

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

In the Matter of the Dismissal of:

LAUREN SHEPHERD, Respondent

OAH No. 2023060430

DECISION

On September 18 through 21, 2023, the Commission on Professional Competence (Commission) heard this matter by videoconference. The Commission consisted of the following members: Administrative Law Judge Kimberly J. Belvedere, John R. Solomon, and Marisela Recendez, Ed.D.

Kimberly Smith, Adams Silva & McNally LLP, represented complainant, Angela Rosendale, Ed.D., Senior Director of Human Resources, Chula Vista Elementary School District (CVESD or “the district”).

Jon Y. Vanderpool, Smith Steiner Vanderpool, APC, represented respondent, Lauren Shepherd, who was present.

Oral and documentary evidence was received, the record was held open for the panel to review evidence and conduct deliberations. The record closed and was submitted for decision on September 22, 2023.

FACTUAL FINDINGS

Background

1. Ms. Shepherd is a permanent certificated employee with the CVESD. Ms. Shepherd holds a clear multiple subject teaching credential, elementary school setting, including preschool. During the 2022-2023 school year, Ms. Shepherd taught fourth grade at Arroyo Vista Charter School (Arroyo Vista).

2. On March 30, 2023, the district served Ms. Shepherd with a document entitled, "Notice of Immediate Suspension Without Pay; Recommendation for Dismissal From Employment and Statement of Charges" (Statement of Charges). The Statement of Charges provided Ms. Shepherd with the district's notice of its intent to dismiss her as a permanent certificated teacher, and the factual basis therefor. (Ed. Code, § 44932.) Ms. Shepherd was given the opportunity to respond in writing or in person at a *Skelly*¹ conference.

¹ In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "pre-removal safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

3. As grounds to dismiss Ms. Shepherd, facts generally alleged the following: Ms. Shepherd engaged in immoral conduct because she came to work on February 15, 2023, with alcohol in her system. This conduct violated the district's zero tolerance policy for drugs and alcohol, and Ms. Shepherd could not properly perform her job duties because she was under the influence of alcohol. Her conduct (being under the influence of alcohol) was dangerous, unprofessional, unlawful, inappropriate, and concerning, and placed Arroyo Vista students, staff, community members, and others at significant risk of injury or death when she drove onto the campus while under the influence. Several hours after she arrived on campus, Ms. Shepherd's blood alcohol concentration was 0.070 and 0.068 percent. When asked if she felt as if she were under the influence of alcohol, Ms. Shepherd stated she did not believe she was. The Statement of Charges alleged the conduct constituted immoral conduct (Ed. Code, § 44932, subd. (a)(1); dishonesty (Ed. Code, § 44932, subd. (a)(3); and evident unfitness for service (Ed. Code, § 44932, subd. (a)(6).) On May 4, 2023, Ms. Shepherd provided a written response to the Statement of Charges in lieu of appearance at the informal *Skelly* conference. Sharon Casey, the Assistant Superintendent of Student Services for CVESD, upheld the Statement of Charges and referred the matter to the Board of Education for the CVESD (board) for final consideration in closed session. Ms. Casey sent Ms. Shepherd a letter dated May 15, 2023, advising her of her decision.

4. On May 24, 2023, in closed session, the board voted to uphold the Statement of Charges. Dr. Rosendale sent Ms. Shepherd a letter dated May 25, 2023, advising her of the board's decision, and her right to request a hearing.

5. On May 30, 2023, Ms. Shepherd timely filed a Request for Hearing and Notice of Defense; this hearing followed.

Evidence Presented by the District

TESTIMONY OF YVONNE DAWSON

6. The testimony of Yvonne Dawson is summarized as follows: Ms. Dawson has worked for the CVESD for 15 years. She currently teaches third grade dual immersion² at Arroyo Vista. The first bell for students is at 8:40 a.m., and school starts at 8:45 a.m. School ends at 3:15 p.m. Monday through Thursday and at 1:45 p.m. on Friday. During the 2022-2023 school year, which is when the events that gave rise to this proceeding occurred, Ms. Dawson, Ms. Shepherd, Andrew Fenton, and Karen Washburn all taught fourth grade. They each had their own classrooms. All fourth grade teachers would meet two or three times per month in “curriculum expert meetings” to talk about the students, field trips, and other happenings in the fourth grade. While the teachers meet, the students participate in visual and performing arts enrichment activities (VAPA).

7. On February 15, 2023, there was a curriculum expert meeting set for 9:00 a.m. in the conference room at Arroyo Vista. Ms. Dawson arrived before Ms. Shepherd. She did not recall when Mr. Fenton and Ms. Washburn arrived, but Ms. Shepherd arrived last. They all sat around the table. Mr. Fenton was sitting next to Ms. Shepherd. Ms. Dawson was sitting across from Ms. Shepherd. Prior to Ms. Shepherd’s arrival, Ms. Dawson and others had already started to discuss some of the topics. When Ms. Shepherd arrived, Ms. Shepherd gave “some pushback” on matters already discussed and her tone was “argumentative.” Ms. Dawson “suspected” Ms. Shepherd might be “under the influence of something.” Ms. Dawson said she could smell “alcohol” on Ms.

² Dual immersion classes are classes taught in both English and Spanish.

Shepherd's breath and "her demeanor was typical of someone who was under the influence of alcohol." Ms. Shepherd's speech was "a little bit slurred," her "facial muscles were relaxed," and her eyelids "were a little down."

8. Ms. Dawson became emotional while testifying and explained that alcoholism runs in her family. She has a family member who she was very close to pass away from complications stemming from alcoholism last year, and another family member has had a lifelong struggle with alcoholism. Once she suspected Ms. Shepherd might be under the influence of alcohol, Ms. Dawson became "a little triggered" and had to leave. Prior to leaving, she had been in the meeting about 10 minutes. She used the excuse that she had to get her math book. After she left the room, she ran into the school psychologist, Rebecca Asman. She told Ms. Asman that she needed to talk to her because she was upset. Ms. Dawson told Ms. Asman that she was "sorry" for what she was "about to dump" on her, and said she did not think Ms. Shepherd was sober. Ms. Dawson reported her belief to Ms. Asman because she thought it should be on "someone's radar" as she did not want to be the one to "make this call." Ms. Dawson did not want to get Ms. Shepherd in trouble or lose her job because Ms. Shepherd is "a good teacher" and "would not hurt kids."

9. Ms. Dawson returned to the meeting. Ms. Asman came to the meeting as well, and Andrew Tandy, the other school psychologist, also came to the meeting. There were some discussions regarding the Gifted and Talented Education Program, and after being in the meeting for about 10 minutes, Ms. Asman and Mr. Tandy left together.

10. Shortly thereafter, one of the teacher's union representatives, Christina Acosta, came into the meeting and asked Ms. Shepherd to step out. Cristina Quiroga, the Associate Principal at Arroyo Vista and acting principal for that day, also came in.

Those who remained in the meeting “just looked at each other and continued on with [the] meeting.” At some point, Mr. Fenton received a text message and told her and Ