do not need to concern yourself with [the dress
19 code] policy"].)

20 58. In the approximately eight (8) weeks of school remaining after HOTCHNER
21 returned to work after receiving his NUC/NUP, HOTCHNER repeatedly emailed Principal O'Shea
22 hyperinflated and hyperbolic descriptions of female students' clothing inconsistent with how the
23 students were dressed. (Hr. Ex. 8, 10-11, 11b, 12-17, 19-24.)

24 59. The DISTRICT submitted numerous photographs showing that between April 11,
25 2022, and June 9, 2022, HOTCHNER's descriptions of female students' clothing are not supported
26 by how the students were actually dressed. (Hr. Ex. 8, 10-11, 11b, 12-17, 19-24.) For example, he
27 reported that student M.E. was wearing a "very short crop top that seems to distract her and others."
28 The photograph of this student's clothing was in stark contrast to HOTCHNER's description. When

1 Principal O'Shea met with student M.E., she found that the dress code was not violated. (Decision,
2 p. 43, Finding ¶¶ 109-110.) In another instance, HOTCHNER reported that student X.A. was failing
3 to cover herself with a jacket and choosing, instead, to "expose herself beyond [our] expectations."
4 The photograph of the student's attire did not match this description. (Decision, pp. 45-46, Finding
5 ¶ 117.) There was no dress code violation found. In another incident, HOTCHNER reported that
6 students X.A., O.G., and M.E. were wearing crop tops and appeared to be distracted by their "open
7 clothing, as do some of the students around them." Again, the photographs did not match this
8 description and no dress code violations were found. (Decision, p. 46, Findings ¶¶ 119-120.)

9 60. The COMMISSION acknowledged all these photographs and related emails in its
10 decision, and found that HOTCHNER reported more than thirty (30) dress code violations to
11 Principal O'Shea, which the COMMISSION found did not constitute dress code violations.
12 However, the COMMISSION only weighed this evidence in the context of whether HOTCHNER
13 fixated on female students' clothing or violated the directives in his NUC/NUP not to address it.
14 (Decision, pp. 38-49, 99, Findings ¶¶ 100, 102, 195, 107, 109-112, 114-117, 119-122, 126-127, 306-
15 307.) The COMMISSION disregarded this evidence entirely when analyzing whether HOTCHNER
16 engaged in acts of dishonesty or assessing his credibility. (Decision, pp. 98-99, Finding ¶ 305.)

17 61. HOTCHNER fabricated to Principal O'Shea that student A.A. laughed at her for not
18 catching her alleged dress code violation when Principal O'Shea visited HOTCHNER's class. (Tr.
19 2264:1-23; Hr. Ex. 16 at A52.) A.A. testified that she "never laugh[ed]" at Principal O'Shea and
20 was so upset about HOTCHNER lying about her that she asked to be moved out of his class. (Tr.
21 1174:17-1175:1, 1175:3-20, 2264:1-23; Hr. Ex. 16 at A52.) Again, the COMMISSION
22 acknowledged the student's testimony, and found that this conduct occurred, but disregarded the
23 student's testimony entirely when analyzing whether HOTCHNER engaged in acts of dishonesty.
24 (Decision, pp. 45, 98-99, Findings ¶ 116, 305.)

25 62. HOTCHNER's propensity for dishonesty is shown by his continuing denials of
26 conduct numerous students reported. (*Compare* Tr. 163:18-164:18, 1144:19-1145:10, 1148:17-24
27 ["Oh, wow. CJ really wants to put his worm in FM's dirt."], *with* Tr. 2050:5-17 [did not say student
28 wanted to put worm in another student's dirt really bad]; *compare* Tr. 918:4-25, 920:8-20, 959:22-

1 961:3, 961:17-962:3, 995:16-23, 1103:14-25 [recited students’ addresses from memory], *and* Tr.
2 1178:9-22, 1219:4-20 [whispered addresses in students’ ear], *and* Tr. 962:7-20 [said he went to a
3 student’s house and “looked through the window”], *with* Tr. 2066:20-2067:7 [did not tell, refer, or
4 whisper students’ addresses or tell students he could see what they were doing in their homes];
5 *compare* Tr. 883:17-20, 1365:8-14 [threw papers at students], *and* Tr. 700:10-701:3, 815:1-23, 816:1-
6 11, 826:1-18, 883:21-884:2 [crumpled up students’ work and threw it in trash], *with* Tr. 2090:10-19
7 [did not crumple up students’ work or throw it in trash], *and* Tr. 2091:13-22 [did not throw papers at
8 students].) His repeated assertions that students exposing his mistreatment are wrong or lying, and
9 misrepresentations of students’ conduct, demonstrate his proclivity for dishonesty.

10 63. To deflect from violating his NUC/NUP, HOTCHNER tried to justify his behavior by
11 exaggerating student E.H.’s behavior. (*Compare* Hr. Ex. 75 [HOTCHNER says: EH “threatened
12 violence”], *with* 794:13-796:7 [Student says: HOTCHNER started saying stuff when the students were
13 “minding our own business”], *and* Hr. Ex. 53 at A183-A184 [Students say they did not threaten
14 HOTCHNER], A186 [Students say they did not hear or see EH and CG threaten or try to physically
15 fight HOTCHNER].) HOTCHNER introduced no evidence of any improper motive or propensity for
16 dishonesty for any of the twenty-four (24) students who testified against him, and the COMMISSION
17 did not discuss any.

18 64. HOTCHNER was dishonest while testifying before the COMMISSION under oath.
19 For example, HOTCHNER testified he removed a student from P.E. class on May 18, 2021, because
20 she “became combative,” “disrespectful,” and “defiant” when HOTCHNER when speaking to him
21 about a disciplinary issue. (Tr. 1963:7-23.) Yet, when asked why he removed her at his investigatory
22 interview in June 2021, he said it was because she was “terribly out of dress code,” “falling out of her
23 tube top,” and “her tube top only seemed to cover in the direction related to her breast, and the rest of
24 her torso was falling out of the tube top, her stomach, hips, and shoulders.” (Tr. 2397:5-2398:21.)
25 Less than a month after the incident, at his investigatory interview, HOTCHNER never claimed she
26 was “combative.” (Tr. 2400:2-6.) Statements made closer to the questioned incident are more credible
27 than those made later, a legal principle that should have weighed against HOTCHNER’s credibility
28 when the COMMISSION analyzed this matter.

65. HOTCHNER testified at hearing that he confiscated the phone of a student in media tech class on May 18, 2021, because the student was with a group of boys, and they were “laughing and...pushing around the phone.” (Tr. 1965:7-1966:23.) HOTCHNER claimed it did not appear student F.M. was using the phone for any instructional purposes and “nobody mentioned a class or anything like that.” (*Ibid.*) However, when questioned about this incident a mere month after it occurred, HOTCHNER claimed he had no recollection of this event. (Tr. 2400:25-2401:7.) To defend his false testimony at hearing, HOTCHNER claimed on redirect he was not provided any specific allegations, including student names and dates at his interviews in June 2021. (Tr. 2592:15-23.) Contrary to his assertion, Principal O’Shea directed HOTCHNER to the allegations in her May 20, 2021, email, which included details and student names. (Hr. Ex. 7, 70.) HOTCHNER’s own representative’s notes from the meeting show the DISTRICT spent 1 hour and 14 minutes providing HOTCHNER specific allegations and time to confer with his representative before. (Tr. 2596:18-2598:19, 2600:5-2601:2, 2601:12-2602:25, 2603:21-25.) While the COMMISSION found HOTCHNER engaged in the conduct as alleged by the DISTRICT, the COMMISSION failed to consider this in weighing his credibility as a whole to rebut the charges or in analyzing his propensity for dishonesty as a cause for dismissal.

66. The COMMISSION’s finding that the DISTRICT did not establish by a preponderance of the evidence that HOTCHNER engaged in acts of dishonesty is unsupported by the weight of the evidence.

Misapplication of Law

A. Weight of the Evidence Compels the Conclusion That HOTCHNER Engaged in Immoral Conduct

67. Neither the weight of the evidence nor the findings of the COMMISSION support the COMMISSION’s legal conclusion that Hotchner’s conduct was not immoral. The COMMISSION’s legal conclusion is contrary to law and against the weight of the evidence resulting in a prejudicial abuse of discretion.

68. As a matter of law, teachers have a special relationship with students and occupy a position of trust and responsibility that is recognized in the law.

69. The COMMISSION did not apply the proper legal standard applicable to a charge of

1 immoral conduct to the facts of the case and abused its discretion to the detriment of the DISTRICT.
2 The COMMISSION applied an outdated and limited definition of immoral conduct, and failed to
3 consider the special calling of a teacher, which requires responsibilities and limitations on freedom
4 of action that do not exist with other professions. A teacher's ability to inspire children and govern
5 them, their power as a teacher, and the character for which they stand are matters of major concern
6 in a teacher's selection and retention. (Decision, p. 102, Legal Conclusion ¶¶ 3-4.)

7 70. The COMMISSION's reasoning for determining HOTCHNER did not engage in
8 immoral conduct consisted of:

9 The DISTRICT did not establish by a preponderance of the evidence that
10 HOTCHNER's actions were immoral as they were not indicative of
11 corruption, indecency, or depravity. Complainant also failed to establish by
12 the preponderance of the evidence that HOTCHNER's conduct was base,
13 vile or depraved. Although the DISTRICT did establish that HOTCHNER
acted inappropriately on multiple occasions and crossed boundaries with
students, these incidents were a result of lapses of judgment and there was
no improper motive for HOTCHNER's behavior.

14 71. Immoral conduct is not limited to acts that are corrupt, indecent, base, vile, or
15 depraved. It can include any conduct which is hostile to the welfare of the school community.
16 (*Crawford v. Comm'n on Professional Competence of Jurupa Unified School Dist.* (2020) 53
17 Cal.App.5th 327, 337.)

18 72. The COMMISSION's own findings establish that HOTCHNER's conduct was
19 immoral under the proper standard. The COMMISSION found that HOTCHNER engaged in the
20 following conduct:

- 21 a. Drew caricatures of students (Decision, p. 30, Finding ¶ 83);
- 22 b. Stated a student looked like Nicholaus Copernicus and called him to the front of
23 the class so HOTCHNER could take a picture of him next to Copernicus
24 (Decision, p. 12, Finding ¶ 25);
- 25 c. Messaged the entire class regarding individual student behavior, missing
26 assignments, and failing grades (Decision, pp. 13-14, Finding ¶¶ 29-30);
- 27 d. Insinuated some students were stupid, treated some students more harshly, and
28 said negative things about certain students in front of the class (Decision, pp. 20-

21, 25, 31, Finding ¶¶ 48, 65, 87F);

- e. Caused a student to feel as if he disliked them (Decision, p. 21, Finding ¶ 51);
- f. Read aloud from a textbook to a student as a form of punishment to embarrass and shame her (Decision, p. 58, Finding ¶ 150);
- g. Pulled a backpack out of a student's hand and dropped it next to HOTCHNER's desk, damaging the Chromebook inside (Decision, p. 17, Finding ¶ 38);
- h. Tossed papers, colored pencils, and markers at students (Decision, pp. 30-31, Finding ¶ 87B);
- i. Confiscated a student's phone while the student was in another teacher's class, which prevented the student from doing their class assignment (Decision, p. 17-18, Finding ¶ 39);
- j. Crumpled up student work in front of them (Decision, p. 31, Finding ¶ 87D);
- k. Touched students, intentionally kicked students' desks, and dropped books loudly on desks next to them (Decision, pp. 26, 30-31 Finding ¶¶ 69, 87A, 88);
- l. Dragged a student by the chair approximately ten (10) feet across the floor (Decision, p. 28, Finding ¶ 69, 77);
- m. Forced students chewing gum to hold it in their hand (Decision, p. 29, Finding ¶ 79);
- n. Routinely pushed a student's computer screen backward, assigned him to pick up trash for five (5) days for allegedly dropping trash on the ground, and confiscated his fidget spinner while he was in a different class (Decision, pp. 30, 65, Finding ¶¶ 86, 170);
- o. Told students that he knew where they lived and whispered their addresses to them in class (Decision, p. 67, Finding ¶ 180);
- p. Told students he had access to their files, could see their "baby pictures," and showed outdated photos in class, which embarrassed some students (Decision, p. 25, Finding ¶ 66);
- q. Removed a student from class and told her, he "do[es]n't get paid enough to see

- 1 bra straps” (Decision, p. 22, Finding ¶ 54);
- 2 r. Told a student to get out of his classroom although she was outside, came close
- 3 to the student, and said, “shoo, fly, shoo” (Decision, pp. 58-59, Finding ¶ 151);
- 4 s. Removed female students from class with their peers and then directed the peers
- 5 to address the student’s clothing (Decision, pp. 22-23, Finding ¶¶ 55-56);
- 6 t. Told a female student who he deemed to be out of dress code, “I can’t even look
- 7 at you” (Decision, p. 22, Finding ¶ 55);
- 8 u. Publicly shamed female students, improperly embroiled other students in what
- 9 should have been a private discussion with a student, and violated student
- 10 privacy, District expectations for teachers, and prior directives (Decision, p. 22,
- 11 Finding ¶ 55);
- 12 v. Publicly told students to “cover it up” and commented on their clothing in front
- 13 of others (Decision, pp. 23, 26, Finding ¶¶ 57, 58, 71);
- 14 w. Asked a female student to put on her fuzzy sweater so he could pet her (Decision,
- 15 p. 29, Finding ¶ 81);
- 16 x. Provided certain female students with preferential treatment (Decision, p. 31,
- 17 Finding ¶ 87E);
- 18 y. Played a video in class and paused whenever he saw a particular female student,
- 19 zooming in the student, and stated, “when ever [sic] I’m bored I’m gonna come
- 20 back [and] just watch that part of you,” “I’ll watch this in the summer when I
- 21 miss you,” and he would watch the video to see the student when he felt lonely
- 22 (Decision, pp. 63-64, Findings ¶¶ 165-168);
- 23 z. Questioned students about their personal lives and “flirting” with students in a
- 24 way that made them uncomfortable (Decision, p. 23, Finding ¶ 58);
- 25 aa. Failed to provide students enough personal space and sat or leaned on students’
- 26 desks (Decision, p. 23, Finding ¶ 59);
- 27 bb. Came close to a specific female student’s desk almost every day, touched her on
- 28 her shoulder, and focused on her so much in class that he noticed when she shook

- 1 her leg, and pointed it out (Decision, p. 23-24, Finding ¶ 59);
- 2 cc. Privately messaged a female student, “We should have a party. A sleepover, with
- 3 footie pajamas, and all our friends (I need to find some, but I bet you have a
- 4 bunch!) We can listen to music, go on a pony ride, and buy a UNICORN!”
- 5 (Decision, pp. 14-15, Finding ¶ 32);
- 6 dd. After distributing a photocopy of his hand in class, compared his hand to
- 7 students’ hands in a manner that made students uncomfortable, and “grabbed” a
- 8 student’s hand after the student pulled it back (Decision, p. 19, Finding ¶ 44);
- 9 ee. Made comments during this exercise such as “You have my hand, so you can
- 10 remember me over the summer,” “You can put my hand on the dinner table for
- 11 company,” “You can take my hand on a date,” and “You can put it on your face,”
- 12 “You don’t know where my hand has been” (Decision, p. 19, Finding ¶ 45);
- 13 ff. Told a student that he would give him mouth-to-mouth (Decision, p. 29, Finding
- 14 ¶ 80);
- 15 gg. Stated a student wanted to put his worm in another student’s dirt, which made
- 16 them uncomfortable (Decision, p. 19-20, Finding ¶ 47);
- 17 hh. Made heart symbols with his hands and stated, “Thanks, I love you too,” and
- 18 “thanks for the love, but I’m married,” and words to that effect, which made
- 19 several students uncomfortable (Decision, p. 27, Finding ¶ 75);
- 20 ii. Stated to students, “I am a married man, but we can still go for a walk after
- 21 school,” and “I am a married, but we can get ice cream after school” (Decision,
- 22 p. 27-28, Finding ¶ 76);
- 23 jj. Acted unnecessarily disrespectful and condescending to, and in a way that was
- 24 not conducive to a productive working relationship toward, CMS Principal
- 25 O’Shea (Decision, pp. 16-17, 61-62, 98 Findings ¶¶ 35-37, 161, 309); and
- 26 kk. Demonstrated unprofessional conduct in many ways with students and staff
- 27 (Decision p. 109; ¶ 26).

28 These findings alone are sufficient to establish that HOTCHNER engaged in conduct hostile to the

1 welfare of the school community.

2 73. Beyond these findings, the evidence in the record demonstrates HOTCHNER
3 engaged in many other acts of immoral conduct under the proper standard. As alleged in paragraphs
4 19-21, 29-32, 35, 38, and 40 above, he created a hostile classroom environment, bullied and
5 ridiculed students in front of their peers, treated them callously, engaged in intimidating and
6 physically aggressive conduct towards them, and engaged in boundary invasions, innuendo and
7 grooming behaviors towards students. The totality of the evidence compels the conclusion
8 HOTCHNER engaged in conduct that is hostile to the welfare of the school community.

9 74. HOTCHNER was expected to create a safe and positive school environment that
10 supports students in realizing their potential as a valuable contributor to society. Contrary to this
11 expectation, he created a classroom environment that made students feel helpless, inferior, anxious,
12 scared, and ashamed. The preponderance of the evidence compels the conclusion HOTCHNER's
13 conduct was immoral.

14 **B. Weight of the Evidence Compels the Conclusion That HOTCHNER Engaged in**
15 **Dishonesty**

16 75. Neither the weight of evidence in this case nor the findings of the COMMISSION
17 support the COMMISSION's conclusion that HOTCHNER did not engage in acts of dishonesty.

18 76. The COMMISSION did not apply the proper legal standard applicable to a charge of
19 dishonesty to the facts of the case and failed to include any legal reasoning in its conclusion. The
20 COMMISSION provided no analysis or evidentiary support for its bare bones conclusion that, "the
21 DISTRICT did not establish that HOTCHNER engaged in acts of dishonesty under Education Code
22 section 44932, subdivision (a)(4)." (Decision, p. 103, Legal Conclusions ¶¶ 7-8.) Dishonest conduct
23 may range from the smallest fib to the most flagrant lie. (*Fontana Unified School Dist. v. Burman*
24 (1988) 45 Cal.3d 208, 220 fn. 12.) The definition also includes mischaracterizations, exaggerations
25 and the manipulation of, or failure to disclose, material facts.

26 77. The totality of the evidence establishes that HOTCHNER engaged in acts of
27 dishonesty. The evidence demonstrates HOTCHNER lacks integrity and has a disposition to
28 deceive. As alleged in paragraphs 56-59 and 61-65 above, HOTCHNER continuously challenged

1 the DISTRICT's directives under the guise of seeking clarification or guidance. He also consistently
2 misrepresented students' conduct, attempted to paint students who had the courage to stand up
3 against his mistreatment as unruly bad actors or liars, and repeatedly contradicted himself under
4 oath.

5 78. The COMMISSION failed to consider evidence that would have established that
6 HOTCHNER's actions were dishonest. The weight of the evidence compels a conclusion
7 HOTCHNER engaged in acts of dishonesty.

8 **C. Weight of the Evidence Compels the Conclusion That HOTCHNER Is Unfit to Teach**

9 79. The COMMISSION concluded the DISTRICT failed to establish that HOTCHNER
10 is unfit to teach. (Decision, pp. 109-110, Legal Conclusion ¶ 26.) The manifest weight of the
11 evidence and the COMMISSION's own findings demonstrate otherwise.

12 80. The COMMISSION did not properly apply the law and abused its discretion in
13 determining that HOTCHNER was fit to teach – all to the prejudice of the DISTRICT.

14 81. The COMMISSION misapplied the factors in *Morrison v. State Board of Education*
15 (1969) 1 Cal.3d 214 ("*Morrison*"), resulting in the erroneous conclusion he was fit to teach.
16 Application of the *Morrison* factors weighs in favor of the DISTRICT. The COMMISSION found
17 five (5) of the seven (7) *Morrison* factors supported HOTCHNER's unfitness to teach, and the
18 COMMISSION's conclusions regarding the remaining factors were unsupported by the weight of
19 the evidence and its own findings. The proper application of the law to the evidence compels a
20 finding that HOTCHNER is unfit to teach.

21 82. In analyzing the *Morrison* factors, the COMMISSION found that the degree of
22 adversity from HOTCHNER's conduct was moderate; that HOTCHNER's most recent misconduct
23 was not remote in time; that HOTCHNER's credential allows him to teach impressionable middle
24 school students for whom he must serve as an appropriate role model; that HOTCHNER engaged
25 in multiple acts of wrongdoing and had prior notice, warning, or reprimands for similar conduct;
26 that HOTCHNER worked in the DISTRICT for many years without any prior adverse action; that
27 some of HOTCHNER's conduct was praiseworthy; that the DISTRICT did not prove HOTCHNER
28 was likely to reoffend; and that disciplinary action against HOTCHNER would not inflict an adverse

1 impact or chilling effect on HOTCHNER or others. (Decision, pp. 106-108, Legal Conclusions ¶¶
2 15-22.) Neither the weight of the evidence nor the findings of the COMMISSION support the
3 COMMISSION’s conclusions that HOTCHNER worked in the DISTRICT for many years without
4 any prior adverse action, some of his conduct was praiseworthy, or the DISTRICT failed to establish
5 he was likely to reoffend.

6 83. The COMMISSION’s own findings demonstrate the severity of the impact of
7 HOTCHNER’s conduct. The COMMISSION found HOTCHNER’s conduct crossed boundaries,
8 could be considered bullying, made students uncomfortable, embarrassed them, disturbed them, and
9 negatively impacted them. (Decision, pp. 12, 14, 17-19, 23-25, 27, 29-30, 32, 58, 62-64, Finding
10 ¶¶ 25, 30, 38-40, 44, 47, 58, 59, 63, 66, 75, 81, 82, 84, 89, 150, 151, 163, 165, 166.)

11 84. Student and expert testimony demonstrated the adversity from HOTCHNER’s
12 conduct was severe. Students testified they felt “scared” (Tr. 848:1-22, 1219:4-20, 1228:7-22,
13 1379:6-25); “unsafe” (Tr. 1246:4-13, 1244:8-7 12); “traumatized” (Tr. 1379:6-25); “worried” (Tr.
14 839:24-840:3); “anxious” (Tr. 837:7-20); “upset” (Tr. 816:1-6, 816:12-20); “less motivated” (Tr.
15 816:7-11); “uncomfortable” (Decision, pp. 12, 19-20, Finding ¶¶ 25, 47; Tr. 849:15-850:2, 871:7-
16 22, 874:10-25, 1066:19-1067:1, 1070:13-19, 1077:1-11, 1100:1-23, 1315:4-9, 1321:2-13;);
17 “embarrassed” (Decision, p. 14, Finding ¶ 30; Tr. 693:3-11); “disrespected” (Tr. 705:19-22, 733:15-
18 734:13, 733:15-734:13); “sexualiz[ed]” (Tr. 1360:14-23, 1383:11-17); “awkward” (Tr. 1004:17-
19 1005:1, 1244:8-12); “weird” (Tr. 874:10-25, 1244:8-12); “creeped ... out” (Tr. 918:20-25); and
20 “disgusted” (Tr. 1381:1-13) in HOTCHNER’s class. Student Li.J. was “uncomfortable” every day
21 in HOTCHNER’s’ class because of his comments. (Tr. 871:7-22.) Student L.J. “didn’t feel safe”
22 and “always ... had to put [her] guard up” in his class because he looked at her in a flirtatious way
23 and sent her heart signals. (Tr. 1246:4-13.) Student B.I. felt “uncomfortable” whenever she had to
24 walk into his class because, unlike other teachers, he constantly scrutinized her outfits. (Tr. 1066:19-
25 1067:1.) Student S.C. was “scar[ed]” to be in HOTCHNER’s’ class because he pushed over a desk
26 and threw a student’s backpack. (Tr. 848:1-22.) HOTCHNER “creeped [student P.C.] out” because
27 HOTCHNER took time out of his day to memorize students’ addresses. (Tr. 918:20-25.)

28 85. The expert explained that HOTCHNER’s conduct could have the effect of decreasing

1 students' motivation, making it more difficult for them to focus, creating cognitive disruption, and
2 fostering learned helplessness. (Tr. 1447:21-14, 1449:20-1450:11.) Cognitive disruption can affect
3 a child's development because it shuts down executive functioning and can lead them to become
4 avoidant, socially withdrawn, isolated, and disengaged. (Tr. 1451:4-1453:8.) Learned helplessness
5 can affect a child's development by making them more accepting of abuse, prone to mental health
6 issues, and less likely to graduate. (Tr. 1454:20-1456:3.)

7 86. Multiple students testified to experiencing these serious adverse effects of his
8 conduct. For example, one student testified that he felt "afraid ... just to go inside [HOTCHNER's]
9 classroom, to go up to him, even to join the Zoom." (Tr. 738:6-9.) Another testified that as a result
10 of HOTCHNER's conduct, her grades started to drop and she had trouble focusing in his class. (Tr.
11 860:25-861:10.) Student S.C. testified she never wore her fuzzy sweater to class after HOTCHNER
12 asked her to put it on so he could "pet" her, because she did not want to be subjected to his attentions
13 again. (Tr. 850:7-11.) Another student testified that she felt "uncomfortable almost every day" in
14 HOTCHNER's class and, consequently, she did not look forward to, and was not able to focus or
15 pay attention in, his class. (Tr. 892:19-893:22.) Another student testified that she didn't talk as
16 much in HOTCHNER's class because she "didn't really want to get in trouble, or, like, get called
17 out for talking." (Tr. 1094:15-24.) Student L.M. testified it was "very tiring" being in
18 HOTCHNER's class because he "scar[ed]" her. (Tr. 1321:6-15.) Student V.P testified
19 HOTCHNER's conduct made her "afraid of male teachers," question "why he would do things like
20 that," stated he "traumatized all of us." (Tr. 1379:6-25.) She testified she was afraid to talk about
21 HOTCHNER's conduct because she felt embarrassed and did not want to tell her parents for fear it
22 would scare them and she would not be allowed to go to school. (Tr. 1380:3-13.) The testimony in
23 the record on the severe impact of HOTCHNER's conduct and the potential impact is abundant.
24 The COMMISSION erred in finding the adversity was only moderate.

25 87. The expert testified that HOTCHNER's conduct could result in students emulating
26 similar abusive behavior or being more likely to be victims of similar behavior. Exposure to a
27 classroom teacher engaging in these kinds of abusive behaviors demonstrates to students the
28 behavior is appropriate. If someone who repeatedly victimized them and their peers is returned to

1 the classroom, it is almost like the DISTRICT is sanctioning the conduct, like their voice does not
2 matter and they have no say in being subjected to such conduct. (Tr. 1497:1-1498:6.)

3 88. The COMMISSION abused its discretion by failing to properly weigh the expert's
4 opinion. The COMMISSION found much of the expert's opinions about the effects of
5 HOTCHNER's conduct were speculative and not based upon a psychological assessment of the
6 students. (Decision, p. 78, Finding ¶ 212.) However, the expert was not required to conduct a
7 psychological assessment of all or any of the students to provide an expert opinion on the potential
8 adverse impacts of HOTCHNER's conduct. She was testifying about the likelihood HOTCHNER's
9 conduct may have adverse effects on the students involved and the degree of adversity anticipated
10 based on her many years of experience and significant qualifications. Discounting the expert's
11 opinion on this basis was an abuse of discretion because it is contrary to law.

12 89. The COMMISSION failed to properly weigh the evidence demonstrating that
13 HOTCHNER's conduct had a significant negative impact on students and was not praiseworthy.
14 The totality of the evidence compels a conclusion HOTCHNER is unfit.

15 90. Neither the weight of evidence in this case nor the findings of the COMMISSION
16 support the COMMISSION's conclusion that HOTCHNER worked in the DISTRICT for many
17 years without any prior adverse action. The COMMISSION found the DISTRICT imposed prior
18 adverse actions on HOTCHNER in the past for inappropriate and unprofessional conduct and he
19 reengaged in the same or substantially similar conduct. (Decision, p. 107, Legal Conclusion ¶ 18.)

20 91. The COMMISSION's conclusion that the DISTRICT failed to prove HOTCHNER
21 is likely to reoffend is against the manifest weight of the evidence and inconsistent with the
22 COMMISSION's own findings. The DISTRICT submitted evidence showing, and the
23 COMMISSION found, that HOTCHNER engaged in multiple of acts of wrongdoing and received
24 prior notice, warning, or reprimands for similar conduct. (Decision, p. 107, Legal Conclusion ¶ 18.)
25 In fact, the evidence demonstrates HOTCHNER has engaged in the same types of misconduct for
26 over a decade. The record reflects HOTCHNER received directives in 2007, 2008, and 2017 for
27 engaging in inappropriate, insensitive, provocative, and unprofessional conduct towards students.
28 In 2008, the DISTRICT directed HOTCHNER to "[b]e sensitive to age-level and emotional

1 development of [his] students”; to “do nothing to embarrass them”; and to “not make jokes in [the]
2 classroom that cause students to feel uncomfortable.” In 2017, the DISTRICT advised HOTCHNER
3 that he engaged in conduct that violated the DISTRICT’s professional standards for teachers and
4 failed to enhance the integrity of the DISTRICT and that his conduct adversely impacted several
5 students and them very uncomfortable. The DISTRICT directed HOTCHNER to not engage in the
6 same conduct again.

7 92. Despite receiving these directives and being placed on notice that his prior conduct
8 was unacceptable, HOTCHNER continued to engage in the same, or substantially similar, behavior.
9 He continued to make uncomfortable and provocative comments to students, such as sending them
10 hearts and stating, “Aw, I love you too. But be careful; I’m a married man,” “If I was not married,
11 you wouldn’t know what I would do,” “I can’t do that. I’m a married man,” “I can’t be together with
12 you. I’m a married man,” or “I’m kidding unless you don’t want me to be kidding.” (Tr. 858:24-
13 860:6, 882:14-22, 1367:1-17, Hr. Ex. 100.) He continued to discuss students’ work and grades
14 publicly in class, such as with students L.M. and A.C. (Tr. 1306:18-1307:4, 1313:20-24.) He
15 continued to reprimand students who were not in his class, such as for having their phones out.
16 (Decision, p. 17, Finding ¶ 39.) He continued to enforce the dress code, even when the students were
17 not in his class. (Decision, pp. 18, 22, Findings ¶¶ 43, 54-56.)

18 93. On March 18, 2022, the DISTRICT issued HOTCHNER a NUC/NUP advising him
19 of substantial conduct that was inappropriate and unprofessional. The NUC/NUP specifically
20 explained to HOTCHNER that making inappropriate, flirtatious, and/or sexually suggestive
21 comments towards students, remarking on their clothing, and suggesting to students that they were
22 interested in pursuing intimate or romantic relationships with him could be considered grooming
23 behaviors because “they are commonly used by adults pursuing inappropriate interactions with
24 children to neutralize the idea of inappropriate relationships between children and adults,” and
25 directed him to refrain from engaging in this conduct. (Hr. Ex. 64 at A299.) The DISTRICT notified
26 HOTCHNER that DISTRICT employees are prohibited from engaging in grooming behaviors.
27 (*Ibid.*) Despite receiving copious examples of the behaviors considered inappropriate, and given
28 clear direction not to engage in them and why, HOTCHNER persisted in engaging in the prohibited

1 conduct. The DISTRICT has a duty to protect its students from adults who expose them to and
2 normalize such conduct, especially given his status as a teacher and role model. HOTCHNER
3 continuation of this conduct without remorse in the first eight (8) weeks he returned to work after
4 being notified such conduct was grooming behavior demonstrates a significant likelihood of
5 reoccurrence. HOTCHNER either intentionally engaged in grooming behaviors or was unable to
6 stop doing so.

7 94. As alleged in paragraphs 29-32 above, HOTCHNER made heart symbols to students;
8 claimed students were “sending him hearts” and “admiring him” when they leaned their chin on their
9 hand in class; stared at female students and their chests; and complimented female students on their
10 appearance and clothes, particularly when they wore a V-neck shirt. He also singled out certain female
11 students in his class. For example:

- 12 a. HOTCHNER told student L.J. “how grown up” and “mature” she looked, and
13 student L.M. that she was “too mature for her age.” (Tr. 1245:10-17, 1315:18-25.)
- 14 b. On May 27, 2022, he played old student broadcasts in Advisory and when young
15 student L.M. appeared in a video, HOTCHNER continuously paused on her,
16 zoomed in, commented on “how [student L.M.] looked so different” and “how
17 much [student L.M.]’s grown up,” and stated he was going to watch the video over
18 the summer when he was lonely and missed her. (Tr. 1247:3-15, 1326:13-19,
19 1374:24-1375:25, 1377:7-17; Hr. Ex. 55.)
- 20 c. On June 2, 2022, during Advisory, HOTCHNER asked students to raise their hand
21 if they felt a “love connection” with him. (360:5-362:24; 1330:24-1331:20; Hr. Ex.
22 56.) When no one raised their hand, HOTCHNER insisted they had “love towards
23 him,” and were showing their love towards him by wearing certain colors. (*Ibid.*)
24 He said student A.C. was “in love” with him because he was wearing a red shirt.
25 (1329:11-1330:2; Hr. Ex. 56.) He told students L.J. and L.M. they “don’t really
26 know when [they’re] going to find love” and that he is “still attractive,” even with
27 gray hair. (Tr. 1255:6-15.)
- 28 d. On the first day of school during the 2021-2022 school year, HOTCHNER

1 approached student L.J., who had just enrolled at the DISTRICT, and
2 complimented her outfit, eyes, and hair, and asked her for “a lot of details” about
3 her family and personal life. (Tr. 1244:8-25.) He asked her where and when she
4 runs on the beach each morning and “demanded” to know the location of her
5 soccer games. (*Ibid.*; 1245:1-9, 1248:19-24, 1258:10-1259:4.)

6 e. HOTCHNER sat M.A. and M.A.2 right next to his desk, had a conversation with
7 them every day, always seemed to be trying to talk to them, even when they did
8 not need help, and would routinely ask them to stay after class to tell them how
9 good they were doing. (Tr. 951:9-24, 951:25-952:12, 1229:8-19, 1232:11-20.)
10 When HOTCHNER talked to MGA, he would stand uncomfortably close to her –
11 approximately 6 inches away. (Tr. 1229:20-1230:23.) For MA’s birthday,
12 HOTCHNER drew pictures and wrote “Happy Birthday” on the whiteboard, and
13 asked to be invited to her birthday party, even though he did not do this for any
14 other student. (Tr. 943:12-944:2, 1235:8-21.) Additionally, when CMS had a
15 teacher versus student soccer game, HOTCHNER made a bet with M.A. that if the
16 teachers lost, he would paint his fingernails pink. (Tr. 950:8-25.)

17 95. As alleged in paragraphs 46-47, 49-51, and 53 above, HOTCHNER returned to
18 engaging in conduct that violated NUC/NUP almost immediately upon his return to the classroom.
19 He continued to speak to students about student dress. He continued to attempt to police the school
20 campus through disapproval and escalated student encounters. He continued to be unable to form
21 meaningful connections with students as opposed to attempting to force compliance through
22 domination and intimidation.

23 96. The weight of the evidence demonstrates that HOTCHNER was either unwilling or
24 unable to modify his conduct toward students. In fact, HOTCHNER admitted that he took virtually
25 no steps to adjust his behavior following his receipt of the NUC/NUP. He testified that he
26 “continued to do what [he] thought was appropriate,” that he “could not adjust [his] conduct because
27 [he] hadn’t engaged in those kinds of behaviors,” and that he “did not see the deficiencies that the
28 district alleged so [he] continued to act as a professional.” (Hr. Ex. 101 at A1292, A1293, A1294.)

1 Listening to twenty-four (24) students testify about how his conduct negatively impacted them also
2 had no effect on HOTCHNER's perception of his behavior. HOTCHNER repeatedly testified that
3 students' "testimonies do not change [his] understanding of what occurred." (Tr. 2487:15-2498:6.)

4 97. HOTCHNER's reports of alleged dress code violations following his receipt of the
5 NUC/NUP further demonstrates his refusal or inability to modify his conduct. The COMMISSION
6 found that the vast majority of students he reported for alleged dress code violations were in
7 compliance with the CMS Dress Code policy. (Decision, pp. 49-50, Finding ¶127.) HOTCHNER's
8 email descriptions of students' dress were also starkly different from students' actual clothing.
9 HOTCHNER's reports and email descriptions indicate that he is unable to credibly assess when
10 students are dressed appropriately and indicates an unusual fixation with student dress. They reflect
11 that HOTCHNER is either unwilling to accept or powerless to accept that he will not be able to
12 control how female students clothe themselves at school. HOTCHNER's assertion that the
13 DISTRICT was not addressing student dress code violations and, therefore, he needed to continue
14 reporting dress code concerns to school administration was neither credible nor reasonable.
15 Principal O'Shea specifically advised him after his first report that he should not concern himself
16 with dress code violation consequences and should, instead, focus on instruction. (Decision, p. 40,
17 Finding ¶ 103.) HOTCHNER's insistence on reporting dress code violations demonstrates he was
18 impotent to control his fixation with female student dress.

19 98. The weight of the evidence and the COMMISSION's own findings demonstrate that
20 HOTCHNER is not only highly likely to reoffend but has already reoffended for more than a decade.
21 His recent violations of the DISTRICT's directives and expectations are not isolated lapses in
22 judgment, but a continuation of a longstanding pattern of conduct. HOTCHNER himself testified
23 that he saw no need, and made no effort, to adjust his behavior following his receipt of the
24 NUC/NUP. The COMMISSION's legal conclusion that the DISTRICT has not proven by a
25 preponderance of the evidence that HOTCHNER is likely to reoffend is abuse of discretion.

26 99. The evidence in this matter compels the conclusion HOTCHNER is unfit.

27 ///

28 ///

D. Weight Of The Evidence Compels The Conclusion That HOTCHNER Demonstrates Evident Unfitness for Service

100. The COMMISSION concluded the DISTRICT failed to establish that HOTCHNER has a fixed character trait which is not remediable. (Decision, pp. 109, Legal Conclusion ¶ 24.) The weight of the evidence and the COMMISSION's own findings demonstrate otherwise.

101. The totality of HOTCHNER's offensive conduct demonstrates HOTCHNER is clearly not fit, not adapted to and not suitable for teaching by reason of temperamental defects. The manifest weight of the evidence demonstrates HOTCHNER possesses fixed, irremediable character traits.

102. As alleged in paragraphs 96-97 above, the totality of HOTCHNER's offensive conduct demonstrates he is not fit, not adapted to, and not suitable for teaching by reason of temperamental defects. HOTCHNER saw no need, and made no effort, to adjust his behavior following his receipt of the NUC/NUP. The testimony of twenty-four (24) student witnesses also had no impact on his perception of his behavior. HOTCHNER was unable or unwilling to restrain himself from reporting alleged dress code violations, even after his direct supervisor advised him to focus on instruction. His level of concern and outrage over the clothing of 11–14-year-old children reflects a fixed character trait. The weight of the evidence demonstrates HOTCHNER is incapable of recognizing the deficiencies in his behavior and correcting his conduct accordingly.

103. The manifest weight of the evidence demonstrates HOTCHNER is incapable of recognizing the deficiencies in his behavior and correcting his conduct accordingly. He possesses a fixed character trait that is irremediable.

E. Weight of the Evidence Compels the Conclusion That HOTCHNER Persistently Violated or Refused to Obey School Laws or Regulations

104. The COMMISSION concluded the DISTRICT did not establish by a preponderance of the evidence that HOTCHNER persistently violated or refused to obey school laws or regulations. (Decision, p. 109, Legal Conclusion ¶ 24.) The weight of the evidence and the COMMISSION's own findings demonstrate otherwise.

105. There was substantial evidence showing that HOTCHNER repeatedly engaged in

1 inappropriate and unprofessional conduct and, despite receiving notice such behavior was
2 unacceptable and given opportunities to correct, made no attempt to modify his behavior.

3 106. The COMMISSION allowed the District to admit minimal evidence regarding prior
4 notice of misconduct and directives the DISTRICT issued HOTCHNER regarding prior similar
5 misconduct in 2007, 2008, 2017, and May 2021. (Tr. 2523:2-2524:13.) The DISTRICT issued
6 HOTCHNER the NUC/NUP on March 18, 2022. HOTCHNER's first day of work after receiving
7 the NUC/NUP was April 11, 2022.

8 107. The COMMISSION found HOTCHNER continued to engage in the same or
9 substantially similar conduct after receiving each prior notice and directives to correct his
10 misconduct. In 2008, the DISTRICT directed HOTCHNER to "[b]e sensitive to age-level and
11 emotional development of [his] students"; to "do nothing to embarrass them"; and to "not make
12 jokes in [the] classroom that cause students to feel uncomfortable." Hotchner's misconduct in 2017
13 violated the prior directives issued to him in 2008. In 2017, the DISTRICT advised HOTCHNER
14 that he engaged in conduct that violated the DISTRICT's professional standards for teachers and
15 failed to enhance the integrity of the DISTRICT and that his conduct adversely impacted several
16 students and them very uncomfortable. The DISTRICT directed HOTCHNER to not engage in the
17 same conduct again. Although the DISTRICT was unaware of HOTCHNER's misconduct until
18 June 2021, the evidence demonstrates HOTCHNER continued to engaged in conduct that violated
19 the DISTRICT's professional standards for teachers, as well as the 2008 directives, and failed to
20 enhance the integrity of the DISTRICT in 2019, 2020, 2021, and 2022, until the DISTRICT put him
21 on paid administrative leave.

22 108. In 2019, for example, HOTCHNER teased a student about his resemblance to
23 Copernicus and forced him to stand next to a photo of Copernicus so HOTCHNER could take, what
24 HOTCHNER referred to as their "family picture." (Decision, p. 12, Finding ¶ 25) He drew caricatures
25 of students on the overhead projector (Decision, p. 30, Finding ¶ 83); and made heart symbols with
26 his hands and stated, "Thanks, I love you too," and "thanks for the love, but I'm married" (Decision,
27 p. 27, Finding ¶ 75). HOTCHNER continued to engage in inappropriate and unprofessional on a
28 consistent basis. In May 2021, the DISTRICT became aware of some of HOTCHNER's inappropriate

1 conduct, issued immediate directives to (1) not confront students on campus regarding the dress code;
2 (2) not remove students from other classes; and (3) if students are exhibiting negative behaviors in
3 class, work positively with the parent and student to improve their grades and behavior, and began
4 an investigation. In August and September 2021, HOTCHNER continued to violate the May 2021
5 directives, so the DISTRICT placed him on paid administrative leave for the remainder of the
6 investigation.

7 109. In 2022, following a lengthy investigation, the DISTRICT issued the NUC/NUP
8 directing HOTCHNER to, among other things, maintain professional boundaries with students;
9 refrain from stating or implying that students are interested in anything other than a professional
10 teacher-student relationship with him; refrain from stating or implying that he is interested in
11 anything other than a professional teacher-student relationship; refrain from touching students or
12 their belongings; refrain from administering student dress code, “coding” students, or speaking or
13 communicating with students about their dress in any manner; refrain from teasing and picking on
14 students; refrain from arguing with students and/or engaging in a power struggle with them; and
15 refrain from reprimanding students in another teacher’s class or on campus. (Decision, pp. 32-37,
16 Finding ¶ 93.) After receiving the NUC/NUP, HOTCHNER again continued engaging in the same
17 and similar misconduct. HOTCHNER violated these directives immediately upon his return to the
18 classroom on April 11, 2022.

19 110. The COMMISSION recognized that HOTCHNER violated the directives in the
20 NUC/NUP on three occasions – when he confiscated student A.S.’ cell phone from her on April 12,
21 2022, confiscated student M.B.’s fidget spinner from him when he was not in HOTCHNER’s class
22 on May 31, 2022, and told the class he had seen student A.Z. outside of school after March 18, 2022.
23 (Decision, pp. 54, 65, 67, Findings ¶¶ 142, 170, 178.)

24 111. The COMMISSION also found that HOTCHNER engaged in the following conduct:

- 25 a. Removed a drink from student’s backpack (Decision, p. 27, Finding ¶ 73);
- 26 b. Touched a student on the chest (Decision, p. 31, Finding ¶ 88);
- 27 c. Dragged a student in his chair approximately ten (10) feet (Decision, p. 28, Finding
- 28 ¶ 77);

- d. Pushed a student’s laptop screen backward to see if he was playing computers (Decision, p. 30, Finding ¶ 86);
- e. Woke sleeping students by dropping books loudly on the desk next to them (Decision, p. 26, Finding ¶ 69);
- f. Told students he knew where they lived and whispered their addresses in their ear (Decision, p. 67, Finding ¶ 180);
- g. Confronted students who were not in his class about having their phone out on May 3, 2022, and May 16, 2022, (Decision, pp. 56, Findings ¶¶ 145-146); and
- h. Confronted students E.H. and C.G., who were not in his class at the time, in the main hall for yelling (Decision, p. 60, Findings ¶¶ 155-156.)
- i. The COMMISSION’s findings which support the conclusion HOTCHNER violated the directives in the NUC/NUP include, but are not limited to, removing a drink from a student’s backpack without the student’s knowledge (Decision, p. 27, Finding ¶ 73)
- j. Dragging a finger across student C.C.’s chest (Decision, p. 31, Finding ¶ 88);
- k. Pushing a students’ laptop screen backward (Decision, p. 30, Finding ¶ 86);
- l. Drawing caricatures of students on the overhead projector when creating headings on school documents (Decision, p. 30, Finding ¶ 83);
- m. Forcing tardy students to wait outside until he let them in (Decision, p. 21, ¶ 52);
- n. Telling students he knows where they live and whispering their addresses to them in class (Decision, p. 67, Finding ¶ 180);
- o. Waking sleeping students by dropping books loudly on the desk next to their heads (Decision, p. 26, Finding ¶ 69);
- p. Making heart symbols to students and stating, “Thanks, I love you too,” and “Thanks for the love, but I’m married,” and words to that effect (Decision, pp. 27-28, Finding ¶ 75);
- q. Playing a video in class and pausing whenever he saw a particular female student, zooming in the student, and stating, “when ever [sic] I’m bored I’m gonna come

back [and] just watch that part of you,” “I’ll watch this in the summer when I miss you,” or stating he would watch the video to see the student when he felt lonely (Decision, pp. 63-64, Findings ¶¶ 165-168);

r. Telling the class when he had seen some students outside of school, that student A.Z. was friends with his daughter in elementary school, and that he has visited the student in her home and seen her do cannon balls in the pool (Decision, p. 67, ¶ 178);

s. Confronting students who were not in his class about having their phone out on May 3, 2022, and May 16, 2022 (Decision, pp. 56, Findings ¶¶ 145-146);

t. Confronting students E.H. and C.G., who were not in his class at the time, in the main hall for yelling (Decision, p. 60, Findings ¶¶ 155-156).

Such conduct violated the directives in the NUC/NUP to maintain professional boundaries; refrain from engaging in boundary invasions and grooming type behaviors; refrain from stating or implying that he and students are interested in anything other than a professional teacher-student relationship; refrain from making comments about or discussing spending time with students outside of school; refrain from touching students and their belongings; refrain from engaging in abusive, threatening, and/or intimidating conduct towards students; and refrain from reprimanding students in another teacher’s class or on campus. (Hr. Ex. 64.) HOTCHNER’s continued misconduct before and after he received the NUC/NUP demonstrates he persistently violated or refused to obey school laws or regulations.

112. In addition to this conduct, HOTCHNER engaged in substantially more conduct contrary to the directives in the NUC/NUP, as alleged in paragraphs 46-51 above, further demonstrating his persistent rules violation. The weight of the evidence demonstrates that following his receipt of the NUC/NUP, HOTCHNER made inappropriate, flirtatious, and/or sexually suggestive comments towards students, remarked on their clothing, and suggested to students that they were interested in pursuing intimate or romantic relationships with him. He also distributed, reviewed, and talked about a dress code packet with students in class; and stopped class to speak to students on the track about their dress. Such conduct violated the directives in the NUC/NUP to

1 refrain from stating or implying that students are interested in anything other than a professional
2 teacher-student relationship with him; to refrain from stating or implying that he is interested in
3 anything other than a professional teacher-student relationship; and to refrain from administering
4 student dress code, “coding” students, or speaking or communicating with students about their dress
5 in any manner.

6 113. The COMMISSION failed to consider almost all of HOTCHNER’s post-NUC/NUP
7 conduct in assessing whether the DISTRICT demonstrated by a preponderance of the evidence
8 whether HOTCHNER persistently violated or refused to obey school laws or regulations. The
9 COMMISSION limited its analysis to only HOTCHNER’s repeated reports of dress code concerns
10 and his confiscation of a student’s phone on April 12, 2022, and another student’s fidget device.
11 (Decision, p. 104, Legal Conclusion ¶ 11.)

12 114. The COMMISSION failed to consider numerous violations of prior directives and
13 repeated inappropriate and unprofessional conduct.

14 115. HOTCHNER’s conduct over four years preceding his dismissal shows a continuing
15 and constant pattern of disregard for DISTRICT policies and directives. The DISTRICT provided
16 resources and guidance to support HOTCHNER in correcting his behavior multiple times, provided
17 directives in 2008, 2017, and 2021; and met with him for hours at a time to review and clarify the
18 directives, review his conduct, and emphasize DISTRICT expectations. Each time, however,
19 HOTCHNER either completely discounted the DISTRICT’s directives and concerns or attempted
20 to challenge them.

21 116. In reaching its conclusion, the COMMISSION also failed to consider HOTCHNER’s
22 attempts to avoid the consequences of his behavior by challenging the DISTRICT’s directives and
23 antagonistically refusing to obey the school rules and regulations. The weight of the evidence
24 regarding HOTCHNER’s consistent and antagonistic violations of the DISTRICT’s prior directives
25 compels the conclusion HOTCHNER persistently violated or refused to obey school laws or
26 regulations.

27 **Improper Exclusion of Evidence**

28 117. The Administrative Law Judge (“ALJ”) permitted HOTCHNER to introduce

1 performance evaluations – over the DISTRICT’s objection – from well beyond the 4-year statute of
2 limitations. (Hr. Ex. 1401-1405.) The ALJ admitted HOTCHNER’s performance evaluations from
3 2009, 2011, 2013, 2015, and 2016 on the grounds that they were relevant to the *Morrison* factor of
4 mitigating circumstances and HOTCHNER’s defense.

5 118. The DISTRICT sought to introduce evidence of prior substantially similar
6 misconduct and related directive during the same period as the already admitted performance
7 evaluations.

8 119. The DISTRICT sought to introduce two (2) memos, one dated January 25, 2007, and
9 another dated March 10, 2008, prepared by DISTRICT administration, for the purpose of
10 impeaching HOTCHNER’s testimony, rebutting previously admitted evidence, and demonstrating
11 he was notified his conduct towards students was inappropriate and unprofessional, was directed to
12 stop engaging in the conduct, and continued to engage in the same or substantially similar conduct.
13 Following an in camera review, the ALJ excluded the memoranda and the underlying conduct, and
14 excluded the directives from the January 25, 2007 memo. This exclusion was prejudicial. The ALJ
15 limited the DISTRICT to examining HOTCHNER only about the directives contained in the March
16 10, 2008, memo. HOTCHNER claimed to only recall one of the directives. (Tr. 2549:10-2550:2.)

17 120. The DISTRICT sought to introduce a conference summary memo prepared by
18 DISTRICT administration in conjunction with a meeting with HOTCHNER, dated March 28, 2017,
19 to impeach HOTCHNER’s testimony and demonstrate HOTCHNER was previously notified that
20 his conduct adversely impacted several students and made them very uncomfortable, was
21 inappropriate, unprofessional, and failed to enhance the integrity of the DISTRICT, was directed
22 not to make insensitive jokes and to stop engaging in such conduct, and that he continued to engage
23 in the same or substantially similar conduct. The ALJ excluded the conference summary memo and
24 testimony about the underlying conduct because the conduct contained in the memo preceded the
25 4- year statute of limitations. (Tr. 2523:2-2524:13.) This exclusion was prejudicial. The DISTRICT
26 was limited to examining HOTCHNER only about the directives contained therein, to which
27 HOTCHNER replied that he did not recall the specific wording of the directive or the directive itself.
28 (Tr. 2516:13-2518:15.)

1 121. The ALJ improperly precluded the DISTRICT from introducing the 2007, 2008, and
2 2017 memoranda, and limited the DISTRICT to examining HOTCHNER about the directives
3 contained in the 2017 and 2008 memos. The ALJ’s exclusion of this evidence was a prejudicial
4 abuse of discretion because the evidence was directly relevant to the COMMISSION’s evaluation
5 of the *Morrison* factors of aggravating circumstances and likelihood of reoccurrence of the alleged
6 misconduct. The 2007 memo, in particular, provided HOTCHNER with directives that were
7 substantially similar to the directives provided in his NUC/NUP. That memo directed HOTCHNER
8 to “be sensitive to the age level of [his] students and the potentially provocative nature of [his]
9 subject matter”; to “not make jokes ... that would make an average child feel uncomfortable”; to
10 “not single out students and tell them about their work in front of the class without their permission”;
11 to “refrain from disciplining other students on campus unless there is a physical or emotional
12 damage concern for other students”; to “only discipline [his] own students”; and to not concern
13 himself with dress code “unless it is in [his] classroom.”

14 122. The ALJ’s exclusion of this evidence denied the DISTRICT a fair trial because it
15 impacted the DISTRICT’S ability to refute the evidence of satisfactory performance introduced by
16 HOTCHNER over the DISTRICT’s objections. The excluded evidence established that
17 HOTCHNER had significant previous notice that his conduct was inappropriate and unprofessional,
18 and he chose to continue to engage in similar misconduct. This evidence goes directly to the
19 likelihood of the recurrence and the COMMISSION’s ruling that the DISTRICT did not establish
20 by a preponderance of the evidence that HOTCHNER was unfit to teach or had a fixed character
21 trait that was not remediable and, therefore, was not evidently unfit for service.

22 123. The ALJ’s admission of HOTCHNER’s 2009, 2011, 2013, 2015, and 2016
23 performance evaluations was a prejudicial abuse of discretion because it was contrary to the ALJ’s
24 later ruling that evidence outside the 4-year statute of limitations should be excluded. The ALJ’s
25 admission of HOTCHNER’s 2009, 2011, 2013, 2015, and 2016 performance evaluations denied the
26 DISTRICT a fair trial because it held the DISTRICT to a different standard of evidence than
27 HOTCHNER on the critical point of prior notice and likelihood of reoccurrence.

28 ///

Improper Denial of Motion to Amend Statement of Charges to Conform to Evidence

124. On or about September 1, 2023, the DISTRICT filed a Motion to Amend the Statement of Charges to Conform to Proof pursuant to Government Code section 11507. The motion was fully briefed by HOTCHNER and the DISTRICT. On or about October 5, 2023, the COMMISSION denied the DISTRICT’S motion. (A true and correct copy of the Order Denying Motion to Amend Statement of Charges to Conform to Proof is attached hereto as **Exhibit 4**).

125. The COMMISSION’s denial of the DISTRICT’s Motion to Amend the Statement of Charges to Conform to Proof constitutes a prejudicial abuse of discretion because the DISTRICT had good cause to amend the Statement of Charges and the amendment would not have prejudiced HOTCHNER. The amendment would have avoided further litigation, preserved judicial resources, and ensured the COMMISSION determined whether HOTCHNER’s dismissal was warranted based on all the available evidence. Moreover, there was no prejudice because HOTCHNER was present when each witness testified regarding the new allegations and had a full and fair opportunity to – and did – cross-examine the relevant witnesses regarding the allegations. The amendment added additional examples of conduct charged in the Statement of Charges.

126. The COMMISSION’s denial of the DISTRICT’s Motion to Amend the Statement of Charges to Conform to Proof denied the DISTRICT a fair trial because the additional charges would have further supported that dismissal is warranted for HOTCHNER because he is evidently unfit to teach; engaged in immoral conduct, acts of dishonesty, and persistent violation of school laws or regulations; and there was a likelihood of recurrence.

THE COMMISSION’S DECISION IS SUBJECT TO PEREMPTORY WRIT

127. The COMMISSION’s failure to find that HOTCHNER engaged in immoral conduct, engaged in acts of dishonesty, persistently violated or refused to obey school laws or regulations, and was evidently unfit to teach has the effect of voiding the Board’s dismissal of HOTCHNER under Education Code section 44932. The DISTRICT is now required to continue to employ HOTCHNER despite knowing the adverse impact on students and their families and employees. Therefore, the DISTRICT has a clear, present, and beneficial right to the granting of an order and/or writ compelling the COMMISSION to amend its decision to include a legal conclusion that

HOTCHNER engaged in acts of immoral conduct, dishonesty, persistent violation of or refusal to obey school laws or regulations, and is unfit to teach.

128. The COMMISSION's failure to find that HOTCHNER engaged in immoral conduct also has the effect of voiding the Board's suspension of HOTCHNER without pay under Education Code section 44939. The DISTRICT is now liable for HOTCHNER's backpay for the period between his suspension and the COMMISSION's decision. Therefore, the DISTRICT has a clear, present, and beneficial right to the granting of an order and/or writ compelling the COMMISSION to amend its decision to include a legal conclusion that HOTCHNER engaged in immoral conduct.

129. The DISTRICT has no plain, speedy, or adequate remedy at law for the prejudice that it will suffer, unless the requested relief is provided by this Court. The DISTRICT has exhausted all available administrative remedies before the COMMISSION and/or OAH.

130. The DISTRICT avers that no remedy, other than the requested relief, can compel the COMMISSION to correct its erroneous conclusions, and thereby protect the DISTRICT's students and their families from HOTCHNER's immoral, inappropriate, unprofessional, dishonest, and insubordinate conduct. The DISTRICT further avers that there is no remedy, other than the requested relief, that can protect the DISTRICT's interest in not having to reimburse HOTCHNER for backpay when his suspension without pay was warranted under Education Code section 44939. Accordingly, a writ of mandate should issue pursuant to Government Code section 11523 and Code of Civil Procedure section 1094.5 compelling the COMMISSION and OAH to set aside the erroneous decision and enter a new decision that upholds the immediate unpaid suspension and dismissal of HOTCHNER.

PRAYER FOR RELIEF

WHEREFORE, the DISTRICT prays for judgment against the COMMISSION as follows:

1. For a peremptory writ of mandate pursuant to Government Code section 11523 and Code of Civil Procedure section 1094.5, ordering the COMMISSION to set aside its erroneous decision of December 26, 2023, and enter a new decision that upholds the immediate unpaid suspension and dismissal of HOTCHNER;
2. For a finding that the COMMISSION's decision is not supported by the weight of

the evidence and was an abuse of discretion;

3. For a finding that the COMMISSION's decision is contrary to law and that the COMMISSION applied improper legal standards and misapplied the law to the facts resulting in a prejudicial abuse of discretion;
4. For a finding that the weight of the evidence established good cause to immediately suspend HOTCHNER without pay and dismiss him from his employment;
5. For costs of suit herein incurred; and
6. For such other and further relief as the Court considers just and proper.

DATED: February 26, 2024

FAGEN FRIEDMAN & FULFROST, LLP

By:



Jacqueline M. Litra

Lynn M. Beekman

Vanessa Lee

ATTORNEYS FOR CARPINTERIA UNIFIED
SCHOOL DISTRICT

807-113/6848056.3

EXHIBIT 1

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA**

In the Matter of the Motion for Immediate Reversal of

Suspension of:

JOHN HOTCHNER, a Permanent Certificated Employee,

Moving Party

and

CARPINTERIA UNIFIED SCHOOL DISTRICT,

Responding Party

OAH Case No. 2022100388

**ORDER DENYING MOTION FOR IMMEDIATE REVERSAL OF
SUSPENSION**

Matthew S. Block, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard this matter telephonically from Sacramento, California, on November 4, 2022.

Estephanie Villalpando, Attorney at Law, represented John Hotchner (Hotchner).

Vanessa Lee, Attorney at Law, Fagen, Friedman & Fulfroost, LLP, represented Carpinteria Unified School District (District).

Procedural History

On September 14, 2022, the District served Hotchner with a Notice of Intent to Immediately Suspend Without Pay and Dismiss (Notice). The Notice was based on a Statement of Charges, dated September 13, 2022, and alleged cause to dismiss based on immoral conduct (Ed. Code, § 44932, subd. (a)(1)¹; unprofessional conduct (*id.*, subd. (a)(2); dishonesty (*id.*, subd. (a)(4); evident unfitness for service (*id.*, subd. (a)(6); and 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 (*id.*, subd. (a)(8)). The Notice alleged cause to immediately suspend Hotchner without pay for immoral conduct. (§ 44939, subd. (b).) Hotchner timely filed a Request for Hearing.

On October 14, 2022, Hotchner also filed a Notice of Motion and Motion for Immediate Reversal of Suspension (Motion) pursuant to section 44939, subdivision (c). He contends that the Statement of Charges does not adequately allege immoral conduct sufficient to support an immediate unpaid suspension. On October 25, 2022, the District filed its opposition to the Motion. On November 1, 2022, Hotchner filed a reply brief. Oral arguments on the Motion were heard on November 4, 2022.

¹ All further statutory references are to the Education Code, unless otherwise specified.

Motion for Immediate Reversal of Suspension

Section 44939 states, in relevant part, that a school district may immediately suspend without pay a permanent employee of the school district who has been charged "with immoral conduct, conviction of a felony or of any crime involving moral turpitude, with incompetency due to mental disability, with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, or with violation of section 51530. . . ." (§ 44939, subd. (b).)

An employee who has been placed on such suspension may file a motion for immediate reversal of suspension. (§ 44339, subd. (c)(1).) "Review of a motion filed pursuant to this section shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section. (*Ibid.*)

STATEMENT OF CHARGES

The District alleges multiple instances of misconduct by Hotchner, occurring from 2018 to 2022. The allegations can be divided into two broad categories: engaging in inappropriate and sexually suggestive conversations with students; and creating a hostile classroom environment.

Examples of the first include Hotchner: (1) telling students he loves them; (2) suggesting that he and a female student could have a sleepover party and wear "footie pajamas"; (3) telling a student he wanted to give them a hug and hold their hand; (4) telling a female student to put on her fuzzy sweater because he wanted to pet her; (5) asking students if they felt a "love connection" with him; (6) asking a student for an invitation to her birthday party and offering to buy her a gift; and (7) making sexual

comments to students, and then stating, "I am kidding, unless you don't want me to be kidding."

Examples of the second include Hotchner: (1) ridiculing students' clothing and appearance; (2) regularly making comments in front of the class that a particular student was "stupid"; (3) taking photos and videos of students despite their objections, purportedly to document dress-code violations; (4) kicking students' feet and desks; and (5) subjecting students to gratuitous and inequitable punishment.

The District contends that immediate suspension without pay is warranted because Hotcher's behavior constitutes immoral conduct.

IMMORAL CONDUCT

"[T]he term 'immoral conduct' in section 44932, subdivision (a)(1) 'stretch[es] over so wide a range' of conduct that it 'embrace[s] an unlimited area of conduct.'" (*Crawford v. Commission on Professional Competence* (2020) 53 Cal.App.5th 327, 337, quoting *Morrison v. State Board of Education* (1960) 1 Cal.3d 214, 224-225.)

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 conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity; dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

(*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740 & *Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

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."

(*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, quoting *Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824.) "Thus, the term must be 'considered in the context in which the Legislature considered it, as conduct which is hostile to the welfare of the general public . . . more specifically in this case, conduct which is hostile to the welfare of the school community.'" (*Crawford, supra*, 53 Cal.App.5th at p. 337, quoting *Morrison, supra*, 1 Cal.3d at p. 224.)

The parties' written submissions and oral arguments have been considered. The District alleged sufficient facts in the Statement of Charges that, if true, would constitute immoral conduct and support immediate suspension under section 44939, subdivision (b). Accordingly, the Motion must be denied.

//

//

ORDER

The Motion for Immediate Reversal of Suspension is DENIED.

DATE: November 16, 2022

Matthew Block

MATTHEW S. BLOCK

Administrative Law Judge

Office of Administrative Hearings

DECLARATION OF SERVICE

Case Name: Hotchner, John

OAH No.: 2022100388

I, Paul Gates, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is Emerald Plaza, 402 West Broadway, Suite 600, San Diego, CA 92101. On November 17, 2022, I served a copy of the following document(s) in the action entitled above:

ORDER DENYING MOTION FOR IMMEDIATE REVERSAL OF SUSPENSION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Vanessa Lee
Attorney at Law
Fagen Friedman & Foster, LLP
6300 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90048
VIA General Logistics Systems (GLS)
Tracking # 558234102

Estephanie Villalpando
Attorney at Law
Bush Gottlieb, A Law Corporation
801 North Brand Boulevard, Suite 950
Glendale, CA 91203-1260
VIA General Logistics Systems (GLS)
Tracking # 558234122

☒ **Overnight Delivery.** I enclosed the above-described document(s) in a sealed envelope or package addressed to the person(s) at the address(es) listed above, and placed the envelope or package with overnight delivery fees paid at an office or a location regularly utilized for collection and overnight delivery by an authorized overnight delivery courier.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at San Diego, California on November 17, 2022.

Paul Gates

Paul Gates, Declarant

EXHIBIT 2

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
CARPINTERIA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

JOHN HOTCHNER,

A Permanent Certificated Employee,

Respondent.

OAH No. 2022120218

DECISION

The Commission on Professional Competence (Commission) heard this matter on March 13-17, 20-24, August 21-25, and August 28-September 1, 2023, by videoconference. The Commission consists of Michelle Orelup, John Miller, and Carmen D. Snuggs-Spraggins, Administrative Law Judge (ALJ) with the Office of Administrative Hearings and Commission Chairperson.

The Carpinteria Unified School District (District) was represented by Milton Foster, Jacqueline Litra, and Vanessa Lee, Attorneys at Law, Fagen Friedman & Foster, LLP.

John Hotchner (Respondent) was represented by Estephanie Villalpando and Jason Wojciechowski, Attorneys at Law, Bush Gottlieb, A Law Corporation.

Testimony and documents were received in evidence. The record was held open until September 22, 2023, for the parties to file simultaneous closing briefs, which were timely filed and marked for identification. The record closed and the matter was submitted for decision on September 22, 2023. The Commission thereafter deliberated in executive session.

Protective Order

On February 27, 2023, pursuant to the stipulation of the parties, the ALJ issued a Protective Order to facilitate the exchange information between the parties, protect the privacy of students in the case, and to prevent the disclosure of confidential information. The ALJ issued an additional Protective Order identifying exhibits that have been sealed after their use in preparation of the Decision that contain the names and pictures of students and names of students' parents. These documents shall remain under seal and shall not be opened, except as provided by the Protective Order. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the document subject to the Protective Order provided that such document is protected from release to the public. Moreover, the ALJ issued an order directing that if transcripts of these proceedings are prepared, the names of minor students and their parents should be replaced with the first initial of their first and last names.

Motions in Limine

Prior to the presentation of evidence, the parties made several motions in limine. The ALJ considered and ruled on the motions in limine as reflected on the record.

District's Motion to Initiate Contempt Proceedings to Enforce Subpoenas

The District moved to initiate contempt proceedings to enforce subpoenas against students Z.B., E.H-S. and K.A., and parent S.H-S. The Motions were denied for the reasons stated on the record.

District's Motion to Conform Pleadings to Proof

The District's Motion to Amend the Statement of Charges to Conform to Proof was denied for the reasons stated in the order dated October 4, 2023.

FACTUAL FINDINGS

Jurisdictional Matters

1. On September 14, 2022, Diana Zapata, acting in her official capacity of Director of Human Resources (DHR) for the District, caused to be served on Respondent written notice of the District's intention to dismiss Respondent and to place him on immediate unpaid suspension. The notice included the written Statement of Charges against Respondent.

2. On October 14, 2022, Respondent timely submitted a Notice of Defense and Request for Hearing.

3. On December 2, 2022, the District filed a request to set the matter for hearing. The District filed notice of hearing as required by law.

4. All jurisdictional requirements have been met.

Background and Employment History

5. Respondent holds a Clear Single Subject Teaching Credential with a Social Science Authorization and a Clear Cross-Cultural Language and Academic Development Certificate (CLAD). He has worked for the District for more than 20 years and is a middle school teacher at Carpinteria Middle School (CMS).

6. Respondent is the president of the Carpinteria Association of United School Employees (CAUSE). In 2007 or 2008, he was elected to serve as the chair of the Social Science Department and, at the request of the District's superintendent, he served as the chair of the safety committee from 2015-2019.

7. Respondent has taught sixth, seventh, and eighth grade students. At all times relevant to the Statement of Charges (SOC), he taught history. Specifically, during the 2021-2022 school year, Respondent taught History 7/Global Studies to seventh grade students. Respondent also had an advisory period, which is a 20-minute class similar to homeroom, held prior to any instructional period. The students in Respondent's Advisory class were in the eighth grade.

8. Respondent's written Class Procedures required students who were tardy to his class to stand by the door within his view and wait until he invited them into the

classroom. He required all students to be quiet for the first ten minutes of class while they recorded their homework assignments. According to Respondent's Class Procedures, students must obtain his permission before leaving their seats. Specifically, they are required to raise their hands and wait for him to acknowledge them. Students are directed to watch for Respondent's thumb; when he raised his thumb above his head, students were advised "you will become absolutely silent, look forward, and prepare to listen to my instruction. You will also put your thumb up [in front of your face and between your eyes] to demonstrate that you are paying attention." (Ex. 84, p. A1051.)

9. In 2021, the Public Employment Relations Board issued a decision in Respondent's favor and against the District regarding a 2019 Notice of Unprofessional Conduct/Notice of Unsatisfactory Performance.

10. In June 2022, Respondent obtained an Arbitration Award against the District related to the District's formal observation of Respondent's teaching in 2021.

CMS

11. Lisa O'Shea has been the principal at CMS for five years.

12. CMS is a trauma-informed school. On June 30, 2020, Respondent and all other certificated employees received training on trauma informed practices to implement when interacting with students (SELPA training). (Ex. 30.) The SELPA training included the definition of trauma, ("... the experience of severe psychological distress following any terrible or life-threatening event"), and information on the educational impacts of trauma on students and staff. CMS also provided an AHA! Workshop for

Educators training entitled "The Trauma-Sensitive Classroom" in the 2021-2022 and 2022-2023 school year years. (Ex. 29.)

13. On December 13, 2020, Principal O'Shea sent all CMS staff an email that suggested ways for staff to address students who were demonstrating trauma responses (difficulty self-regulating emotions and therefore engaging in aggressive and impulsive behavior or demonstrating fear of new or unfamiliar situations). (Ex. 92). On January 24, 2021, Principal O'Shea sent a similar email to staff that contained suggestions for trauma informed practices that staff could implement in their classrooms. On March 27, 2022, she sent an email to staff that defined trauma, described what trauma informed practices should include, and provided links to two trauma informed presentations (AHA! Trauma Informed training and SELPA Trauma Informed Training). On April 24, 2022, Principal O'Shea sent an email to CMS staff that included a link to "CMS Trauma Informed School Presentations." (Ex. 95, p. 1107.)

14. In the 2020-2021 school year, CMS's Dress Code policy, as stated in the CMS Student Handbook, provided:

Students are expected to attend school in appropriate clothing. Student dress and appearance affect student attitudes and conduct. This District's dress code is intended to define appropriate student attire and personal grooming. Its purpose is to prevent disruption of the educational environment, enhance student conduct, eliminate distractions, and ensure the health, welfare, and safety of the student body and staff. Gang related apparel has been

determined to be hazardous to the health and safety of the school environment. Education Code 35183.

All students in the Carpinteria Unified School District shall abide by the following standards while at school or attending school activities, unless otherwise stated.

Individual exceptions to the dress code may be granted by school administration upon parent request for medical or religious reasons.

1. Clothing is to be clean, neat, and properly fitted.

2. Students must be fully clothed at all times.

3 All clothing shall be within the bounds of decency and good taste, as appropriate for school. Garments shall be sufficient to conceal undergarments at all times.

a. Dress and shorts shall be no shorter than mid-thigh.

b. No "see-through" or "fishnet" types of clothing may be worn without an appropriate accompanying top.

c. No bare midriff clothing, low-cut, backless, off the shoulder, tube tops, spaghetti strap tank tops or revealing tops may be worn.

[¶] . . . [¶]

5. No clothing, jewelry, or accessories (such as wallet chains) which are potentially disruptive, dangerous, or intimidating are allowed.

[¶] . . . [¶]

c. No clothing, jewelry, or accessories which pertain to a gang or its territory are allowed.

6. Hats (worn appropriately) that provide sun protection are permitted. Hoods and beanies may be worn in inclement weather. Bandanas, and similar headgear may not be worn at any time.

(Ex. 66, p. A966.)

15. CMS's policy during the 2020-2021 school year regarding valuables and electronic devices, including cell phones, suggested students leave those items at home, and prohibited their use on campus unless authorized by a staff member. Students were admonished that if staff saw students with cell phones or other electronic devices, the items "will be confiscated and returned according to [the District's] discipline." (Ex. 66, p. A961.)

16. According to CMS's Tardy policy for the 2020-2021 school year, students were to be in their assigned seats when the bell rang and, in the case of habitual tardiness, teachers were to contact parents and assign consequences.

17. CMS's Discipline System for the 2020-2021 school year included the provision of positive behavioral interventions and supports (PBIS), which focuses on

“educating students about expectations,” and “emphasizes the four ‘BE’s.’ Be Respectful, Be Responsible, Be Safe, and Be a Positive Contributor.” (Ex. 66, p. A966.)

18. The Discipline System also provides:

The goal of student discipline is to teach students to behave in ways that contribute to academic achievement, positive healthy relationships, school success, and to support a school environment where students and staff are responsible and respectful. Staff will seek to use other interventions including restorative or logical consequence when possible to address student misconduct at the school site level first and support students in learning the skills necessary to enhance a positive school environment and avoid inappropriate student behavior.

(Ex. 66, p. A966.)

19. CMS’s policies regarding tardiness and valuables/electronic devices and its system of discipline remained the same for the 2021-2022 school year. However, the Dress Code policy was changed as follows:

The CMS dress code policy is designed to ensure all students are dressed appropriately and sensibly. CMS is an academic environment and student dress should reflect that. The following rules must be followed during the school day and at school events:

1. Students must be fully clothed at all times.

2. All clothing shall be within the bounds of decency, as appropriate for school. Garments shall be sufficient to conceal undergarments at all times.
3. No apparel with gang affiliation, or apparel with profane or inappropriate images or words will be allowed.
4. No clothing, jewelry, or accessories which are potentially disruptive, dangerous, or intimidating are allowed.
5. Hats (worn appropriately) that provide sun protection are permitted. Hoods and beanies may be worn outdoors in inclement weather. Hoods must remain down during all classes, including P.E.

[¶] . . . [¶]

(Ex. 67, p. A979.)

20. CMS's media class created a Friday Video. The video showed students performing skits, being interviewed, and engaged in other activities and was shown every Friday in Advisory class.

21. From March 2020 to June 2021, during the COVID-19 pandemic, CMS teachers taught students remotely using the Zoom platform.

Charges Regarding Respondent's Conduct

CREDIBILITY

22. The bulk of the charges against Respondent concern Respondent's alleged behavior and comments while in the classroom or otherwise on campus. The Commission evaluated the credibility of the witnesses pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. The mannerisms, tone of voice, eye contact, facial expressions and body language are all considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness.

23. The testimony of some of the students was found to be credible, as they observed and interacted with Respondent over the schoolyears and observed similar behavior, and testified in a clear concise, unequivocal manner, and supported their perspective with descriptive facts. The testimony of other students, however, was difficult to follow and at times did not fully address the allegations set forth in the SOC. The credible testimony of students, corroborated by their written statements and the testimony of Principal O'Shea established some of the Factual Findings set forth below. Where the Commission did not find the students' testimony credible or no

evidence was presented by the District with respect to some of the charges, the Commission found that the charges were not established.

24. Similarly, with respect to some of the charges, Respondent was found to be credible and testified in a clear concise, unequivocal manner, and provided context for his conduct and statements. As to other charges, however, his testimony was difficult to follow and at times did not fully address the allegations set forth in the SOC. Several teachers testified on Respondent's behalf. Their testimony regarding student violations of the dress code was credible. However, their testimony that CMS was not a trauma informed school and that they did not recall receiving emails from Principal O'Shea was unpersuasive.

2019-2020 School Year

25. On or around May 31, 2019, Respondent showed a picture of Nicholaus Copernicus (Copernicus) in class and stated student D.N. looked like Copernicus. Respondent called student D.N. up to the front of the class and took a picture of him next to Copernicus. Student D.N. did not like that, and testified Respondent's conduct was an example of jokes Respondent would make that made student D.N. uncomfortable, crossed boundaries and could be considered bullying.

26. According to Respondent, the students said student D.N. looked like Copernicus and that they could be related. He asserted he asked student D.N. to come up to the front of the class and he seemed to enjoy having his picture taken and was not bothered. Neither student D.N., his parents, nor any administrator told Respondent student D.N. he was upset, and Respondent contends he had no reason to believe he was. Respondent further contends that he did not mock student D.N. and the first he learned that there as an issue was a year after the event. Respondent's conduct on

May 31, 2019, was inappropriate, had the effect of making student D.N. uncomfortable, and did not serve any legitimate educational purpose.

27. On May 20, 2020, Respondent went to the homes of 16 of his students, unsolicited and unannounced, to give them each a gift. A parent contacted Principal O'Shea and reported her concerns regarding Respondent's conduct. Respondent explained that he wanted to reward the students who were really engaged by giving them a thank you note and a box a cereal. He did not go inside the students' homes. After speaking to the parent who lodged the complaint and reviewing Respondent's email explanation regarding his actions, on May 21, 2020, Principal O'Shea sent Respondent an email stating she "loved" Respondent's attempt to "celebrate and connect with our scholars. However, I would ask that you have . . . or me accompany you to do home visits. We always try to go in pairs. It helps protect us, and is best practice. [¶] Keep up the great work!" (Ex. 69, p. A984.) Accordingly, Respondent had good intentions, but demonstrated a lapse in judgment.

2020-2021 School Year

28. The Zoom video conferencing platform allows participants to send public and private chat messages while using it. The public chat message can be seen by everyone participating in the videoconference, while private messages can only be seen by the sender and the recipient.

29. On October 19, 2020, during distance learning, Respondent publicly sent messages to the virtual classroom claiming a student was playing video games instead of paying attention. Respondent had previously removed the student from the virtual classroom in an attempt to get the student to change his behavior. In the public chat

message, Respondent accused the student of demonstrating disrespect and disruption. Respondent said that he accidentally sent the message publicly.

30. CMS provides a mandatory support class for students who failed to submit assignments or were receiving Ds and Fs. On February 8, 2021, and February 11, 2021, Respondent sent public messages naming several students who were required to attend the support class. In the February 11, 2021, message he additionally stated that the support class was mandatory for students who had not submitted a project and named the students who had not done so. Respondent's communications on February 8 and 11, 2021, as well as his communication on October 19, 2020, were inappropriate in that they had the effect of embarrassing students without any legitimate purpose.

31. On February 18, 2021, during distance learning, Respondent assigned students to write a paragraph regarding the five themes of geography, as applied to a civilization of their choice. In response to a private message from female student E.M. asking whether she needed to write one paragraph for each of the five themes, Respondent privately messaged back that the student was "smart enough" to do more work than her classmates and offered her extra credit if she did. (Ex. 42, p. A160.) Respondent's communication with student E.M. was not inappropriate, in that implementing differentiated instruction based upon a student's abilities is within a teacher's discretion.

32. On February 19, 2021, a female student privately messaged Respondent during class to wish him a happy early birthday and informed him that her birthday was three days after his. In response, Respondent suggested "We should have a party. A sleepover, with footie pajamas, and all our friends (I need to find some, but I bet you

have a bunch!) We can listen to music, go on a pony ride, and buy a UNICORN!) (Ex. 43, p. 164.) Respondent asserted that he engaged with the student in an attempt to build a relationship with student. Respondent had exchanged private messages earlier that morning with the student about Respondent's concern for her falling behind in her work. He asked if the student was okay and whether another student was bullying her. (Ex. 43, p. A164.) The student replied that she was okay but had "been a little stress [*sic*] because grades are due today." (*Id.* at p. A164.) Respondent's explanation regarding the context of his message is persuasive. However, his comments to the student were inappropriate and demonstrated a lapse in judgment.

33. On February 23-28, 2021, Respondent sent email messages to Principal O'Shea in response to her February 22, 2021 email asking when she could "review [Respondent] teaching new material?" (Ex. 1, p. A8.) She explained that when she typically observes teachers, they are teaching content. When Principal O'Shea observed Respondent on February 22, 2021, it appeared some students had completed their project and were working on independently on extra work and others were instructed to take notes on a chapter.

34. Respondent provided a lengthy response describing what the students were doing, but prefaced it with "[Perhaps] it would have been wise to schedule a pre-meeting, to ensure you were/are aware of all that preceded that which you observed?" (*Id.* at p. A3.) In response to Principal O'Shea's question asking if the students were teaching themselves by reading the chapter and taking notes, Respondent stated, "No. That would be a grossly inaccurate mischaracterization of the expectations, and one that could have been easily resolved by a cursory review of the material. Again, perhaps a pre-meeting would have been a good idea?" (*Id.* at p. A6.) While Respondent's email messages are defensive in tone, the Commission does not find

them to be disrespectful and demeaning, nor did Respondent issue multiple directives as alleged by the District.

35. At 10:34 a.m. on March 5, 2021, Principal O'Shea emailed Respondent to ask him whether he intended to join their post-observation Zoom conference scheduled for 10:30 a.m. that day. A calendar invite for the meeting had been sent to Respondent on March 1, 2021. Respondent replied:

[¶] . . . [¶]

Your email is a surprise. You made no effort to work with me to schedule this meeting, and so I was unaware. I would like to believe that you understand that employees, like myself, do not constantly review the calendar searching for meetings that I/we are unaware of.

I am in a meeting right now, and not available.

In the future, please work with me to schedule such meetings. It is a routine professional courtesy, it may also be a more efficient method of scheduling a meeting. I will try to make time later today if you like, to join you. I am available between 12:30PM & 2:00 PM. I will check my email again around 12:30 PM.

[¶] . . . [¶]

(Ex. 6, p. A21.)

36. Principal O'Shea informed Respondent that she rescheduled the meeting for the following week after waiting for 30 minutes. In response, Respondent wrote:

[¶] . . . [¶]

It is unfortunate that you wasted your time today. If I may again provide a productive suggestion; working with employees to establish and confirm availability may be a much more effective and efficient method for such purposes. Simply placing a meeting on the calendar, without adequate notification, does little to empower employees to participate successfully and demonstrate that they/I value your time. Although I offered availability up to 2PM today, you have selected next week to meet. I will confirm my availability as soon as possible.

[¶] . . . [¶]

(Ex. 6, p. A20.)

37. Respondent's emails, as set forth in Factual Findings 35 and 36 were unnecessarily disrespectful and not conducive to a productive working relationship.

38. In April 2021, Respondent, when disciplining a student, pulled the backpack out of the student's hand and dropped it next to Respondent's desk. The student's Chromebook, which was in the backpack at the time, was damaged.

39. On May 18, 2021, Respondent confiscated a student's phone when he saw him using the phone in the hallway with classmates related to a class assignment

during class time. Respondent did not notify the student's teacher or allow the student to explain himself. The student was in media technology class and was using his phone to watch and film a video for a class assignment, which was expressly allowed by his teacher. Respondent prevented the student from participating in his class assignment.

40. Respondent's conduct, as alleged in Factual Findings 38 and 39 were inappropriate and negatively impacted students.

41. On May 21, 2021, the District reminded Respondent that teachers are expected to build relationships, facilitate communication, and share control with students. The District informed Respondent that his conduct was controlling, conveyed disrespect for students and staff, negatively impacted the school environment, and prevented students from fully participating in the school curriculum.

42. On May 21, 2021, Principal O'Shea directed Respondent to alert her or CMS Assistant Principal (AP) Gabriel Covarrubias if he had concerns regarding a student dress code violation and to: (a) not confront students on campus regarding the dress code; (b) not take/confiscate phones from students who are not in his classroom; (c) not remove students from other classes; and (d) if students are exhibiting negative behaviors in class, work positively with the parent and student to improve their grades and behavior.

43. On June 1, 2021, Respondent approached a female student in the main hall while she was walking to class with her friends, regarding her alleged inappropriate dress and sent her to the office to change. Principal O'Shea was unable to determine the reason Respondent considered the student's outfit inappropriate. The student was wearing a white shirt with red flowers, a matching short-sleeved cardigan, and sweats and was not in violation of CMS's dress code. (Ex. 32.)

44. On or about June 7, 2021, Respondent printed out a photocopy of his hand for a class assignment involving concrete details and commentary. He compared his hand to students' hands in a manner that made students uncomfortable. Students removed their hands from their desks to prevent Respondent from engaging in this conduct towards them. Student D.E. described how he pulled his hand back when Respondent "grabbed" his hand.

45. During this exercise, Respondent made statements such as "You have my hand, so you can remember me over the summer," "You can put my hand on the dinner table for company," "You can take my hand on a date," and "You can put it on your face," "You don't know where my hand has been."

46. Respondent contends that students made jokes about having a copy of his hand, such as stating that they could leave his fingerprints around town. He made the statement about students putting the copy of his hand on their faces in response to students saying, "you slapped me." Respondent asserted that he may have made the comment regarding taking the copy of his hand on date if the students needed a chaperone while on a date. The District did not establish that Respondent's comments suggested that he had an intimate relationship with the students.

47. On June 8, 2021, Respondent taught a lesson on feudalism and manorialism. He has taught the same lesson for many years. During the lesson, Respondent explains the difference between "good dirt" and "bad dirt," and leads the students through the lesson with drawings and a hand demonstration. He tells the students to lace their fingers together. When their fingers are loosely laced it represents "good dirt" because air, sunlight and microbes can pass through. Respondent tells the students that if a pen or finger cannot fit between their laced

fingers, it is "bad dirt," and he attempts to poke a marker through students' laced fingers. Several students testified that Respondent stated that a student wanted to put his worm in another student's dirt, and they were uncomfortable with Respondent's comments. The District did not establish that Respondent conducted a demonstration that was sexual in nature.

48. On June 9, 2021, student K.A.'s mother, A.A., reported to Principal O'Shea that her son had concerns about Respondent's conduct. She testified she overheard Respondent teaching her son's class during the week of March 14 or 15, 2020. Mother A.A. reported that Respondent's tone was very condescending and shaming, and he appeared to be personally offended and attacked students if he believed students were not interested in the lesson. Mother A.A. also testified that the way Respondent said students' names, he "might as well be calling them stupid." In her email to Principal O'Shea, she expressed concern about the lesson on dirt, but acknowledged that she had no personal knowledge of the lesson.

49. On June 10, 2021, the last day of school before summer recess, Respondent sent a box to Principal O'Shea containing a hat. Attached to the box was a note stating, "See Step 3 [of discipline log]. [Student] will be seeking hat from you after school." (Ex. 5, p. A18.) In the discipline log Respondent completed for the incident he characterized the student's conduct as "minor." (Ex. 5, p. A17.) The District did not establish that Respondent removed the student from the class for this infraction or that Respondent removed the student at all, as alleged in the SOC.

50. On June 15, 2021, and June 18, 2021, the District held an investigatory interview with Respondent and his representative regarding his conduct in the

classroom and his interactions with students. Principal O'Shea and the District's legal counsel were also present at the meeting.

2021-2022 School Year

51. Student J.M. was in Respondent's History 7 class during the 2021-2022 school year. He testified that he felt nervous in Respondent's class because he believed Respondent would "do something" to him, and that Respondent did not like him. Student J.M. stated that he had to calm himself down three times per week because he was nervous. He asserted Respondent was "always" mad at him, typically when he was tardy for class. Student J.M. described how Respondent would make him wait outside the class for five minutes when he was tardy and then let him in. On one occasion, Respondent told student J.M. that he was going write him up. Student J.M. was waiting outside the class for Respondent but left when the bell rang so that Respondent would not be able to obtain his signature.

52. Respondent had students wait outside of his classroom before entering if they were tardy for more than 30 seconds. He also had students who were being disruptive step outside while he continued to deliver instruction to the class; sometimes the students would be waiting outside for five minutes before Respondent came out and had a conversation with the student about their behavior. Respondent's conduct was not unusual, controlling or manipulative. The District did not establish that Respondent regularly excluded students from his class for minimal disruption during the 2020-2021 and 2021-2022 school years.

53. On August 24, 2021, Principal O'Shea observed Respondent's class. Respondent was showing students how to record their assignments. Halfway through the lesson, he stopped and stated, "Speaking of recording, you are not recording, are

you, Principal O'Shea?" When Principal O'Shea did not respond, Respondent stared at her until she held up her phone to demonstrate she was not recording. As Principal O'Shea was leaving the room, Respondent announced that students needed to write down their assignments on a piece of paper because the school was no longer buying them agenda books.

54. On August 30, 2021, Respondent removed a female student from class because he wanted to speak to her about her shirt. Once the student was outside, Respondent informed her that he "don't get paid enough to see bra straps." Respondent's conduct violated prior directives to not remove students from his class for dress code violations and to enforce the dress code.

55. On September 1, 2021, Respondent removed a female student from class for an alleged dress code violation and asked two other students to join. Once all three students were outside, Respondent directed the other two students to tell the student what was wrong with her apparel. Respondent had them repeat after him why the female student's outfit was inappropriate and tell her to put on a sweater. Respondent then informed the female student, "I can't even look at you." His conduct publicly shamed the female student, improperly embroiled other students in what should have been a private discussion with the student, and violated student privacy, District expectations for teachers, and prior directives.

56. On September 2, 2021, Respondent removed a female student from class for an alleged dress code violation and asked another student to join them. Once outside of the classroom, he directed the other student to inform the female student to zip up her jacket because her shirt was too short and to ask if the female student needed or had a sweater to wear over the shirt. Respondent improperly embroiled

other students in what should have been a private discussion with the student and violated student privacy, District expectations for teachers and the prior directive issued to him.

Additional Charges

57. Respondent told students whose stomachs or shoulders were partially exposed to “cover it up,” while other students were present. Though inappropriate, it was not established Respondent’s comments were objectifying or that they sexualized female students.

58. Respondent asked students about their personal lives in a way that made students feel uncomfortable. For example, he complimented student L.J. on her outfit and hair and asked her details about her personal life, including how long she and her family had lived in Carpinteria. Student L.J. believed Respondent was being “flirty” with her. She recalled an incident where Respondent “demanded” to come her soccer game. In response, student L.J. lied and told Respondent she did not know the date or location of the game because she believed Respondent was being flirty with her. Other students testified that they believed Respondent was flirting with students.

59. Student O.G. testified that Respondent would move toward students if they asked for help and not allow enough personal space. According to student O.G., Respondent would sit or lean on the students’ desks. Student O.G. said she felt uncomfortable and awkward and would tell Respondent that she understood the work just to end the conversation. Student M.A. testified that Respondent would come close to her desk sometimes when she needed help and crouch down next to her. She asserted Respondent touched her on her shoulder and focused on her so much in class that he noticed when she shook her leg and point it out. Student M.A. stated that

she tried not to shake her leg because she did not want Respondent to point it out. She further asserted that Respondent came close to her almost every day and that it made her uncomfortable.

60. Respondent acknowledged he asked students about their personal lives in an effort to build relationships and show a genuine interest in them. He asked students what sports teams they played on, where they played, whether they had summer plans, and when students told them their older siblings previously had him as their teacher, he would ask who their sibling was. Respondent asserted that he had similar conversations with students throughout his career.

61. Respondent also acknowledged that he spoke with student L.J. about her soccer games and talked about attending her games. His daughter also played soccer and he asked whether he would see student L.J. on the field too.

62. Respondent further acknowledged that he complimented students on their appearance. He said, "you look really nice today," if they dressed up and when he saw students at graduations. He also told male students they looked "charming" when they wore a tie. Respondent touched students' shoulders to get their attention when they were leaving the classroom and had their backs to him, and he was having a conversation. Respondent denied ever touching a student on their shoulder in an inappropriate way.

63. While the students' testimony regarding feeling uncomfortable was persuasive, Respondent's testimony regarding his personal conversations with students and touching students on their shoulder was equally persuasive.

64. Respondent made a bet with student M.A.2. regarding a soccer game between the students and teachers. The loser of the bet had to paint or color their fingernails with a highlighter. The teachers lost and Respondent painted or colored his fingernails. Respondent's conduct was not inappropriate in that teachers are encouraged to build relationships with students and the bet furthers that goal.

65. Respondent regularly made comments to the entire class that caused students to believe Respondent was insinuating student A.C. is stupid. It was established Respondent's comments were inappropriate, unprofessional, and served no legitimate educational purpose.

66. Respondent told students he had access to their files and could look through their "records" to see their "baby pictures." He showed some of their photos to the class, which embarrassed some students. Respondent asserted he did this as part of a lesson on how the government has access to individuals' information and told the students he had access to pictures of the students from years before they were in his class. He acknowledged that he told them he occasionally turned to their cumulative files to better understand their educational history. Respondent denied unilaterally showing students' pictures from elementary school, and contends that he only showed them upon request, and not to threaten or embarrass the students.

67. Respondent used students' sixth grade pictures on his seating chart, using pictures from the attendance roster provided by the District. He explained he used the sixth-grade pictures because those are the only photographs available for a portion of the students' seventh grade year.

68. Respondent called certain students by their full names. He denied doing so to threaten or embarrass them.

69. Respondent intentionally kicked students' desks when they were not paying attention in class or when they were sleeping. One student testified that the kicks were "light." Respondent also woke sleeping students by dropping books loudly on desks next to them. The District did not establish that Respondent kicked students' feet when they were sleeping or not paying attention.

70. Respondent discussed diabetes and obesity in relation to teaching a lesson on the fall of the Roman Empire due to public health problems and compared that to lifestyle choices and health problems that occur in the United States. (Ex. 1315, pp. B1728-B1729.) Respondent also discussed healthy food versus unhealthy food and the food pyramid. He denied shaming students and no students testified that they felt Respondent shamed them during the discussion. The District did not establish that he shamed students by discussing weight and junk food and displaying information about obesity while teaching History/Global Studies.

71. Respondent asked a student whose jeans were torn, in front of the entire class, if she was attacked by dogs or wolves on the way to school. He also said that another student in the class must have fallen really hard on top of her to have torn her jeans. Though Respondent's comments were inappropriate. The District did not establish that Respondent's comment implied the students were engaged in sexual conduct.

72. Respondent had a practice of drawing a magnifying glass on the overhead projector to get students to pay particular attention to an important point. During one of these demonstrations, some male students began laughing. Respondent told the students to "get your head out of the gutter." When a student's project fell over in class, such that it was protruding at a downward angle, he told students, "Get

your mind out of the gutter." Respondent stated that he used that phrase with the students often because of their tendency to interpret things as having a sexual connotation. The District did not establish that Respondent made a sexual comment related to the shape of the magnifying glass.

73. Respondent removed a drink from the side mesh pocket of a student's backpack without her knowledge. The District did not establish that Respondent teased the student after doing so.

74. On May 21 and 22, 2019, April 26, 2021, August 25-26, 2021, and September 2, 2021, Respondent took photographs of students in his class to be used in CMS's Friday videos, at open house, and in the yearbook. Several of the students did not want their pictures taken and would cover their faces with their hands or clothing and turn their heads away. (Ex. 39.) Respondent submitted a picture from CMS's 2019-2020 yearbook. There are several pictures of students covering their faces with their hands and their clothing. (Ex. 1303.) These photographs, however, were not approved for inclusion in the yearbook by Principal O'Shea, in that that task was not a part of her job duties at that time. Principal O'Shea denied that Respondent submitted photographs for the yearbook or the weekly letter. However, the District did not establish that Respondent took the photographs of the students to be disrespectful.

75. When students made the heart symbol with their hands or when Respondent interpreted that they were doing so he would make the heart symbol in return. While making the heart symbol, he also stated, "Thanks, I love you too," and "thanks for the love, but I'm married," and words to that effect. Several students testified that Respondent's statements made them uncomfortable, while others stated Respondent was joking when he made the statements. While Respondent made some

students uncomfortable with his statements, the District did not establish that Respondent made the comments with any ill intent or that his actions were inappropriate. The District also did not establish that Respondent stated, "If I was not married, you wouldn't know what I would do," as alleged in the SOC.

76. Respondent made the following statements to students, "I am a married man, but we can still go for a walk after school," and "I am a married, but we can get ice cream after school." Respondent explained that his students were aware that he is married and that his wife is also a teacher at CMS. He made the statements in the context of responding to students insinuating that he was doing something inappropriate when they saw two teachers talking or walking or if a student gave him a hug because he is married. Respondent further explained that he was providing examples of other things he could do with people, and it would not be inappropriate just because he is married. Respondent credibly denied telling a student that he wanted to hold the student's hand, give the student a hug, or go on a walk with them after school because the student was holding a green marker, because it is his favorite color.

77. Respondent dragged a student's chair with the student in it across the floor, approximately 10 feet. He explained that the student was making a lot of noise and disturbing students in his group. Instead of asking the student to get up, Respondent put his hands on either the chair or desk and pulled it. According to Respondent the student said, "Whee," or "Yay. This is fun." Respondent asserted that he has known the student since the student was a toddler and is friends with the student and his family. He further asserted neither the student nor his family complained about the incident. The District did not establish that Respondent sat on top of the student's desk.

78. Respondent refused to allow student A.A. to retrieve her pencil when she dropped it on the floor because he did not want her to leave her seat, even though she was able to reach it from her seat.

79. Respondent would direct students who were chewing gum to take the gum out of their mouth. However, he would not let them throw the gum away and would make them hold it in their hand.

80. Respondent told student D.E. that he would have to give him mouth-to-mouth. Student D.E. did not recall the circumstances underlying the statement. The District alleged Respondent made the comment because of the COVID-19 virus. However, the District did not establish that Respondent meant anything nefarious about the statement, and Respondent denied making a statement.

81. When student S.C. removed a fuzzy sweater she was wearing and placed it on her backpack, Respondent took it off of her backpack and asked her to put it back on because he wanted to "pet" her. Several students who were present found Respondent's comment extremely disturbing. While Respondent's comment was inappropriate the District did not establish that Respondent's comment constituted grooming behavior.

82. When student V.P. dropped her paper, Respondent asked her to pick it up. She testified that Respondent was behind her when she did so, and she was embarrassed. Respondent asserted he asked students to pick up papers but did not look at them in sexual way when they did. The District did not establish that he instructed student V.P. to pick up her paper in order to look student V.P. in a sexual way.

83. Respondent drew students in the style of caricatures when creating headings on school documents. He drew the caricature in the upper left- or right-hand corner of the document with a smiley face and embellishing details related to a student such as an L.A. Rams mask, and the letters "ing" after the caricature as a reminder for students to create a heading.

84. Respondent told the class that he saw student L.M. the previous weekend. He also told her that student L.M. was rude to his daughter when they were in preschool. This made student L.M. uncomfortable.

85. Respondent removed a male student's hoodie, causing the student to say "Ouch." Respondent asserted that the student laughed as he said it. According to Respondent, he and other students laughed as well. He believed the student was joking when he said "ouch," and he had no reason to believe he hurt the student.

86. Respondent routinely pushed student M.B.'s computer screen backward to see what he was looking at when student M.B. was playing games on his computer, without asking student M.B. to show him his screen.

87. Between April 26, 2021, and September 3, 2021, Respondent engaged in the following behavior:

- A. Respondent removed students' hoods and hats from their heads when attempting to take the students' temperatures before entering class and the students would not remove them when asked.
- B. Respondent tossed papers to students when handing them out, and did not pick them up off the floor. He also tossed colored pencils and

markers from approximately 15 feet away to students who forgot them. Respondent's conduct was not demeaning or degrading.

- C. Respondent had students redo assignments if their work was illegible not sloppy. Respondent's conduct in this regard was appropriate in that it is within his discretion as a teacher to refuse to accept illegible work.
- D. Student L.N. testified Respondent crumpled up his work more than once when he handed it in. According to student L.N., Respondent did not say anything when he did this, student L.N. did not know why he had to redo the assignment. Respondent denied that he did so.
- E. Several students credibly testified that they perceived from Respondent's words and actions that he had favorite students, specifically students S.C. and V.P. None of the students testified they felt excluded or overlooked because of this.
- F. Several students credibly testified that they perceived Respondent disliked certain students, in particular A.C. and S.A, because he treated them more harshly and said negative things about them in front of the class.

88. Student C.C. credibly testified during the 2021-2022 school year, Respondent touched him on his chest while touching his shirt while talking about the dress code. He stated Respondent touched him very quickly and that he did not think much of it, but later felt violated and did not understand why Respondent would touch him. Respondent's conduct was inappropriate.

89. Student J.S. stated that Respondent would come close to her and look at her chest when she wore certain clothes, including v-cut shirts. She described feeling uncomfortable when he did this. Respondent denied that this happened. J.S.'s testimony did not preponderate over Respondent's denial.

90. Respondent's conduct as alleged in Factual Findings 26, 32, 38, 39, 55, 57, 71, 81, 87, and 88 was inappropriate, unprofessional and served no legitimate educational purpose.

91. On September 3, 2021, the District placed Respondent on paid administrative leave pending its investigation into allegations of misconduct.

March 18, 2022 Notice of Unprofessional Conduct and Unsatisfactory Performance

92. On March 18, 2022, the District issued a Notice of Unprofessional Conduct and Unsatisfactory Performance (March 18 NUC/NUP) to Respondent via certified and electronic mail. The March 18 NUC/NUP was based upon, among other things, Respondent's conduct alleged in Factual Findings X-X.

93. To cure the deficiencies noted in the March 18 NUC/NUP, the District created a Plan of Assistance for Respondent that included 30 directives, including the following:

1. CMS is a trauma informed school and, as a result, teachers are expected to build relationships with students, determine the underlying causes for behavioral issues, and address those causes. Recognize and respond to students

consistent with trauma informed school practices. Create a culture of mutual respect and support in your classroom. Develop and implement a written plan outlining how you intend to implement trauma informed practices and create a culture of mutual respect and support in your classroom. Submit this written plan to CMS Principal for approval by April 5, 2022.

2. Develop and implement a classroom management plan and submit it in writing to the CMS Principal for approval by April 8, 2022. Your classroom management plan must include strategies for building positive relationships with students, assuming positive intent, creating a safe environment for learning, giving students a sense of control, working with students who act out or withdrawn, and utilizing consequences focused on learning instead of punishments.

3. Maintain professional boundaries with students. Refrain from engaging in boundary invasions and grooming type behaviors. Refrain from sexualizing students. Refrain from stating or implying that students are interested in anything other than a professional teacher-student relationship with you. Refrain from stating or implying that you are interested in anything other than a [professional] teacher-student relationship. Refrain from making comments about or discussing spending time with students outside of school.

Refrain from making comments about students interacting with other sexually or romantically or being sexually or romantically interested in others.

4. Treat students, parents, and District employees with courtesy, respect and dignity at all times.

5. Refrain from touching students. Refrain from touching student's belongings (e.g., hats, backpacks, clothing, phones, computers, etc.) and or/items in the possession of students or being used by students (e.g., computers, desks, writing utensils, etc.)

6. Refrain from making sexual suggestive comments and gestures and using sexual innuendo and double entendre. Refrain from displaying or creating images that [are] potentially sexual in nature. Refrain from engaging in or directing students to engage in sexually suggestive demonstrations. Refrain from making gestures of a sexual nature.

7. Refrain from administering student dress code, "coding" students, or speaking or communicating with students about their dress in any manner. If you have a concern about any aspect of a student's dress, you are to notify the CMS Principal of the name of the student and nature of your concern in a private manner. The CMS Principal or designee will review and/or address any dress code

violations you report as they deem appropriate. Students you perceive as violating the dress code are to remain engaged in school activities and not be sent to the office or out of the classroom, unless the CMS Principal or designee requests that the student be sent to the office. Refrain from speaking to students about their clothing or your perception that their dress is inappropriate. Refrain from making any comments, statements, drawings, demonstrations, or gestures that are or could be interpreted as sexual in nature in the classroom.

8. Refrain from correcting, discipling, or calling-out students publicly. Speak to students privately regarding any academic or behavioral concerns, or disciplinary issues. Refrain from involving peers in [any way] in addressing or reprimanding students including, but not limited to, using [students] to deliver messages or evaluate other students. Praise publicly and correct privately.

9. Refrain from making statements or gestures that mock, belittle, embarrass, disparage, intimidate, or insult students, parents, or employees. Refrain from teasing and picking on students.

10. Refrain from engaging in abusive, threatening, and/or intimidating conduct towards District employees, students, and parents.

11. Refrain from arguing with students and/or engaging in a power struggle with them.

[¶] . . . [¶]

[13]. Refrain from raising your voice when speaking to students, parents and employees. Speak to students, parents and employees in a calm and respectful manner. When speaking to students and/or parents regarding academic performance or classroom behavior, give them an opportunity to respond, respectfully listen to their feedback and concerns with the intention of understanding, and make a good faith effort to understand their position.

[14]. Refrain from removing students from another teacher's class, reprimanding students in another teacher's class or on campus. If you have concerns related to any student in another teacher's class or on campus outside your classroom, report your concerns to the CMS Principal. The CMS Principal or designee will address any concerns you report as they deem appropriate.

[15]. Refrain from removing students from your own class, unless necessary to preserve order in the classroom.

[¶] . . . [¶]

[19]. Refrain from assigning a Family Tree Project or similar project. [The] project provokes trauma responses in some

students. Many students are in foster care, come from single parent or no parent households, or have suffered traumatic familial losses.

[¶] . . . [¶]

(Ex. 65, pp. A548-A551.)

94. The March 18 NUC/NUP also directed Respondent to contact Principal O'Shea or DHR Zapata, if he had any questions or concerns regarding compliance with the directives or how to conduct himself.

95. The District terminated Respondent's paid administrative leave, effective March 19, 2022. However, because Respondent was dealing with a personal matter, he did not return to the classroom until April 11, 2022.

96. Prior to Respondent's return to the classroom, on April 7, 2022, he sent an email to Principal O'Shea and DHR Zapata, thanking them for providing resources "critical to a successful return to the classroom," and asking them about policies and procedures, including CMS's Dress Code policy. (Ex. 77, p. A1013.) Respondent noted that there were three dress code policies in place (the District's dress code policy, a "seven-point dress-code policy" provided by Principal O'Shea, and the dress code policy published on the CMS website) and asked for clarification of which dress code he should rely upon. (Ex. 77, p. A1014.)

97. On April 8, 2022, DHR Zapata emailed Respondent and told him that he did not need to concern himself with the policy and reiterated the directives from the March 18 NUC/NUP concerning dress code. She also directed him to provide Principal

O'Shea with the name of the student and nature of his concern if he had a concern about any aspect of a student's dress. (Ex. 77, p. A1017).

RESPONDENT'S RETURN TO THE CLASSROOM

98. From April 11, 2022, through April 13, 2022, Respondent reviewed his written Classroom Procedures with students and also distributed a Dress Code packet to students and reviewed it with them. A parent lodged a complaint with Principal O'Shea about the amount of time Respondent spent on reviewing the dress code. Respondent explained that when he returned to the classroom on April 11, 2022, he was not provided an update of where the class left off and he approached the class as if it was the new school year and typically reviews his class procedures and the dress code with the class then. He did not discuss the dress code policy with the students, and generally reviewed it.

99. While Respondent was told not to concern himself with the dress code, he did not violate the March 18 NUC/NUP directives about the dress code, nor was he insubordinate when he distributed the Dress Code packet and reviewed it with students from April 11, 2022, through April 13, 2022, because he did not enforce the dress code or speak with students about the clothing they were wearing.

RESPONDENT'S DRESS CODE VIOLATION REPORTS

100. Respondent reported more than 30 dress code violations to Principal O'Shea between April 11, 2022, and June 9, 2022. Twenty-six of those reports concerned female students, as more specifically set forth below.

101. On April 11, 2022, Respondent sent Principal O'Shea three email messages regarding CMS's Dress Code policy. First, he notified her three students had allegedly violated CMS' Dress Code, then he sent another email telling her to add two other students to the list. Principal O'Shea determined all the outfits he reported that day, except one, were compliant with CMS' Dress Code. Principal O'Shea took photographs of the students' outfits, which supported her determination. (Ex. 8a.) She notified Respondent that administration had "dealt with the dress code concerns." (Ex. 9, p. A34.) Later that evening, Respondent sent another email stating that he would like to "better understand" Principal O'Shea's response to the violations so that he can gain an understanding of how dress code violations are managed. (*Ibid.*) He further stated "I would like to find a way to better support and understand the disparate administrative consequences provided to CMS students under your supervision," and "p]lease know, I understand that multiple dress-code policies may make a concise response challenging, but that does not alleviate the need to understand the experience of our students when I or another faculty member contact you on these matters." (*Ibid.*)

102. On April 13, 2022, Respondent sent two email messages to Principal O'Shea regarding Dress Code violations. First, he notified her student M.E. arrived at his class "in the exact same condition as she was the last time she was in class and I reported the DRESS CODE violation. I hope you will come to the classroom and address this issue (with her) this morning, so that may send her clear expectations moving forward." (Ex. 10, p. A37.) (Respondent had reported on April 11, 2022, that student M.E. was wearing a "very short crop top.") (Ex. 8, p. 28.) Principal O'Shea subsequently pulled student M.E. out of class to observe her outfit, but was unable to identify anything wrong with it because the student's shirt was tucked into her pants,

and she was wearing a jacket over her shirt. (Ex. 10a.) Respondent sent a second email to Principal O'Shea stating that student M.E. returned to class "in the same condition she was in when you removed her. Class just ended, and she has left to bring the same condition to her next class. [¶] . . . [¶] p.s. In the future, could you clarify the response on the pass or by email, as I was unsure how to respond when she returned." (Ex. 10, p. A36.)

103. On April 13, 2022, Principal O'Shea sent an email to Respondent stating that he has been directed not to concern himself with student dress code violations, and that the consequences for students out of dress code is "to get the student wearing the appropriate attire so that they can re-enter the learning environment." (Ex. 9, pp. A32-A33.) She stated that she did not understand his April 11, 2022 accusation about disparate consequences under her supervision since the consequences as always remained the same, and that if students continued to violate the dress code, their parents are notified. Principal O'Shea told Respondent not to concern himself with dress code violation consequences, and to focus on instruction, not how students are dressed.

104. On April 13, 2022, Respondent responded to Principal O'Shea's email. He asserted he wanted to comply with the directive about the dress code, and noted the directive was contradictory. Respondent stated in the email that it was disempowering to him, and sent the wrong message to students, when he is told to "ignore and not enforce obvious disciplinary violations in the teaching and learning environment." (Ex. 9, p. A31.) He stated his belief that in prohibiting him from enforcing the dress code, students were allowed to determine what rules they wished to follow, "while receiving the consequence of their choice." (*Ibid.*) Respondent also expressed concern that the directive created an inconsistent approach to the dress code, and that other CMS

faculty reported their concerns to CAUSE and to Principal O'Shea about inconsistent enforcement of the dress code and the consequences for violating it.

105. On April 15, 2022, Respondent emailed Principal O'Shea to report student A.A. being out of dress code for two days, and that her friend, student X.A. was "exhibiting the same condition. Both are wearing very short crop tops, which are, at the very least, a distraction to themselves, if not also others [s/c] that are wondering why I have not enforced the rules consistently. Again, my seeming to ignore this in class send the wrong message to students in the room, who seem to perceive that I am playing favorites. It also makes me comfortable when these students enter the room, clutching their mid-sections in the knowledge that they are violating our CMS dress-code policies." (Ex. 11, pp. A39-A40.) Principal O'Shea responded via email acknowledging receipt of Respondent's concerns and informing Respondent that she would address the concerns as she deemed appropriate.

106. Respondent emailed Principal O'Shea on April 15, 2022, in response to her email of the same date, and stated:

Thank you, Principal O'Shea,

Beyond the provisions included in the CUSD/CMS dress-codes, I would appreciate learning what other criteria you use to determine whether a student's violating condition is "deemed appropriate." I am only aware of the published policies that inform this conversation.

Please know that I ask the above with productivity in mind; I am trying to figure out how I might minimize the negative

impact on my relationship with students who perceive (incorrectly) that I am choosing to enforce the dress-code inconsistently; based on the directives contained in the Districts NUC/NUP. In the past, the students I dress-coded may have been frustrated that they were being disciplined for their violations, but the rest of the students recognized (including the students being dress-coded) that I enforced the dress-code consistently and as close to the CUSD/CMS's multiple and conflicting policies as possible.

I can understand how a student would now think I was playing favorites, given the posture I have been directed to maintain in the classroom and around campus; again, based on the directives contained in the Districts NUC/NUP.

Thank you, in advance for any support and clarity you can provide in regard to my concerns.

(Ex. 11, p. A39.)

107. Following receipt of Respondent's email, Principal O'Shea met with student A.A. and determined her outfit was compliant with CMS's dress code. She emailed Respondent and told that he is not to enforce the dress code "at all," and that the students' perception of him "should be of you consistently not enforcing the dress code." (Ex. 12, p. A43.)

108. On April 18, 2022, Respondent sent an email to Principal O'Shea in response to her April 15, 2022 email. He stated that her email did not clarify any of the

matters he asked about. Respondent denied that he was enforcing the dress code and was merely sharing his concerns with Principal O'Shea. He also stated that he was confident that students believed he is not enforcing the dress code and that was a "challenge." Respondent explained his belief that students who complied with the dress code were beginning to wonder why he did not consistently apply the rules to students who were in clear violation of the dress code. He wrote that the District's directive placed him in a "confusing, if not even negative light with the students, which in turn undermines my relationship with them." (Ex. 12, p. A43.) Respondent also wrote that he was sharing his thoughts "with all respect," because it was important for him to clarify the impact of the District's directive. (*Ibid.*)

109. On April 18, 2022, Respondent notified Principal O'Shea that student M.E.'s was again in violation of the dress because she was wearing a "very short crop top that seems to distract her and others. I believe that my seeming to ignore this in class send the wrong message to her and the students in the room, who seem to perceive that I am playing favorites." (Ex. 13.) He also reported that student I.M. was wearing a Raiders jersey, and because Raiders hats were gang-affiliated, he was concerned, but unsure, that the jersey was also prohibited under the dress code as gang related. On that same date, Respondent sent another email to Principal O'Shea reporting that students X.A. and A.A. were wearing very short crop tops to class, and that they were a distraction to themselves and others. He also expressed the same concerns regarding the messaging the District was providing to the students, and the message students were receiving by his failure to enforce the dress code.

110. Principal O'Shea met with student M.E. and found her outfit was compliant with CMS's Dress Code, in that the top of her shirt went the waistband of her slacks.

111. On April 19, 2022, Respondent emailed Principal O'Shea to report that student M.E. was wearing a very short crop to class. He noted that she had visited the classroom twice but did not address the issue with student M.E. Respondent asserted in the email that student M.E. was reluctant to do her work and although he wanted to provide her with additional "direct support, I remain uncomfortable working in close proximity with her when she is demonstrating this condition; especially in light of the kinds of inaccurate and vindictive allegations contained in the District's retaliatory [March 18] NUC/NUP." (Ex. 14.) Respondent raised the same concerns regarding the impact of the directive on messaging to students and the teaching and learning environment.

112. Principal O'Shea again met with student M.E. and determined that her outfit was compliant with CMS's dress code policy, in that the top of her shirt met the waistband of her slacks. (Ex. 14a).

113. During the hearing, Respondent stated that he did not mean to insinuate that he did not assist student M.E. although she was not doing her work, and that "direct support" meant that student M.E. was willfully refusing to cooperate in class. His testimony was unpersuasive in that regard. However, Respondent's assertion in the email that he was trying to protect himself from allegations by M.E. in light of prior allegations that he was too close to students and stared at their chests was persuasive.

114. On April 25, 2022, Respondent informed Principal O'Shea Student M.E. was continuing to wear a crop top without a jacket to cover herself in class and that he has seen students wearing hats outside of his class "promoting gang affiliations." (Ex. 15.) He again asserted that refraining from enforcing the dress code for all students supports the perception he was "playing favorites." (*Ibid.*) Respondent also expressed

concern that the District/CMS was applying the disciplinary policy inconsistently, and stated it was also a concern of several CMS employees that were members of CAUSE that he represented. He claimed that his colleagues reported that Principal O'Shea appeared to have been ignoring their concerns.

115. On that day, student M.E. was wearing a long pink shirt that hung well below the waistband of her jeans and a oversized black hoodie. Principal O'Shea determined that student M.E.'s outfit complied with CMS's Dress Code policy. (Ex. 15a).

116. On April 27, 2022, Respondent informed Principal O'Shea three students, students A.A., O.G., and M.E., were continuing to wear and "flaunt" their "exposing crop-tops" in class. (Ex. 16.) Principal O'Shea had stopped by Respondent's class prior to Respondent's email and did not remove the students. Only one of the students was wearing a shirt that did not meet CMS' Dress Code. (Exhibit 16a.) The other two students, who were photographed that day, were both wearing shirts that touched the tops of their jeans and did not bear their midriffs. In Respondent's email to Principal O'Shea, he claimed after she left, student A.A. "turned to a friend and laughed about not being noticed or caught." (Ex. 16.) At the hearing, student A.A. denied laughing because Principal O'Shea did not address the dress code with her. Student A.A. did not testify that she was offended by Respondent's statement that she laughed, nor did she testify that she requested to be transferred out of Respondent's class because of it.

117. On May 5, 2022, Respondent informed Principal O'Shea that student S.L. was wearing a t-shirt with "inappropriate imagery," that he "was getting lots of props for" when student S.L. arrived late to Advisory class and had the attention of other students. (Ex. 17.) Respondent asked Principal O'Shea to let him know if she deemed S.L.'s shirt was a dress-code violation so that he could be better informed on the topic.

Later that day, Respondent sent her a second email stating student X.A. was "in violation of the CMS Dress Code policy" by failing to cover herself with a jacket and choosing, instead, to "expose herself beyond [our] expectations." (Ex. 18.) Principal O'Shea observed Student X.A. that same day and photographed her outfit. She was wearing a top that was tucked into her waistband and did not expose her midriff.

118. Student X.A.'s shirt was not in violation of CMS's dress code policy. (Ex. 18a.)

119. On May 6, 2022, Respondent reported to Principal O'Shea that students X.A., O.G., and M.E. were in violation of CMS's dress code policy because they were wearing crop tops. He further reported that they appeared to be distracted by their "open clothing, as do some of the students around them. At what point would consistent neglect for the Disciplinary expectations be considered defiance?" (Ex. 19.)

120. Principal O'Shea took pictures of the students Respondent reported as violating the dress code policy that day. All three girls were wearing tops that touched the top of their waistbands and did not expose their midriffs. Principal O'Shea therefore determined that their clothing did not violate CMS's dress code policy. (Ex. 19a.)

121. On May 16, 2022, Respondent reported to Principal O'Shea that student M.E. was still arriving to class in violation of the dress code. However, Principal O'Shea determined that student M.E.'s clothing complied with the dress code, as her shirt touched the top of her pants when standing, as demonstrated in the photograph Principal O'Shea took of student M.E. that day. (Ex. 20a.)

122. On May 17, 2022, Respondent reported to Principal O'Shea that student M.E. arrived at his class "in the same condition" in violation of the dress code. (Ex. 21.) He stated that he was still "unclear as to what effort and/or messaging you re pursuing, but I am concerned that it continues to have little impact on her choices and how they impact her productivity in class and on campus" and asked for clarification (*Ibid.*) Again, student M.E.'s clothing complied with the dress code, as her shirt touched the top of her pants when standing. (Exhibit 21a.)

123. On May 18, 2022, Respondent contacted Principal O'Shea via email to share he was concerned students were wearing jerseys that had been distributed to students at a school sponsored "CMS Lunch Time Rap Show." (Ex. 22.) He also copied CMS staff on the email. Respondent stated, without any basis, that the jerseys may be "seen as gang affiliated clothing," which could result in potential violence, and asked whether the jerseys were permitted and whether Principal O'Shea had considered how the jerseys may "set up [students] for future conflict." (*Ibid.*) Respondent stated that other staff and faculty had discussed the same concerns and would like clarification from administrators. Kelly Vergeer, a teacher at CMS also voiced concern regarding the jerseys. (Ex. 1061.) Respondent asked for recommendations on how the jerseys could be removed or discouraged in the future, and whether parents should be contacted if the jerseys were not permitted. Principal O'Shea explained that her initial research indicated that the jerseys were only related to the musician and his music but would check with the sheriff resource officer to see if the jerseys were related to "Carpinteria gang activity." (*Ibid.*) Respondent questioned both the nature of Principal O'Shea's research and her intended inquiry.

124. On May 20, 2022, Respondent informed Principal O'Shea via email that student M.E. had, once again, came to his class "wearing overly revealing clothing"

and asked, "At what point is or will [the student's] willful defiance on the topic of dress-code, be addressed effectively?" (Ex. 23.) He included each of the student's teachers on the email chain and explained that he did so to assure them that he was following the directive by not addressing M.E. directly and so they would know he was not ignoring the concerns about M.E.'s clothing. Respondent noted that this was the tenth email that he had sent to Principal O'Shea regarding student M.E.'s since he returned to the classroom on April 11, 2022. He wrote, "[g]iven the repeated nature of the violation, it seems this is an issue larger than simple dress-code violations that M.E. presents. What message is your administrative response sending her peers? What message is your administrative response sending M.E.?" (*Ibid.*)

125. Principal O'Shea determined that student M.E.'s clothing was in compliance with the dress code, as the student's shirt touched the top of her pants when standing, and she had her jacket zipped up. Principal O'Shea documented the state of student M.E.'s clothing by taking a photograph. (Ex. 23a.)

126. On June 1, 2022, Respondent informed Principal O'Shea four students were "continu[ing] to openly violate the dress code policy," including student M.E., and stated that you would "not clarify the concern, as [Principal O'Shea] [had] already been well advised . . . on several occasions" by Respondent, CMS teachers, and CAUSE leadership. (Ex. 24.) All but one of the students Respondent reported, including student M.E., were dressed in compliance with CMS's Dress Code as demonstrated by the photographs taken by Principal O'Shea. (Exhibit 24a.)

127. The District did not establish that Respondent violated the March 18 NUC/NUP directive regarding the Dress Code policy. While DHR Zapata and Principal O'Shea told Respondent to not enforce the dress code or concern himself with it, they

also, contradictorily, told him that he could email administrators with any concerns that he had. Respondent reasonably and continually asked for clarification about the dress code policy since there were three in place, and other faculty and staff members had the same concerns. There is no evidence that Respondent discussed his perceived dress code violations with students, nor did he discipline students because of dress code violations, after receiving the March 18 NUC/NUP. While the District established that a vast majority of the students were not in violation of CMS's Dress Code policy when Principal O'Shea observed them, the District failed to establish that Respondent targeted or was fixated on female students and/or crop tops. Respondent continuously emailed Principal O'Shea about certain students he believed were not complying with the CMS Dress Code policy and was never told otherwise. Therefore, Respondent's belief that his concerns were being ignored and the students were continually violating the CMS Dress Code policy was not unreasonable.

RESPONDENT'S WRITTEN PLANS RE: TRAUMA INFORMED PRACTICES AND CLASSROOM MANAGEMENT

128. The March 18 NUC/NUP directed Respondent to (1) submit a written plan outlining how you intend to implement trauma informed practices and create a culture of mutual respect and support in your classroom by April 5, 2022; and (2) submit a classroom management plan implementing strategies for building positive relationships with students, assuming positive intent, creating a safe environment for learning, giving students a sense of control, working with students who act out or are withdrawn, and utilizing consequences focused on learning instead of punishments by April 8, 2022.

129. Respondent failed to submit either plan by the deadlines. Respondent explained that he missed the deadlines because he was on bereavement leave at the time. On April 13, 2022, the District informed Respondent of the missed deadline and directed him to submit the plans by 5:00 p.m. on April 15, 2022.

130. On April 15, 2022, Respondent submitted a one-paged document entitled "Plan of Assistance" that failed to comply with the directive. (Ex. 81, p. A1038.) In the document, Respondent stated he was confused with the directive and had previously requested a meeting to obtain clarification. He also stated that he would follow all disciplinary policies and classroom management directives published by the District and/or CMS and follow any District trauma informed plan or unique classroom plans.

131. On April 22, 2022, DHR Zapata emailed a letter to Respondent notifying him that his submission failed to comply with the directives contained in the March 18 NUC/NUP. With respect to the plan outlining how Respondent intended to implement trauma informed practices or create a culture of mutual respect and support in his classroom (trauma informed plan), DHR Zapata reminded Respondent that he previously attended trauma informed school training with his colleagues. She provided a link to the book "Helping Traumatized Children Learn 2," so that he could familiarize himself with trauma informed practices. DHR Zapata directed Respondent to read the book and submit the written trauma informed plan by 12:00 p.m. on April 29, 2022.

132. DHR Zapata also advised Respondent that if he believed his Classroom Procedures satisfied some of the directives, he should have incorporated those procedures into a plan for review and approval. She directed Respondent to create a classroom management plan by April 27, 2022, that included "strategies for building

positive relationships with students; assuming positive intent; creating a safe environment for learning; giving students a sense of control; working with students who act out or are withdrawn; and utilizing consequences focused on learning instead of punishments.” (Ex. 82, pp. A1040-A1041.) DHR Zapata also notified Respondent that his failure to submit either the trauma informed plan and the classroom management plan on time or to request additional time was in direct defiance of the directive and constituted insubordination, and that if he continued to be insubordinate, he may be disciplined, up to and including dismissal.

133. On April 22, 2022, District representatives and their counsel met with Respondent and his counsel to discuss his questions regarding the Plan of Assistance and the March 18 NUC/NUP directives. After meeting for 3.5 hours, the parties were only able to review 17 of the 30 directives. Respondent’s counsel indicated in an email dated April 22, 2022, that Respondent found the meeting helpful to understand the District’s directives. Respondent’s counsel asked the District to provide the date of Respondent was trained on trauma informed practices and requested a follow-up meeting to complete the review of the directives. (Ex. 79.)

134. In an email dated April 22, 2022, the District’s counsel informed Respondent’s counsel that the training occurred on June 6, 2020, and referred Respondent to the March 27, 2022 email from Principal O’Shea for an example of the multiple emails she sent with trauma informed practices resources. The District’s counsel also requested that Respondent put his additional questions regarding the directives in writing. (Ex. 79.)

135. On April 27, 2022, and April 29, 2022, Respondent submitted a classroom management plan and written plans. The classroom management plan was not

focused on the classroom environment; did not detail how he would build a positive relationship with students, assume positive intent, create a safe environment for students, give students a sense of control, work with students who act out or are withdrawn, or utilize consequences focused on learning instead of punishments. He included his Classroom Procedures into the plan. The District found Respondent's Classroom Procedures unreasonably disempowering and domineering. Respondent's written plan regarding the implementation of trauma informed practices included a list of eight statements. For example, he stated: "1) I will continue to look beyond behavior, when deemed appropriate. 2) I will continue to build relationships, when deemed appropriate." (Ex. 86, p. A1066-A1067.) The District found Respondent's written plan regarding the implementation of trauma informed practices failed to identify and incorporate trauma informed practices into his teaching and did not contain any details or concrete plan of plan.

136. On May 10, 2022, DHR Zapata sent Respondent a letter via email notifying that his classroom management and trauma informed practices plans were deficient. She explained how the plans were deficient, provided further information on what Respondent should include in the plans so that they comply with the direct, and directed him to stop using his Classroom Procedures effective immediately. DHR Zapata directed Respondent to submit revised classroom management and trauma informed practices plans by 5:00 p.m. on May 13, 2022.

137. On May 13, 2022, Respondent submitted a revised classroom management plan and written trauma informed practices plan. The plans were very similar to the plans Respondent submitted on April 27 and 29, 2022. However, Respondent added detail to his classroom management plan by describing how he would assume positive intent, he added four items discussing how he would build

upon the students' sense of safety during their day-to-day experience on campus, supplemented two of his previous responses on how he would give students a sense of control and added seven additional ways he would do so. Respondent added an additional description of how he would work with students who were acting out or were withdrawn, and added two ways he would utilize consequences focused on learning instead of punishments. He stated that he would not use his Classroom Procedures and testified that he did not do so after receiving the May 10, 2022 letter prohibiting him from doing so.

138. Respondent's revised trauma informed practices plan did not contain much in the way of details or a concrete plan of action. It simply removed the phrase "as deemed appropriate," and in five out of eight areas included, without any explanation, examples of when Respondent *would not* implement trauma informed practices consistently in the classroom. (Ex. 86.) In the area of creating a safe learning environment, Respondent stated, among other things, that he would be attentive to the physical condition of students, work to support physical challenges, remain attentive to the emotional condition of students, support challenging emotions, and remain attentive to the mental condition of students. He included examples of unexpected student responses that he would look for, and examples of supportive feedback he would give students to reduce negative thinking.

139. Respondent asserted at the hearing that he was not been provided adequate support or training to submit the plans as directed and that he was initially confused as to what the District wanted. He also asserted that he asked for clarification but was not provided it, he was never provided with the book "Helping Traumatized Children Learn 2" prior to April 22, 2022, he had not seen trauma informed practices implantation plans before and he did not have adequate time to respond by the

deadlines imposed by DHR Zapata since he only given three or four work days to revised plans. He explained that deadlines were set during a busy period of the school year, as President of CAUSE he was engaged in collective bargaining, and that it was difficult to draft the plans from “scratch.”

140. Respondent’s contention that he did not have much time to create the plans in time to meet the deadlines is well taken in that he was on bereavement leave when the March 18 NUC/NUP was issued containing the original deadlines, and he was given few working days to revise the plans and meet the subsequent deadlines. However, there is no evidence that Respondent requested an extension to submit the plans. Moreover, although Respondent stated he did not believe he was adequately trained on trauma informed practices to complete the plans, the District provided sufficient information to Respondent on how to craft the plans, particularly in its May 10, 2022 letter, and provided him with resources for assistance.

141. Although the plans were insufficient to meet all the directives pertaining to the plans, and Respondent’s initial attempts to create the plans were lackluster, Respondent substantially complied with the directives on May 13, 2022.

ALLEGATIONS OF VIOLATION OF THE MARCH 18 NUC/NUP

142. On April 12, 2022, student A.S. had her cell phone out during lunch. She testified that Respondent came out of his classroom and told her that she could not have her phone out. Student A.S. further testified that Respondent took her phone, made her write her name on a piece of paper, and told her she could pick it up from the office. She asserted that this incident occurred toward the end or middle of her eighth-grade year. Exhibit 46 is a photograph taken by Principal O’Shea of the cell phone next to a piece of paper with the student’s name on it. Principal O’Shea testified

that Respondent brought the phone to the office after approaching student A.S. on the field, and the incident occurred in April or May 2022. Respondent violated the directive contained in the March 18 NUC/NUP by confiscating student A.S.'s cell phone on April 12, 2022.

143. It was Respondent's practice to pass out oranges to his students and had done so for more than 15 years. At 9:12 a.m. on April 25, 2022, Principal O'Shea sent an email to Respondent stating that she noticed Respondent had two boxes of oranges in his classroom. She further stated she wanted to make sure he was not giving them to students because of complaints that students were throwing the oranges and leaving orange peels in front the classrooms. (Ex. 1171, B646.) At 11:35 a.m. that same day, Principal O'Shea sent Respondent a second message stating that oranges were being thrown during nutrition, which occurred after she sent her earlier email. Principal O'Shea directed Respondent to not allow students to take oranges from his classroom. At 2:02 p.m., Respondent sent an email to Principal O'Shea informing her when he saw her earlier email, he did not read it carefully but assumed the email concerned how students were handling access to the oranges. He asserted he reminded students to act responsibly with the fruit or they might lose access to them. Respondent stated that he typically handed out 60 oranges per day. He explained he passed out the oranges not only to show appreciation and affection to his students, but to ensure that they ate healthy snacks. Respondent agreed to abide by the directive, but shared his concerns with the directive claiming it prohibited him from building genuine and meaningful relationships with students, and asserted it was part of a continued practice to isolate him from the students, adversely affected students who did not have consistent access to health snacks, and punished all students for the actions of a few.

144. Respondent's testimony at the hearing regarding the oranges was consistent with his email and persuasive. Accordingly, the District did not establish Respondent was insubordinate or defiant concerning Principal O'Shea's April 25, 2022 direction to not pass out oranges.

145. On May 3, 2022, student A.A. was on the soccer field during nutrition or lunch. Respondent was walking from the office to his classroom and saw student A.A., who testified she had dropped her cell phone and then put it in her pocket. According to student A.A., Respondent saw her phone and yelled at her to go to the office. The District did not establish that Respondent confiscated student A.A.'s phone as alleged in paragraph d(3) because he did not take it from her.

146. On May 16, 2022, student A.A. was sitting on the ground outside of Respondent's classroom and her cell phone was also on the ground. A.A. prepared a written statement indicating that Respondent "grabbed [her cell phone]," but then gave it back to her when she told him that she would take the phone to Principal O'Shea. (Ex. 48.) At the hearing, student A.A. testified that Respondent took the phone but did not assert that he gave it back to her. Student A.A. took her phone to the office and gave it to Principal O'Shea. Since student A.A. prepared her written statement near the time of the incident, it was afforded more weight than her testimony. Accordingly, Respondent did not violate the directive contained in the March 18 NUC/NUP prohibiting him from confiscating items from students.

147. On May 5, 2022, Respondent sent an email to Principal O'Shea notifying her student G.G. had been disrespectful to an CMS office manager while walking in the hallway and the officer manager asked student G.G. to hand over his earbuds that he was using. He also reported that student G.G. pointed at Respondent and yelled at

him, "I'll catch you after the fade," or "See you after the fade." (Ex. 74.) Official notice is taken that "catch my fade," and "catch a fade," is slang for beating someone up or threatening physical harm." Respondent also stated he did not do what student G.G. meant by his statements but they did not appear to be respectful, and that he did not approach student G.G. Further, he wrote:

"[G]iven the permissive and inconsistent disciplinary response he has experienced under your supervision, I'm unclear where and how to productively reintroduce myself into that extended conversation.

Nonetheless, when I witness his treatment of our CMS faculty & support staff, I'm compelled to share my observations; in hopes of better informing the record and providing support to our colleagues and student body impacted by [student G.G.'s] behavior. Please let me know if you would like me to share any further specifics.

(Ex. 74.)

148. While Respondent criticized Principal O'Shea's discipline of student G.G., the Commission did not find his criticism to be disparaging.

149. On May 16, 2022, Respondent instructed his class to take notes, however student M.E. did not do so. Respondent prepared a discipline log regarding student M.E.'s failure to take notes. According to student M.E.'s written statement prepared that day and her testimony at the hearing, while she had "spaced out" and looked out the window some of the time, she had been reading the book associated with the

lesson and had not yet had an opportunity to write any notes. She was upset because Respondent accused her of not doing *any* work during the class although she told him that she was reading her book. However, student M.E. did not indicate in her statement or during her testimony that she felt threatened or intimidated by Respondent's behavior. Accordingly, Respondent's interaction with student M.E. did not violate the March 18 NUC/NUP.

150. Also on May 16, 2022, student J.S. was having a rough day and had "spaced out" when she was supposed to be reading. Respondent began reading out loud from a textbook to student J.S. because, according to Respondent, she was not paying attention or doing her work. In her written statement, Student J.S. she told Respondent, "can you stop bugging me," and he responded, "I will if you do your work," and she agreed to do so. (Ex. 52, p. A182.) During her testimony, Student J.S. said that she told Respondent she could read the book herself, but Respondent continued to read to her. Respondent's reading out loud to her embarrassed student J.S. There was no evidence that Respondent sent student J.S. outside. Respondent's actions were inappropriate.

151. Respondent had student J.S. stay after class so that he could complete a discipline log for her. Her friend B.I., who typically walked with student J.S. to their next class, came to Respondent's classroom and waited outside the door. B.I. asserted in a written statement that she prepared the same day, that Respondent told her to get out of his classroom although she was outside. She estimated that she waited for at least five minutes and that Respondent's next class was beginning to line up. B.I. told Respondent "I don't think [you're] supposed to hold someone in for this long." (Ex. 52, p. A181.) In response, Respondent came close to student B.I. and said, "shoo, fly, shoo." (*Ibid.*) Student B.I. wrote, and testified, that she backed up because of how close

Respondent came to her and Respondent laughed. She further testified that Respondent's actions made her feel "uncomfortable and weird" because Respondent was "invading" her space.

152. Student J.S. told Respondent, "you look funny writing us up for the littlest things," and, according to student J.S. Respondent told her, "you are the funny one," and laughed. (Ex. 52, p. A182.) B.I. asserted that Respondent stated, "you guys look funny." Student J.S. then said, "you think everything is funny," and student B.I. said, "if it's so funny then you should just let her go." (Ex. 52, p. A181, A182.) Both students said Respondent laughed even more. Student J.S. then began cussing at Respondent, so Respondent called the vice principal. She testified that Respondent "wrote her up" for cussing at him once, and that he wrote her up on May 16, 2022, for not doing her work. The District did not establish that Respondent regularly escalated minor infractions into disciplinary matters for student J.S.

153. Respondent acknowledged he told student B.I. to "go, please, shoo," "fly, get going, shoo," the matter with student J.S. did not have anything to do with her, and that she needed to "go now." He denied leaning in to talk to student B.I., and stated he tried to keep a good distance away. Respondent estimated that he was 15 feet away from Student B.I. when he spoke with her.

154. Student J.S.'s written statement does not include any reference to Respondent leaning in close to student B.I. She testified, however, that Respondent told student B.I. to leave, and when she did not, he closed the door. Therefore, student B.I.'s written statement and testimony did not preponderate over Respondent's denial. Accordingly, while Respondent's statements to student B.I. to "shoo" was

inappropriate, the District did not establish that Respondent's behavior was menacing or unbecoming of a teacher of the District.

155. On May 16, 2022, student C.G., who was in eighth grade, was walking in the hallway with student E.H. According to student C.G., Respondent opened the door to his classroom and asked where the students were going. He testified student E.H. responded, "mind your own business," and then Student E.H. and Respondent "got close together."

156. Respondent prepared an email on May 16, 2022, describing his interaction with students E.H. and C.G. He stated that the students were yelling loudly in the hallway and the asked student E.H. not to yell. Respondent further stated that student E.H. repeatedly told him to go fuck himself, made further comments containing profanity, and that he asked student E.H. to go with him to the office. According to Respondent, student E.H. repeated that Respondent should go fuck himself and then threatened Respondent with violence. Respondent wrote that he continued to ask Student E.H. to go to the office with him when he saw Sheri Werner, a CMS campus supervisor, and asked her for support.

157. Neither student E.H. nor Ms. Warner testified at the hearing. However, student E.H. prepared a written statement the following day regarding his interaction with Respondent that was admitted as administrative hearsay pursuant to Government Code section 11513, division (d). Student E.H. wrote that he yelled in the hallway and when Respondent told him to quiet down, he told Respondent, "shut the fuck up." (Ex. 53, p. A183.) Student E.H. also denied threatening Respondent.

158. Ms. Werner prepared a written statement on May 16, 2022, which was admitted as administrative hearsay pursuant to Government Code section 11513,

subdivision (d). In the statement, she stated she saw the students arguing with Respondent and that Respondent said student E.H. told him to "fuck off," or something similar and that student E.H. denied it. According to Ms. Werner, student E.H. was being "extremely disrespectful" to Respondent and that student C.G. started to join in being disrespectful as well. (Ex. 53, p. A185.) She wrote: "[a]lthough [Respondent] was understandably upset at being disrespected this way, he did not help the situation at all by continuing to engage with them." (*Ibid.*) Ms. Werner did not indicate in her statement that the students, at any time, threatened Respondent. The students eventually went to the office with Ms. Werner.

159. AP Cota emailed Respondent on May 16, 2022, and told him that the students' parents had been notified of possible suspensions but that that administration was going to obtaining written statements from them the following morning.

160. While students C.G. and E.H. were not in Respondent's classroom and he had been directed not to discipline students not in his class, it was not unreasonable for Respondent to ask the students to speak quietly in the hallway while classes were in session. The District established that Ms. Werner de-escalated the situation. However, the District did not establish that Respondent misrepresented student E.H.'s behavior or disregarded his explanation in violation of the directives contained in the March 18 NUC/NUP.

161. On May 25, 2022, Principal O'Shea stopped by Respondent's class to do a walkthrough. When she entered Respondent's class, he began questioning her in front of the students about why CMS was not providing Advisory class next year. Respondent stated that he was tempting to teach his students to question and stand

up to authority figures. However, it was inappropriate for Respondent to question Principal O'Shea in front of the class, and there were other, more class appropriate ways in which he could have demonstrated this concept.

162. Student H.D. testified that the exchange between Respondent and Principal O'Shea made her feel awkward and she wanted to go back to work. Her testimony was consistent with the written statement she prepared the day of the incident.

163. After student H.D. told her father, P.D. about the incident, P.D. sent an email to Principal O'Shea on May 27, 2022, stating student H.D. was frustrated by the "uncomfortable situation," Respondent created when he confronted her in the classroom and expressed his concern about "the very real threat of disgruntled employees in workplaces." (Ex. 44, p. A166.) P.D. testified that he was concerned that Respondent was involving students regarding his workplace issues, but acknowledged that he was not present when the exchange between Respondent and Principal O'Shea took place.

164. David Martinez, Respondent's teacher's aide (TA), was present during the exchange between Respondent and Principal O'Shea. He did not testify at the hearing, but his written statement prepared the day of the incident was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d). TA Martinez wrote that Respondent was teaching about feudalism before Principal O'Shea came into the classroom. Respondent asked Principal O'Shea to stay and told her he asked the students about Advisory and they advocated to have it. Principal O'Shea responded that the following school year, 10 minutes of all first period classes would take the place of advisory. Respondent then told her that CAUSE was in favor of

advisory remaining in place, and Principal O'Shea stated the teachers were not in favor of that. TA Martinez wrote:

[Respondent] then reminded Mrs. O'Shea that as the advocate for the Union they voted for advisory. Mrs. O'Shea said that a small group of teachers have gone to her about advisory being too long, it's not in teachers' contract for advisory, and 10 minutes will still be in 1st period for activities. Once, the discussion ended Mrs. O'Shea left the room and [Respondent] went on to teach the class about Feudalism. When class was over [Respondent] asked me to stay put for a second. [Respondent] asked me if I thought that he was being disrespectful towards Mrs. O'Shea. I said, "I don't think it was disrespectful but I don't think it was the time for it. [Respondent] said thank you for the input.

(Ex. 54, p. A189.)

165. Student L.M. was included in the Friday video shown on that date. When the video was shown, Respondent paused it so that the students could see student L.M. According to the Student Witness Form student L.M. completed on May 27, 2022, Respondent said, "when ever [*s/c*] I'm bored I'm gonna come back just watch that part of you." (Ex. 55, p. A190.) Student L.M. testified that Respondent said that he was going to watch the video in his free time and that she "looked like a little kid compared to now." She further testified that she asked Respondent to stop but he did not. Student L.M. was embarrassed by Respondent's actions.

166. Student V.P. testified that Respondent would pause the Friday video whenever he saw a student that was currently in class or a student from his past global studies class. She also testified that Respondent zoomed in on the picture of student L.M. but did not do that with other students. Student V.P. completed a Student Witness Statement Form on May 29, 2022, and wrote that Respondent paused the Friday Video when student L.M. appeared and said, "I'll watch this in the summer when I miss you," and the room became quiet. (Ex. 55, p. A192.) Student V.P. stated she felt "really uncomfortable," when Respondent made the statement about Student L.M.

167. Three other students completed Student Witness Statement Forms about the Friday Video incident. They did not testify at the hearing, but their statements were admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d). These students also wrote that Respondent said he would watch the video to see student L.M. when he felt lonely.

168. Respondent denied making the statements. However, the credible student testimony and the students' written statements are persuasive. Accordingly, the District established that Respondent said he would watch the Friday Video of student L.M. when he was bored or lonely. Respondent's conduct was both inappropriate and unprofessional and served no legitimate educational purpose.

169. On May 29, 2022, Respondent had the class write "Happy Birthday" messages to student M.A.2. on the board although he did not typically do that for other students. Respondent also asked to be invited to her birthday party. The District did not establish that once student M.A.2's birthday had passed, Respondent told students he liked the party even though he did not attend.

170. On May 31, 2022, Respondent saw student M.B. drop trash on the ground while the student was not in Respondent's classroom. As a consequence, he assigned student M.B. to pick up trash for five days. He also confiscated student M.B.'s fidget spinner, which student M.B. used to focus and relieve anxiety. Respondent violated the March 18 NUC/NUP by confiscating the fidget spinner. He also violated the directive prohibiting him from disciplining students who were not in his classroom.

171. On June 2, 2022, Respondent used time during his Advisory class for social emotional learning as suggested by CMS administrators. He discussed "love" with the students, and made statements such as "love is a connection we have with people," "you may have a connection with teachers that is love," "love back at you" in response to students left the room, "you could find love soon," and that a student was showing his love towards him in the context of love is a sense of affection for other people. None of the statements constituted sexual innuendo. The District did not establish that the comments suggested Respondent had an intimate relationship with his students or were inappropriate and unprofessional.

172. The District did not establish that on June 2, 2022, Respondent said, "No one has touched the inside of you," [Student] is in love with me because he's raising his hand," or "If you look at me, we have a love connection" as alleged in paragraphs XX of the SOC. Though there were student statements regarding this allegation, none of the students who testified at hearing testified to this incident.

173. The District alleged Respondent informed student E.D., "I think we are in love," or words to that effect, because they were both wearing red shirts. The student testimony did not preponderate over Respondent's denial that the incident occurred. Accordingly, the District did not establish this charge.

174. On June 6, 2022, Respondent assisted student A.M. with preparing an incident report stating that during lunch that day, after a female student who, was trying to fight her, told her to kill herself, a group of male students who were nearby started laughing and then joined in taunting her and telling her to kill herself as well. (Ex. 25.) Ms. Werner prepared a written statement the incident. She wrote that she saw student A.M. and the female student were about to get into a fight, so she went over to deescalate the situation. There was a group of boys yelling rude comments nearby but she could not hear "exactly" what they were saying. (Ex. 26.) She wrote that the group of boys often says disrespectful and rude things and it was her practice to ignore them, "unless they are saying mean and hurtful things to another person (a peer not in their group)." (*Ibid.*)

175. Ms. Werner observed Respondent and "Coach" approach the group of boys and tell them that they were being rude and to stop saying rude comments, and she thought the boys said rude things back to them but was unsure because she was dealing with student A.M. (Ex. 26.) Student A.M. did not tell her that the boys said anything disrespectful to her and was more concerned about the female student who wanted to fight her. Ms. Werner saw Respondent after lunch helping student A.M. write the statement. She was confused about this and wrote "perhaps [Respondent] heard the boys say rude things directly to her, but I never heard that and when I spoke to [student A.M.] again after lunch, she did not mention being upset about the boys. She was more focused on the situation with [the other student] which we resolved." (*Ibid.*)

176. In light of Ms. Werner's own admission she did not hear what the boys had said, the District did not establish that Respondent unnecessarily interposed himself in the situation between student A.M. and the group of boys.

177. On a date not established by the record but after March 18 NUC/NUP was issued to Respondent, he took a student's drink out of his backpack in front of the class because the container was open. Respondent placed the drink next to the sink. Respondent acknowledged that his action conduct violated the directives but asserted that he did so for safety reasons in that the student's drink could have spilled on the floor causing him or students to fall. Respondent's testimony was persuasive.

178. Respondent told the class when he had seen some of the students outside of school. Student A.Z. was friends with Respondent's daughter in elementary school. He told the students that he had visited the student at her home and saw her do cannon balls in the pool. Respondent began using the term "[Students Name]isms" to refer to a cannonball. Respondent's conduct violated the March 18 NUC/NUP.

179. Principal O'Shea testified that Respondent had practice of drawing caricatures of two students in the 2021-2022 school year. She asserted the students reported he drew a caricature of a person with red hair and asked students to guess who it was. However, the record is not clear as to when that occurred. Respondent denied continuing this practice after receiving the March 18 NUC/NUP directive to stop drawing students. The District's evidence regarding this charge did not preponderate over Respondent's testimony. Accordingly, the District did not establish that Respondent violated the directive in this instance.

180. Respondent told students that he knew where they lived and whispered students' addresses to them in class. The context of why Respondent did this was not established by the record. Respondent's conduct was inappropriate. The District did not establish that Respondent told students that could see them doing things in their homes.

181. Respondent told students that they looked "cute" and/or like a "good kid" in their elementary school photos. Respondent's conduct did not violate the March 18 NUC/NUP because Respondent's comments would not make students feel picked on or unsafe.

Testimony of Principal O'Shea

182. Principal O'Shea provided testimony regarding her concerns that Respondent's conduct had on the students and staff, in that she believed he engaged in intimidating and aggressive behavior with them. Principal O'Shea also found Respondent's conduct toward her to be demeaning, insubordinate and condescending. Respondent's testimony that she was concerned about Respondent's statements and her behavior toward her was credible.

Testimony of Rebecca Norton

183. Rebecca Norton retired as CMS's school psychologist in October 2022. She described her interactions with Respondent as mostly collegial. However, she observed him interact with Principal O'Shea in staff meetings approximately 10 to 15 times where, according to Ms. Norton, Respondent was condescending and/or disrespectful in his tone and challenging directives. Ms. Norton asserted Respondent questioned Principal O'Shea's leadership ability. Ms. Norton considered Respondent's conduct to be obstructive to the functioning of school business and contributing to negative moral among staff and an adverse school climate.

184. On May 21, 2021, Respondent sent an email to Principal O'Shea and copied all CMS staff regarding technical difficulties with the bell system, stating:

Principal O'Shea:

In the future, when you are aware that there are IT and communication issues that could undermine the safety of and our response to safety related events (let alone the impact to the routine teaching and learning considerations that are impacted) could you please work more proactively to notify your staff and faculty? There seems no need to increase the challenges that can arise when so many are left so unsure of the conditions in place to support our safety response. As you were aware of the condition much earlier today, I am confused why you chose not to communicate on the topic or provide an update to those directly caring for our students; that is, until an inquiry was sent school-wide. Bell tones, phones, and internet service are all tools we rely upon to successfully perform our responsibilities. On behalf of CMS employees, myself included, I ask that you work more aggressively to support our efforts.

Respectfully,

~ j. Hotchner

(Ex. 34., p. A125.)

185. Ms. Norton forwarded a response email to Principal O'Shea with the "eye roll" emoji. (Ex. 34, p. A124.) She then stated "He cornered Stephanie and me to help

'discipline' a student who wasn't wearing his mask properly yesterday when we were out on the field during transition period." (*Ibid.*)

186. Ms. Norton explained that she had been asked to supervise students on the yard during nutrition and lunch. She and Stephanie, a CMS counselor, were walking and talking when Respondent came out of his classroom and asked them to discipline the student. Ms. Norton stated that the term "cornered" was too strong but Respondent stepped in front of them and stopped their conversation. In using the word "discipline," she meant that Respondent wanted her to reinforce the idea of proper mask wearing. Ms. Norton did not discipline the student and she did not think Respondent needed to involve her. In her opinion, Respondent could have resolved the matter with a calm discussion with the student.

187. Ms. Norton used the emoji to convey to Principal O'Shea that she understood that it must be frustrating for her to have to clarify things and constantly be questioned by Respondent because she too was occasionally frustrated with Respondent.

188. Ms. Norton observed Respondent respond harshly to a student when he scolded the student for a minor infraction and asked her to come to the office. The student appeared to Ms. Norton to feel scared and shut down. Respondent also asked for assistance from Ms. Norton to discipline a student in his class when the student refused to remove his hat.

Testimony of Joseph Fantazia

189. Joseph Fantazia was a special education teacher at CMS from October 2020 to June 2022. He provided case management for between 16 and 26 students

and academic instruction for students with IEPs. Mr. Fantazia was notified when his students were disciplined and was part of the process of moving one of Respondent's students to another teacher's class.

190. Mr. Fantazia was concerned about Respondent's interactions with students because of Respondent's "black and white" point of view. It appeared to Mr. Fantazia that Respondent sought to be more punitive rather than understanding of his students. He is aware of Respondent telling a seventh student that he would consider the student to be absent and give him a failing grade for the class if he did not turn on his camera during remote learning. The student was struggling with anxiety and had several personal/familial reasons for not having his camera on. The student's IEP was changed so that he could turn his camera up to the ceiling. When Respondent became aware of the change, he instituted additional requirements to ensure that the student was participating. Mr. Fantazia believes Respondent should have done more to understand how to get more out of his students without leveling threats of failing them.

191. According to Mr. Fantazia, three students expressed anxiety about going to Respondent's class, and did not like him. However, he did not witness any of the events leading to the students' feelings about Respondent.

District's Expert

192. Dorit Saberi is the Supervising Psychologist and Co-Founder/Clinical Director of the Safe Harbor-Trauma Recovery Center at Harbor UCLA Medical Center. She obtained her bachelor's and master's degrees from California State University, Northridge in clinical psychology and educational counseling psychology. Dr. Saberi

obtained her doctorate degree from Arizona State University and has been licensed by the California Board of Psychology since 2002.

193. Dr. Saberi is certified to treat individuals who have been the victims of traumatic events and has provided trauma services to children ages three and older who have been the victims of crime, domestic violence and trafficking. She has also treated children ages 16-24 and she has provided trauma focused cognitive behavior therapy (CBT). Dr. Saberi is familiar with developmental milestones for school-aged children as she received her Ph.D. in that area. She has worked with educators in that she has participated in IEP meetings and consulted with educators on recognizing a trauma response versus oppositional defiance disorder in students.

194. Dr. Saberi explained that children between 10- and 14-years go through important developmental stages. They experience an increase in executive function and changes in identify formation. Children this age are also developing decision-making, and reasoning skills, and grapple with self-esteem and body image. They also go through puberty, changes in their hormone levels, and become aware of issues of justice and develop their moral compass.

195. Prior to offering her opinion at the hearing, Dr. Saberi read the hearing transcripts, listened to witness testimony during all days of hearing, reviewed the plan of action prepared by Respondent and the Statement of Charges and Notice to Suspend, watched the videos from Respondent's depositions, and attended student interviews conducted by the District's counsel. The student interviews ranged from 10 minutes to an hour. Dr. Saberi acknowledged that interview sessions are not the usual method for conducting a psychological evaluation and her attendance during the interviews was not meant to be a psychological evaluation. She did not have

opportunity to learn the history of the students who testified at the hearing, and she does not know whether they suffered any trauma prior to being in Respondent's class.

196. Dr. Saberi attended the District's interviews of four or five students who did not testify at the hearing. She contends that she was able to separate the student testimony at the hearing from the interview statements made by students who did not testify when offering opinions on Respondent's alleged conduct. However, Dr. Saberi acknowledged that she inadvertently merged statements (testimony at the hearing and allegations made by students who did not testify) on two occasions. Those occasions were not made clear by the record.

197. Dr. Saberi was concerned about Respondent's interactions with students. It is her understanding that Respondent singled students out by making comments about them or engaging in behaviors in reference to the students that made them stand out in front of their peers. Dr. Saberi gave examples of drawing caricatures of students, commenting on their hair color, stating that he did not get paid enough to see bra straps, and reading to student J.X in front of others. She also noted that Respondent played the video of L.M., which was embarrassing and humiliating to her. Dr. Saberi was concerned that Respondent's behavior, which she referred to as public shaming, resulted in lack of motivation and focus, and caused students to become anxious and dread coming to class. At this point in the students' development, they require affirmation as they are forming relationships and Respondent's behavior could have an adverse impact on their development. Dr. Saberi formed the opinion Respondent engaged in public shaming of students based on students' testimony that they were embarrassed by Respondent's actions.

198. Dr. Saberi described some of Respondent's actions as over controlling behavior. Her opinion was based on student testimony that Respondent would demand that they take their hoodies off but then would remove their hoodies himself, that he continued to report dress code violations after receiving the March 2022 NUC/NUP, assigning the family tree project although he was told that it was not necessarily fitting or trauma informed, that he made students stand outside if they were one minute to class, and that if he raised his hand above his head, the class had to be silent.

199. Dr. Saberi testified that Respondent's over controlling behavior could limit student creativity, cause students to believe that did not have their own voice and prohibit them from expressing themselves. She also testified that Respondent's behavior could limit students' ability to fully engage and focus and create the perception Respondent was uncaring. Dr. Saberi offered the opinion that a teacher must consider individual students' abilities, diversity, and life circumstances when enforcing classroom rules.

200. Dr. Saberi offered the opinion that Respondent's conduct in the classroom lacked transparency. She noted that students reported they were unclear about how assignments were graded and what criteria was being used. Dr. Saberi also noted that Respondent used subtleties when he said, "I know your address," and then recited it. Dr. Saberi concluded that Respondent's behavior was incongruent, confusing and unpredictable, and such behavior leads to students feeling unsafe in Respondent's classroom. She also concluded that Respondent's actions caused students to become confused about how they are supposed to behave and how they are punished and rewarded, which can lead to learned helplessness, inaction, withdrawal, and truancy.

201. Dr. Saberi noted Respondent, when angry, would engage in conduct that was detrimental to students such as slamming a laptop computer, closing it on a student's hand, kicking the leg of student's desk, throwing papers at students instead of handing them out, grabbing the student was speaking to a parent, raising his voice, and dragging a student seated in his desk 15 feet. Dr. Saberi opined Respondent's conduct was concerning because students expect safety and respect in the classroom, and his behavior can cause students to show down, demonstrate lack of motivation, fear, and dread, and wondering if they will become the target of Respondent's anger.

202. Dr. Saberi testified that Respondent's differential treatment of students was concerning. She noted that students testified that student V.X was his favorite student, and that he would yell at student J.X. Dr. Saberi also noted that he gave oranges to some students but told student B.X. that she could not have one. She stated that Respondent's behavior was concerning because students are forming their identities at that time. She noted that students asked student A.C. why Respondent did not like him. If students appear to be unfavored, they can internalize the behavior, develop the belief are defective or not good enough and do not deserve equal treatment. The students will then lose focus and motivation in class. On the other hand, if students perceive he or she is the teacher favorite they may become upset and experience survivor's guilt.

203. Dr. Saberi expressed concern for Respondent's unwelcome or intrusive touching such as when he grabbed student's hands to compare with his and students pulled their hands away or hid them, or when he touched student C.C.'s chest, and the student felt violated. She explained that Respondent's behavior was concerning because of the potential for escalated touching, abuse, and the behavior could be considered grooming. In addition, female students reaching puberty can be

uncomfortable with a teacher standing too close, hovering over them, and focusing attention on their body parts.

204. Dr. Saberi stated that Respondent made inappropriate statements and innuendos when saying how students had matured or developed, commenting that a student's eye color was attractive and which color he favored, and commenting that a student was wearing his favorite shirt. She noted student J.S. felt Respondent was staring at her chest, and student L.J.C. felt Respondent's comments were flirty. Dr. Saberi opined that with this behavior, Respondent violated the students' boundaries by calling attention to their physicality. She further opined that Respondent's behavior was unprofessional and could lead to the students' confusion and internalization of shame or guilt because of their physical characteristics. The negative consequences of such behavior is greater in students who have experienced trauma and could lead to depression, social anxiety, withdrawal, and self-harm.

205. Dr. Saberi offered the opinion that Respondent's behavior could also be considered grooming behavior (building a relationship to lower defenses). She pointed to Respondent's suggestion to student L.J.C. that they should have a sleep over as possibly part of later stages of grooming. However, Dr. Saberi saw no evidence that Respondent met with any students outside of class or school, including student L.J.C., or took any further action with respect to the suggestion regarding a sleep over.

206. The themes addressed by Dr. Saberi (over-controlling behavior, anger, public shaming, unwelcome or intrusive touching) point to a potentially traumatic classroom environment. She noted that students, in their interviews and testimony, spoke about feeling shame, guilt, dread, fear, anxiety, and uncertainty as a result of Respondent's conduct. Dr. Saberi also testified that urban middle school youth also

tend to suffer from adverse childhood events that make them more susceptible to experience negative impact to their psychological function due to Respondent's behavior.

207. Dr. Saberi explained that long-term psychological effects of a traumatic classroom environment include dropping out of middle and high school, low self-esteem, depression, and lowered self-efficacy. Male students can model and sanction the observed behavior.

208. Dr. Saberi has treated patients who have had experiences similar to Respondent's students. She noted that they became desensitized to inappropriate behavior, gave up on adults, and lowered their expectations such that flirty behavior by an inappropriate person was no longer a red flag. She attributes these patients' psychological issues to their early experiences in the classroom.

209. Dr. Saberi stated that some middle school students are primed to see a sexual meaning in things that were not intended that way, and for some students, sexually suggestive things go over their heads. She further stated that it is normal for middle school students, because of their stage of development, to find sexual meanings in jokes, although they would typically joke with peers not in the classroom while lessons are being taught. However, Dr. Saberi acknowledged that she does not spend much time in middle school classrooms.

210. Dr. Saberi stated that individuals suffer the responses to subversive conduct that she described when they are chronically exposed to it. However, individuals can suffer aversion and trauma effects with just two contacts, it depends on the person.

211. Dr. Saberi acknowledged that Respondent addressed dress code violations by emailing Principal O'Shea after the March 2022 NUC/NUP and did not speak with the students he believed to be in violation directly. She is not aware whether of Respondent was told not to use his classroom procedures, what other teacher's classroom rules are, or what CMS's policy was regarding cell phones. Dr. Saberi did not recall seeing the exhibits that demonstrated Respondent allowed students to create trees that did not relate to family, nor did she recall student A.A.'s testimony that Respondent did not search her backpack; rather, she dumped its contents on the ground.

212. Dr. Saberi's testimony was given some weight based on her experience and training. However, Dr. Saberi's conclusions were based on allegations in the SOC that were not established. Moreover, much of Dr. Saberi's opinions about the effects of Respondent's conduct, with the exception of student testimony regarding their feelings, were speculative and not based upon a psychological assessment of the students.

Respondent's Evidence

213. Prior to working for the District, Respondent was a student teacher in Santa Barbara and Goleta. He coached soccer and track during his first few years with the District. Respondent has been a member of CAUSE for 20 years.

214. Respondent met the District's expectations when he was evaluated in 2009, 2011, 2013, 2015, 2016, and 2018.

215. Respondent acknowledged that he has had difficult interactions with District and CMS administrators. He attributes those difficult interactions to his

inquiries about subjects that administrators “don’t want to talk about.” Respondent asserted that as the CAUSE representative at CMS, he is asked to communicate members’ concerns with Principal O’Shea during staff meetings, including members’ dissatisfaction with day-to-day operations.

216. Respondent denied many of the charges against him concerning his interaction with students and admitted others, while providing context. He denied that his comments to Principal O’Shea were disrespectful, demeaning or insubordinate.

217. Respondent contends that the students Principal O’Shea photographed between April 2022 and June 2022, to demonstrate that their outfits did not violate CMS’s Dress Code policy were not dressed like that while in his class. He suggested that the students changed or adjusted their clothing by the time Principal O’Shea interacted with him. However, several students who offered rebuttal testimony denied doing so.

218. Respondent denied receiving Principal O’Shea’s May 21, 2021 email containing the directives prohibiting him from confronting students about the dress code, confiscating phones from students not in his class, and removing students from other classes, and for students engaging in negative behavior, directing him to work positively with parents and students to improve students’ grades and behavior. His denial is based upon the fact that the email was sent after hours and although his tendency is to respond to Principal O’Shea’s email there is no record that he responded to it.

219. The District offered rebuttal testimony from Aaron LaPlante, the District’s IT manager. He was able to research the status of the May 21, 2021 email, and saw that it was opened and then marked unread. Mr. LaPlante explained that an email will

only show “unread” if the user marks it as such. However, Mr. LaPlante cannot tell when the email was opened or when it was marked unread. He conducted his search regarding the May 21, 2021 email a few days prior to the hearing. Mr. LaPlante stated that the email could have been opened and marked unread as recently as the week prior to his testimony.

220. Respondent contends that he did not learn about the May 21, 2021 email until after March 18, 2022. He further contends that it was then that he found the email in his inbox, opened it, and marked it unread. Respondent explained that it is his practice to mark important emails as unread because it causes the email to be highlighted in bold and makes it easier to find if he believes he will need it in the future. Respondent’s testimony was credited given his history of responding to Principal O’Shea’s many disciplinary emails.

CHARACTER EVIDENCE

221. Cynthia Faust previously worked at CMS for 14 years as a special education teacher for sixth, seventh, and eighth grade students. She has known Respondent for 14 years, interacted with him on a regular basis, and they typically taught some of the same students for at least one-half of a school year. Ms. Faust has also socialized with Respondent outside of school at teacher functions.

222. Ms. Faust described Respondent as friendly and professional, and someone she consulted with at the beginning of the school year regarding ways to support and accommodate students’ needs. She asserted that her interactions with Respondent were positive, and that he provided her with materials to assist students adjust to the curriculum.

223. Ms. Faust has observed Respondent teaching and is impressed with his ability to get students involved. In her opinion, his interactions with students were spontaneous and natural, he had a good rapport with them, the students did not appear to be afraid to speak and they easily participated in the lessons. Ms. Faust stated she has seen students following Respondent around campus and she believes he is one of the most popular teachers at CMS.

224. Ms. Faust did not observe Respondent act disrespectfully toward staff members. She is not aware of any reports that Respondent yelled at or picked on students or made inappropriate comments in class. However, one of Ms. Faust's students, J.S., reported to her that she did not like Respondent and that he was mean to her, but student J.S. was vague about her complaint. Ms. Faust recalled that student J.S. was upset that Respondent was not nice to her friend, but student J.S. was not present during her friend's interaction with Respondent. After that incident, voiced her dislike for Respondent. Student J.S. spoke with Principal O'Shea about her concerns and did not want to see a counselor.

225. Student J.M.'s mother complained to Ms. Faust that on one occasion, Respondent made student J.M. wait outside the classroom before admitting him to review student J.M.'s behavior form.

226. Ms. Faust is aware that trauma informed practices are based on social emotional learning. She denied Principal O'Shea, nor any other administrator, instructed her to use trauma informed practices in the classroom. Ms. Faust received training on AHA and ACES along with general educational training. She recalled seeing the AHA Training but did not initially recall receiving the trauma informed practices

emails sent by Principal O'Shea but later acknowledged that she "probably" reviewed them. Ms. Faust also did not recall being told that CMS is a trauma informed school.

227. Ms. Faust was unaware that the District intends to dismiss Respondent and was not aware of the charges against him. When made aware of the some of the charges contained in the SOC, she acknowledged that the behaviors, on their face, are inappropriate for a teacher.

228. Monica Solorzano is a City Council member of the City of Santa Barbara. One of her children attends CMS and the other attends an elementary school in the District. Her children have not had Respondent as a teacher, and she has not observed him in his role as a teacher.

229. Ms. Solorzano is the Vice President of Parents for CMS (PFCMS) and knows Respondent, whom she met in 2022. Her children also attend the same dance studio as Respondent's daughters.

230. Ms. Solorzano has heard Respondent speak at the PFCMS meetings and found that he provided thoughtful and considered feedback on agenda items and was passionate about public education.

231. Principal O'Shea and other administrators have also attended the PFCMS meetings. Ms. Solorzano sensed there was tension between Respondent and Principal O'Shea and other administrators. She discerned Respondent and Principal O'Shea or the administrators did not have a positive relationship because of Principal O'Shea's or the administrators' tone of voice, facial expressions, and word choice. Ms. Solorzano did not experience the same reception when she spoke.

232. Ms. Solorzano observed Respondent work with parents on event planning and interact with them concerning other issues. She described him as kind, smart, resourceful, generous with time and energy, and a good father, friend and colleague. Ms. Solorzano never had a negative interaction with Respondent.

233. Ms. Solorzano was not aware of the charges against Respondent. When notified of some of the charges at the hearing, she states she did not know enough about the behaviors alleged to say whether they are inappropriate.

234. Crystl Hotchner is Respondent's wife. She has worked at CMS for 23 years and is a math teacher for seventh and eighth grade students.

235. For the past five years Mrs. Hotchner and Respondent have taught some of the same students since they both teach seventh graders. She believes a majority of the students at CMS know she and Respondent are married.

236. Mrs. Hotchner described Carpinteria as a small beach town. She has seen and interacted with students outside the school environment. Some CMS students live on her same street, are friends with her daughter, and are on the same soccer team. Mrs. Hotchner will run into students anywhere she goes in town. While in her classroom, Mrs. Hotchner has mentioned to students that she has seen them outside of school. She has not been reprimanded by CMS administrators for doing so.

237. Students talk about Respondent in her class, such as having inside jokes with him. She is aware of students talking about Respondent being on leave; the students speculated the reason for Respondent's absence was he was going through a divorce, or he had been arrested.

238. During Mrs. Hotchner's tenure at CMS, the dress code prohibited students from wearing crop tops, flip flops, and clothing with inappropriate slogans and clothing had to be certain length. She asserted that at staff meetings, administrators and staff discussed that the majority of dress code violations concerned female students wearing crop tops and male students wearing their pants too low or clothing with inappropriate slogans.

239. Students B.I., B.V., and M.E. were students that Mrs. Hotchner and Respondent shared that frequently violated the dress code. Mrs. Hotchner has sent students to the office for dress code violations or emailed CMS administrators regarding those students. The violations were resolved by giving the student a shirt or having them zip up their sweatshirt if they were wearing one.

240. Mrs. Hotchner sent emails to Principal O'Shea regarding students who were out of dress code. On April 26, 2022, she sent an email to AP Cota and copied Principal O'Shea and Respondent regarding student A.A.'s dress code violation. Mrs. Hotchner copied Respondent on the email because he is the union president. She wrote:

. . . Thank you for your assistance with [A.A.] Just to recap:

1) Her crop top only reached the top of her jeans if she pulled her jeans up really high.

2) When I asked her to zip up her sweatshirt she rolled her eyes and refused to comply[.]

3) After her refusal I explained that her options were to zip up her sweatshirt or go to the office and have [Principal]

O'Shea tell her to zip up her sweatshirt. She rolled her eyes and said, "it's ok" and again refused to zip up her sweatshirt.

4) I asked her to out into the hall so I could talk to her privately.

5) At that point you came into the room (for another reason) but were able to talk to [A.A.] together. You directed her to zip up her sweatshirt so as not to waste class time over clothing issues. She complied.

[¶] . . . [¶]

(Ex. 1076.)

241. On May 18, 2022, Mrs. Hotchner sent an email to Principal O'Shea regarding students A.A., M.E., B.I., and B.V., who were in her third period class, regarding alleged dress code violations. She also copied their first, second and advisory period teachers on the email. Mrs. Hotchner stated that these students "routinely" came to her class with "short crop tops or very low cut tops," and she "routinely" asked them to put on or zip up their sweatshirts. (Ex. 1085, p. A431.) Principal O'Shea responded that: a) Mrs. Hotchner should notify administration of any dress code issues; b) students found in violation will be provided a change of clothes so that they will not miss instruction; c) "nothing in the dress code policy prohibits students from wearing 'low cut' clothing; and d) "Attention should be focused on supporting students' academic and emotional progress and less on female students'

clothing. When female students are removed from class because of their clothing, it sends the wrong message about the importance of their education.” (*Id.* at p. B430.)

242. Notably, there was no evidence Mrs. Hotchner sent Principal O’Shea any emails regarding student dress code violations prior to Respondent receiving the March 18 NUC/NUP.

243. Mrs. Hotchner’s classroom management rules include prohibiting drinks from the classroom with the exception of water. She provides the rules to her students in writing on the first day of class, goes over them in detail on the second day, and reviews them with the class on the third day. By the end of the week, the students have grasped how her classroom runs.

244. Mrs. Hotchner has confiscated drinks from students by placing them on her desk and returning them later. When she confiscates a drink, she tells the students she does want them to spill it. Mrs. Hotchner has not taken a drink out of a students’ backpack and was never told by CMS administrators that she could not have a policy prohibiting drinks.

245. Mrs. Hotchner confiscated cell phones from students who violated CMS policy and was never told not to do so. She asked the student to give the phones to her and did not take the phones out of students’ hands.

246. To assist with classroom management, Mrs. Hotchner requires her students to wait outside her classroom before inviting them to. CMS administrators never told her it was inappropriate for the students to wait outside.

247. Mrs. Hotchner has observed Principal O’Shea make the heart-shaped symbol with her hands.

248. Mrs. Hotchner has taken photographs of students, with their knowledge, using her personal iPhone or an iPad per Principal O'Shea's request to take photographs of students engaged in work for the Friday bulletin and the yearbook. Some students did not like to have their pictures taken. Mrs. Hotchner told those students she will take a picture of their hands and/or their worksheet. If they insist on not having their picture taken, she will not do so. Mrs. Hotchner sends the photographs to Principal O'Shea or the librarian.

249. Mrs. Hotchner attended the AHA workshop trainings on trauma and implements some of the best practices regarding trauma in her classroom. She believes she attended the SELPA trauma informed practices training but does not recall receiving the emails from Principal O'Shea containing trauma informed practices resources.

250. Jennifer Foster has worked at CMS since 1994 and teaches math to sixth and seventh grade students. She has worked with Respondent since he started at CMS, she is the treasurer of CAUSE, and has socialized with Respondent outside of school. Ms. Foster recently attended a "welcome back" gathering at Respondent's house.

251. Fifty percent of Ms. Foster's seventh grade students were in Respondent's class. No student has reported a concern about Respondent to her.

252. Ms. Foster's classroom rules are: 1) be respectful; 2) be on time and prepared for class; 3) do not disturb others; and 4) no unauthorized gum or food. She goes over the rules with her class at the beginning of the school years and provides examples of what it means to follow or not follow the rules. Students must raise their hands if they need to get out of their seat to obtain supplies or use the bathroom. No

one from administration has told her that having the students remain in their seats and raise their hand to get up is inappropriate.

253. Ms. Foster's students wait outside the classroom before they enter, and she greets each student as they enter the room. No one has ever told her that it was inappropriate for students to wait outside.

254. If a student acts inappropriately in Ms. Foster's case, she will stand by the student's desk. If the student continues to behave inappropriately, she asks the student to step outside the classroom while she completes a behavior form/log. Ms. Foster will then go outside and talk to the student about their behavior, tell the student what she wants to see from them when they return to class, and then invite the student to return. She will send a student to the office and text administration if they physically harm someone uses profanity with her. No one has ever told Ms. Foster that having a student step outside the classroom is inappropriate.

255. Ms. Foster testified that CMS's dress code policy was stricter prior to the 2022-2023 school year. Principal O'Shea informed Ms. Foster that it is not appropriate to dress code students to make them feel bad. During the past five years, Ms. Foster has addressed dress code concerns directly with students who were in violation, and no one in administration has told her that it was inappropriate do so.

256. Ms. Foster has taken photographs of students with a school issued iPad, or her personal cell phone if she was already using the iPad for other purposes, to document student learning to use at open house. The pictures were also used for students to see themselves learning.

257. Some students do not like having their pictures taken. Ms. Foster tells them that their faces would not necessarily be showing and she is taking the pictures to show the task or activity. If a student insists that they do not want their picture taken, she will delete the photograph. According to Ms. Foster, Principal O'Shea thanked her for taking the pictures and included them in the Week in Review.

258. It is Ms. Foster's understanding that under CMS's cell phone policy, which was effective beginning of the 2022-2023 school year, students are not allowed have cell phones out and they should be in their backpacks at all times unless a teacher approves otherwise. The previous policy was that so long as cell phones could not be seen, students could have them on their person. Under the previous policy, Ms. Foster confiscated more than 15 to 25 cell phones during the school year, and no one told her that she should not do so. When she confiscated the phones, she did not take them out of the students' hands; she would extend her hand and say, "please give me your cell phone" until the student eventually did so.

259. Ms. Foster does not allow students to have drinks in her classroom except for water. If a student has a drink other than water, she asks the student to put it on a table on the side of the classroom. Ms. Foster does not grab drinks out of students' hands, nor does she take them out of students' backpacks.

260. Ms. Foster contended that she did "not really" know what trauma informed practices are, and only remembered participating in one 20-minute trauma informed practices training in January or February 2022 or 2023. Ms. Foster was told by administration that she should use trauma informed practices, but asserted she not required to do so, and in any event she is not clear on how to do that.

261. Ms. Foster has observed Principal O'Shea and Respondent interact during monthly meetings over the past five years. She described Respondent's demeanor as polite during the meetings and stated he asked a lot of questions. It appeared to Ms. Foster that Principal O'Shea would become frustrated by Respondent's questions.

262. Ms. Foster attend the AHA workshop training during the 2020-2021 school year. She asserted that events are "foggy" for her after March 2020, therefore she does not recall attending the SELPA trauma training. Ms. Foster assumes she received the emails sent by Principal O'Shea with trauma informed practices resources attached. She tried to open every link in the emails sent by Principal O'Shea but did not always have time to do so.

263. Ms. Foster is not aware of the charges against Respondent but learned at an executive board meeting that the District was seeking to dismiss him. She did not know he said that he was not paid enough to see bra straps. Ms. Foster heard rumors that Respondent was directed not to address dress code violations. She asserted that she may have continued to address dress code violations if given the same directive depending on the circumstances.

264. Ms. Foster has not thrown a student's backpack, directed student peers to tell another student their clothing violated the dress code, slammed a laptop on a student's fingers, or dragged a student across the room in a chair. She has, however, placed a student's chair down on all four legs when a student was sitting in it with only two legs.

265. Debra Leiter retired from CMS in June 2022. She and Respondent are friends and socialize outside of school two to three times per year. Ms. Leiter has been to Respondent's home, and he has been to hers.

266. Ms. Leiter taught seventh and eighth grade science, and during the past five years, she and Respondent shared some students. She recalled that their shared students had positive things to say about Respondent and really enjoyed his class. Ms. Leiter has observed Respondent interact with students and described those interactions as positive.

267. Ms. Leiter had a good relationship with Principal O'Shea. She recalled that they had ongoing conversations about Respondent. Ms. Leiter described a particular conversation she had with Principal O'Shea in the Fall of 2020, wherein she alleged Principal O'Shea asked if Ms. Leiter had any "dirt" on Respondent. However, she acknowledged that Respondent was the one who used the term "dirt" when he subsequently emailed her and asked if Principal O'Shea was actively seeking "dirt" on him. Ms. Leiter informed Respondent that Principal O'Shea had asked for information about Respondent but would not put much stock in it because it seemed related to Principal O'Shea's insecurities and not actual vindictiveness.

268. Ms. Leiter testified that she had five or six conversations with Principal O'Shea where Principal O'Shea said negative things about Respondent. She recalled a particular conversation where Principal O'Shea said she did not know how Ms. Leiter could be friends with Respondent.

269. Ms. Leiter asserted she does know what trauma informed practices are. She denied CMS is a trauma informed school or being directed to use trauma informed practices in her classroom. Ms. Leiter did not attend the AHA workshop because she felt working with colleagues on curriculum was more important. She stated, however, that she used trauma-sensitive best practices in her classroom every day. Ms. Leiter does not recall receiving emails from Principal O'Shea that included

trauma informed practices resources but received any email sent that was sent school wide.

270. Ms. Leiter described middle school students as immature and prone, every day, to construe innocuous things she said as having a sexual connotation.

271. According to Ms. Leiter, CMS's tardiness policy was overridden by the school's multiple behavior plans and was not consistently enforced. Students were tardy to her class, and she became concerned if students were more than 10 to 20 seconds late.

272. Ms. Leiter observed Principal O'Shea make a heart-shaped symbol with her hands to students in the hallway and on the field in between classes.

273. Ms. Leiter was asked by Principal O'Shea to take photographs of students engaged in classroom activities for CMS's Friday newsletter. In her experience, some students did not like to have their picture taken, but she sometimes took their picture even if they asked her not to do so.

274. Ms. Leiter confiscated phones from students in her class who violated CMS's cell phone policy. She may have confiscated phones from students who were not in her class if she told the student to put the phone away and they did not comply. No one told her that it was inappropriate for her to confiscate phones.

275. Ms. Leiter was not aware of the charges against Respondent. She was not told that the hearing concerned Respondent's potential dismissal from the District and understood the purpose of the hearing to be "character assassination."

276. Kelly Vergeer is a sixth and seventh grade science teacher at CMS. She and Respondent shared the same seventh grade students. During the past five years, some of those students told Ms. Vergeer that Respondent is their favorite teacher.

277. It is Ms. Vergeer's understanding that CMS is a trauma informed school. She was provided training on trauma informed practices and can implement them although she was not informed that she was required to do so.

278. Ms. Vergeer spends the first week reviewing her classroom rules. She has her students line up along the wall outside the classroom before they enter. When the students stop talking, Ms. Vergeer directs them on what to do when they enter and reminds them about her rules. Students must wait to be called on before they can get out of their seats. If students are late to class, she will ask why they are late. If a student continues to be tardy, Ms. Vergeer will call their parents and thereafter provide progressive discipline. If a student is chewing gum, she will ask them to spit it out or take the trash can to the student so they can dispose of it.

279. Ms. Vergeer has never been told that it was inappropriate for students to remain in their seats before she allows them to get up, or for her students to wait outside the classroom.

280. Ms. Vergeer has observed Respondent's interactions with Principal O'Shea at staff meetings, where Respondent typically asks Principal O'Shea questions. Ms. Vergeer described Respondent's demeanor at the meetings as professional.

281. In Ms. Vergeer's experience, the maturity level of CMS students varies. Some will say things for shock value, draw male reproductive parts on things, and yell out the number 69 in reference to a sexual act. She deals with behavioral issues by

conferencing with the student in the doorway or outside during a break in the lesson so as not to embarrass the student and so that the class can continue learning. Ms. Vergeer does not address a student's behavioral issues in front of the class. No one told her that having the student go outside is inappropriate.

282. In Ms. Vergeer's experience, more female students than male students violated CMS's dress code. She addressed code violations directly with students, and no one from administration told her not to do so.

283. Principal O'Shea asked Ms. Vergeer to take pictures of students as they participated in activities to share with parents at back-to-school night and to submit in support of grant proposals. Some students did not like to have their pictures taken.

284. Ms. Vergeer has confiscated phones from students who were in her class and those who were not. She was never told by administration not to do so. Ms. Vergeer would hold out her hand and ask the students to place their phones in it.

285. Ms. Vergeer previously taught an advisory class. A manual was provided to the teachers with a list of activities to conduct during advisory, along with slides and information for some of the lessons; however, teachers were not required to follow advisory curriculum.

286. John Fowler has been employed at CMS since 2004 and teaches seventh and eighth grade global studies and American history. Mr. Fowler and Respondents are close friends, and they have worked collaboratively at CMS.

287. Mr. Fowler and Respondent have shared students during the past five years. He asserted that the students reported good things about Respondent, including playing games with him and having "battles" with him. According to Mr.

Fowler, they described Respondent as engaging, positive, and sincere, and asked about Respondent when he was on leave. He has not received any student complaints about Respondent.

288. Mr. Fantazia approached Mr. Fowler about student C.G. because he thought the student would be better served in Mr. Fowler's class as opposed to Respondent's class. Respondent was very firm in his expectations for the student and would not budge. Mr. Fowler understood what Mr. Fantazia meant – student C.G. has special needs and needed more flexibility.

289. Mr. Fowler recalled that student M.B. came to him about Respondent confiscating his fidget spinner. Mr. Fowler was not aware Respondent was directed not to discipline students when they were in other teachers' classes.

290. Mr. Fowler has informally observed Respondent teach numerous times during the past five years, and he observed Respondent six times during the 2021-2022 school year for approximately five minutes. He described Respondent as exceptional and engaging teacher who motivates his students and provides opportunities for them to express themselves.

291. Mr. Fowler asserted that CMS's dress code policy during the 2021-2022 school year required students to come to school dressed appropriately. However, some female students would arrive with their midriffs and cleavage exposed and, therefore, it was unclear to Mr. Fowler what the dress code policy was. In his experience, it was predominantly the female students who violated the dress code in the ways he described.

292. According to Mr. Fowler, during the spring of 2021, he sent two emails to Principal O'Shea. (Ex. 1143.) In the first email, Mr. Fowler reported hearing a female student yell "[f]ucking [p]ervert." (*Ibid.*) When he looked out his classroom door, he saw student B.I. and another female student walking away from Respondent's classroom and across the field, and he saw P.E. students who appeared to be focusing on student B.I. and the other student.

293. A few minutes later, Mr. Fowler sent a second email, stating, "On a related note, I would really appreciate it if we can find [B.I.] a T-shirt today. I believe [Respondent] is correct in drawing a correlation between how [B.I.] (and [A.A.] as well) is dressing and how that might play a role in her approach to school – how she interacts with their [sic] classmates, her teachers, and the opportunities we provide for her to learn." (Ex. 1143.)

294. Mr. Fowler testified that he sent the emails to Principal O'Shea student B.I.'s cleavage was exposed and there appeared to be "mixed signals" on what was appropriate dress at the school.

295. Mr. Fowler asserted that he addressed tardiness with students directly on a regular basis. He described student tardiness as "off the charts" after returning from remote learning. When a student is up to 30 seconds late for class, Mr. Fowler invites them in and gets them caught up on the lesson. If the student is very tardy (over a minute or two), he will send them to the office or have them sit in the back of the classroom for a moment and fill out a refocus form. It is Mr. Fowler's intent to bring them "into the fold" of learning. If the student is chronically tardy, he will follow-up with various interventions.

296. Mr. Fowler described his students as possessing different maturity levels. During the past five years, the students would interpret words he said, such as hard or wet as having a sexual connotation and they would giggle, blush, and make jokes. In those instances, Mr. Fowler told the students to, "get your heads out of the gutter."

297. Mr. Fowler took pictures of students for a weekly review at the request of Principal O'Shea. He used his iPad and sometimes used his personal cell phone because it has a better camera.

298. Mr. Fowler only allowed students to drink water in his class and allowed them to step outside to drink juice or soda. He has confiscated drinks from students in the past. Mr. Fowler has worn hats in his classroom and allowed students to do so as well, with the exception of hats with NFL logos that may considered gang related, when the policy permitted it.

299. When Mr. Fowler has confiscated students' cell phones, he asks them to turn them over; he does not take them out of their hands because he tries to avoid physical altercations with his students.

300. Mr. Fowler "somewhat" knows what trauma informed practices are. He recalls attending discretionary trainings and that none of the trauma trainings were required. Mr. Fowler denied being told that he was required to implement trauma informed best practices in his classroom, but he does implement some of them.

301. Charlier Gardner has been friends with Respondent for a decade. His two children are in the seventh and ninth grade and attend schools in the District. Mr. Gardner's oldest daughter was in Respondent's seventh grade global studies class for

a month before he went on leave in 2021. She appeared to Mr. Gardner to be happy to have Respondent as her teacher.

302. Mr. Gardner described Respondent as an outstanding person who cares a lot for the community and children. According to Mr. Gardner, Respondent goes above and beyond, is a pillar of the community, and he is happy to have Respondent as a friend. He considers Respondent to be an expert in education. However, he has not observed Respondent in the classroom.

303. Mr. Gardener is not aware of the charges against Respondent nor that several students testified against him at the hearing. However, he asserted that even if he had heard the testimony, his opinion of Respondent would not change.

Analysis

304. The evidence established that Respondent made comments to students and engaged in behavior that made the students uncomfortable and was inappropriate. Examples include: confiscating student M.B.'s fidget spinner; telling a student that he did not get paid enough to see her bra strap; suggesting that he and his student have a sleepover for their birthdays; removing students' hoodies; touching a student's chest/shirt; directing peers to tell another student why her clothing was inappropriate; confiscating the phone of a student who had previously notified Respondent that he had an appointment and was speaking with his mother; and making statements that suggested that a student was stupid.

305. The evidence did not establish that Respondent engaged in grooming behavior, sexualized his students, or otherwise made sexual innuendos. Rather, the evidence established that because of the age and developmental stage of

Respondent's students, they imparted a sexual connotation to things Respondent said. In addition, the evidence did not establish that Respondent engaged in acts of dishonesty.

306. The evidence did not establish that Respondent fixated on specific female students to enforce the dress code. Instead, there were certain female students who routinely appeared in violation of the dress code. In addition, several CMS teachers testified that their female students were typically the students that violated the dress code.

307. While Respondent made repeated reports to Principal O'Shea between April 2022 and June 2022 that students were violating the dress code, he did not violate the March 18 NUC/NUP, in that he was instructed to notify administration of any concerns that he had. The directive was contradictory in that Respondent was told not to concern himself with the dress code but allowed him to notify administration if he had any concerns. He asked clarifying questions on his own behalf and on behalf of CAUSE members about the dress code, but with exception of the initial responses notifying Respondent that the issues he raised about specific students had been addressed, he was not provided any information.

308. Respondent violated the March 18 NUC/NUP in that he discussed seeing student A.Z. outside of class and confiscated a student's phone on April 12, 2022.

309. Respondent's communications to Principal O'Shea were defensive and at times, condescending.

310. The SOC (Exhibit 65) is incorporated herein by reference. The District failed to establish the charges found at the following pages and paragraphs:

page A492, paragraphs 1a(3)-1a(6), 1a(10);

pages A493-A494, paragraph 13(a), 13(d), 13(g), and 13(i);

page A494, paragraph (c)(4);

page A495, paragraph 17;

page A501, paragraph 15;

page A502, paragraphs d(b), d(d), d(e), d(j);

page A503, paragraph k, paragraph 3, and paragraphs (f)(1)-(f)(2);

page A504, paragraph 3(b), 3(c), and 3(e);

page A505, paragraphs 3(g) and 3(i);

page A506, paragraphs 3(j)-3(m);

pages A507, paragraph (p);

page A508, paragraphs (u), (v), (w);

page 509, paragraphs and (z) and (h);

pages A510-A513, paragraphs i(2)-i(3), i(6), i(10);

page A518, paragraph 2(c);

page A519, paragraphs (3)(a), 2(d), and 2(e);

page A520, paragraphs (d)(2)-(d)(4);

page A521, paragraphs 3(e) and (3)(g);

page A522, paragraph (h)(4);

page 524, paragraphs k, j, i; and

page 525, paragraphs p and n.

311. When all of the evidence is considered, Respondent engaged in inappropriate and/or unprofessional conduct and demonstrated lapses in judgment. His conduct suggests that he would benefit from sensitivity training and other educational courses. However, the Commission does not find that Respondent is unfit to teach.

LEGAL CONCLUSIONS

1. The District may dismiss a permanent, certificated employee only for those causes identified by state law. The charges in the SOC allege five grounds for dismissal authorized by the Education Code: (1) immoral conduct, (2) unprofessional conduct, (3) dishonesty, (4) evident unfitness for service, and (5) 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 of Education or by the governing board of the school district.

2. The District must prove the allegations of the SOC. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035.) Preponderance of the evidence means evidence with more convincing force than that opposed to it. (*In re Shelley J.* (1998) 68 Cal.App.4th 322.) If the evidence is so evenly balanced that

one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party with the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Immoral Conduct

3. A school district may dismiss a teacher who engages in immoral conduct. (Ed. Code, § 44932, subd. (a)(1).) “Immoral conduct” has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal. App.2d 808, 811.)

4. The District did not establish by a preponderance of the evidence that Respondent’s actions were immoral as they were not indicative of corruption, indecency, or depravity. Complainant also failed to establish by the preponderance of the evidence that Respondent’s conduct was base, vile or depraved. Although the District did establish that Respondent acted inappropriately on multiple occasions and crossed boundaries with students, these incidents were a result of lapses of judgment and there was no improper motive for Respondent’s behavior.

Unprofessional Conduct

5. A school district may dismiss a teacher who demonstrates unprofessional conduct. (Ed. Code, § 44932, subd. (a)(2).) Unprofessional conduct is defined as “that

which violates the rules or ethical code of a profession or such conduct which is unbecoming a member of a profession in good standing." (*Board v. Swan* (1953) 41 Cal.2d 546, 553, overruled on other grounds.)

6. Respondent engaged in unprofessional conduct on multiple occasions as set forth in the Factual Findings above. Accordingly, the District established by a preponderance of the evidence that cause exists to terminate Respondent's employment as a permanent employee for unprofessional conduct under Education Code section 44932, subdivision (a)(2).

Dishonesty

7. Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, and betrayal. Dishonesty denotes the absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray. (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717.)

8. The District did not establish that Respondent engaged in acts of dishonesty under Education Code section 44932, subdivision (a)(4).

Persistent Violations of School Laws or Regulations

9. A school district may dismiss a teacher who engages in a persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district. (Ed. Code, § 44932, subd. (a)(8).) Such violations must be "stubborn and continuing." (*San Dieguito Union High School*

District v. Commission on Professional Competence (1985) 174 Cal.App.3d 1176, 1183.)

The willful refusal of a teacher to obey the reasonable rules and regulations of the employing board of education is insubordination. (*Board of Educ. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 552, overruled on other grounds by *Bekiaris v. Board of Education* (1972) 6 Cal.3d 575.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence [Bourland]* (1985) 174 Cal.App.3d 317.)

10. In *Bourland*, the teacher and her principal disagreed upon a statement of objectives by which the teacher would be evaluated. (*Bourland, supra*, 174 Cal.App.3d at p. 319.) Over three months, the principal directed the teacher 14 times to include objectives regarding completing tasks on time and improving communications with her supervisor, but the teacher refused because she believed if she did so, she would be admitting she needed to improve her job performance. (*Id.* at p. 320.) The court, in finding that the teacher did not engage in a persistent refusal violation of rules, found that "the parties stubbornly continued to debate the matter over a period of three months . . . [Citations omitted.]" (*Id.* at p. 321.) The court further found that the "private debate" between the parties "does not indicate the type of continual insubordination that may seriously affect the discipline in a school." (*Ibid.*)

11. Here, similar to the teacher in *Bourland*, Respondent, following the directive to notify of administration of any dress code violation concerns, repeatedly asked Principal O'Shea for clarification of the dress code. Respondent did not believe he was in violation of the directive since he did not address the issue with students directly. While the Commission found that Respondent did violate the directives contained in the March 18 NUC/NUP, such as when he confiscated a student's phone

and another student's fidget spinner, those isolated events do not constitute a persistent refusal to follow the rules.

12. The District failed to establish by a preponderance of the evidence that cause exists to terminate Respondent's employment as a permanent employee for engaging in a persistent violation of or refusal to obey the school laws under Education Code section 44932, subdivision (a)(8).

Evident Unfitness for Service

13. 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. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) Unlike unprofessional conduct, evident unfitness for service connotes "a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) The Commission must look at the proven conduct in the aggregate. The *Woodland* court found it was unnecessary to determine if every act demonstrated unfitness for service. Rather, it was proper to examine the totality of the offensive conduct.

14. Respondent's fitness to teach must be examined under the factors in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. The California Supreme Court held that a school district cannot abstractly characterize conduct as immoral or unprofessional but must show that retaining a teacher poses a significant danger of harm to students, school employees, or others who may be affected by the teacher's conduct. The misconduct must have some rational connection to the teacher's ability to teach as follows:

In determining whether the teacher's conduct thus indicates unfitness to teach the board may consider such matters as the likelihood that the conduct may have adversely affected students or fellow teachers, the degree of such adversity anticipated, the proximity or remoteness in time of the conduct, the type of teaching certificate held by the party involved, the extenuating or aggravating circumstances, if any, surrounding the conduct, the praiseworthiness or blameworthiness of the motives resulting in the conduct, the likelihood of the recurrence of the questioned conduct, and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

(*Morrison*, supra, 1 Cal.3d at p. 229.)

15. The first *Morrison* factor focuses on the "likelihood" the conduct "may have" adversely affected students, teachers, or the educational community, and the degree of adversity anticipated. The degree of adversity from Respondent's conduct was moderate. Actual adverse impacts of Respondent's conduct were demonstrated in that students were nervous and uncomfortable in his class and at times embarrassed.

16. The second *Morrison* factor involves the proximity or remoteness in time of the conduct. Respondent's most recent misconduct was committed during the 2021-2022 school year, which is not remote in time.

17. The third *Morrison* factor concerns the type of teaching certificate held by the party involved. Respondent holds an appropriate credential for the subject

matter he was assigned to teach and has several years of experience where he met expectations until his recent discipline. However, Respondent's credentials allow him to teach impressionable middle school students for whom he must serve as an appropriate role model.

18. The fourth *Morrison* factor examines the extenuating or aggravating circumstances surrounding the conduct. The evidence established that Respondent engaged in multiple acts of wrongdoing and had prior notice, warning or reprimands for similar conduct.

19. Mitigating factors may include an absence of prior adverse action over many years of educational service and present misconduct which is not deemed most serious; references of good character by individuals aware of the misconduct; lack of harm to the person who is the object of the misconduct; objective action taken by the holder, demonstrating remorse and recognition of the wrongdoing and designed to timely make amends; the proximity or remoteness in time relative to the seriousness of the misconduct; or the nature and extent of subsequent rehabilitation. Respondent worked in the District for many years without any prior adverse action.

20. The next *Morrison* factor is the praiseworthiness or blameworthiness of the motives resulting in the conduct. Some of Respondent's conduct was praiseworthy, in that he attempted to build relationships with his students, genuinely believed that the same students were consistently violating CMS's Dress Code policy, and in some instances Respondent was representing the interests of CAUSE members. CMS teachers attested to Respondent's character and reputation at CMS; however, they were not aware of the extent of Respondent's misconduct.

21. The next *Morrison* factor is the likelihood of the recurrence of the questioned conduct. Respondent's most serious violations occurred prior to the issuance of the March 18 NUC/NUP. Other than a few lapses, Respondent has been able to demonstrate his ability to comply with the directives. Respondent's unprofessional lapses following the March 18 NUC/NUP appear to have largely been isolated lapses in judgment. Respondent's continual emailing to administration was not a violation of the March 18 NUC/NUP. Respondent's continual emails appear, in large part, based on the administration's failure to explain to Respondent that the clothing of the students at issue conformed to CMS's Dress Code policy. Absent such communications, Respondent was left with the impression that his concerns were not being addressed. Based upon the evidence in the record, the District did not prove, by a preponderance of the evidence, that Respondent is likely to reoffend.

22. The final *Morrison* factor is 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. There is evidence of some notoriety within the District regarding Respondent's conduct, however, disciplinary action against Respondent would not inflict an adverse impact or chilling effect on Respondent or others, because there is no constitutionally protected speech or behavior in the conduct at issue.

23. Even where, as here, a school district has established cause for dismissal, the Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citation.] '[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.' [Citation]." (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343-344.)

24. While Respondent exercised, among other things, poor judgment and a lack of professionalism, the District did not establish by a preponderance of the evidence that Respondent has a fixed character trait which is not remediable. Respondent was issued 30 directives in the March 18 NUC/NUP and demonstrated that following receipt of those directions, he was able to change some of his behavior. As noted above, Respondent's misconduct following the March 18, NUC/NUP were largely isolated incidents. Respondent's continual emailing of the administration regarding CMS's Dress Policy was not a violation of the March 18, NUC/NUP in that Respondent was instructed to direct any concerns regarding the dress policy directly to administration. The District did not present evidence that administration responded to Respondent's numerous emails to notify Respondent that the clothing he considered to be in violation was not, in fact, a violation or instructed him to stop addressing the dress policy at all after early April 2022. Based on this record, the District failed to establish by a preponderance of the evidence that cause exists to terminate Respondent's employment as a permanent employee for evident unfitness for service under Education Code section 44932, subdivision (a)(6).

CONCLUSION

25. A Commission on Professional Competence has broad discretion in determining what constitutes unfitness to teach and immoral conduct, and whether dismissal or suspension is the appropriate sanction. (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327.)

26. While the District established that Respondent demonstrated unprofessional conduct in many ways with students and staff, the Commission

concludes that dismissal is not warranted because the Distract failed to establish that Respondent is unfit to teach.

ORDER

The Statement of Charges against Respondent John Hotchner is hereby dismissed, and he shall not be terminated as a permanent certificated employee of Carpinteria Unified School District.

DATE: 12/22/2023



John Miller (Dec 22, 2023 11:47 PST)

JOHN MILLER

Commissioner

Commission on Professional Competence

DATE: 12/23/2023


Michelle Orelup (Dec 23, 2023 07:59 PST)

MICHELLE ORELUP

Commissioner

Commission on Professional Competence

DATE: 12/23/2023



CARMEN D. SNUGGS-SPRAGGINS

Administrative Law Judge

Office of Administrative Hearings

DECLARATION OF SERVICE

Case Name: Hotchner, John

OAH No.: 2022120218

I, Valentina Ortiz, declare as follows: I am over 18 years of age and am not a party to this action. I am employed by the Office of Administrative Hearings. My business address is 320 West Fourth Street, Suite 630, Los Angeles, CA 90013. On December 26, 2023, I served a copy of the following document(s) in the action entitled above:

DECISION

to each of the person(s) named below at the addresses listed after each name by the following method(s):

Jacqueline M. Litra, Attorney at Law
Milton E. Foster, III, Attorney at Law
Vanessa Lee, Attorney at Law
Fagen Friedman & Foster, LLP
6300 Wilshire Boulevard, Suite 1700
Los Angeles, CA 90048
VIA Email (E-Service)
mfoster@f3law.com;iespedservice@f3law.com;
m;dgreen@f3law.com,vlee@f3law.com;dgre
en@f3law.com,jlitra@f3law.com;LASpedser
vice@f3law.com

Estephania Villalpando, Attorney at Law
Jason Wojciechowski, Attorney at Law
Dana Martinez, Attorney at Law
Bush Gottlieb, A Law Corporation
801 North Brand Boulevard, Suite 950
Glendale, CA 91203-1260
VIA Email (E-Service)
dmartinez@bushgottlieb.com,evillalpando@bushg
ottlieb.com,jasonw@bushgottlieb.com;evillalpand
o@bushgottlieb.com

Diana Zapata, Director of Human Resources
Carpinteria Unified School District
1400 Linden Ave.
Carpinteria, CA 93013
VIA Email (E-Service)
dzapata@cusd.net

☒ **Electronic Transmission.** Based on a court order or the agreement of the parties to accept service by electronic transmission, the document(s) were distributed to the person(s) by secure electronic transmission (OAH Secure e-File) with a notification and document link sent to the email address(es) listed above.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. This declaration was executed at Los Angeles, California on December 26, 2023.

Valentina Ortiz

Valentina Ortiz, Declarant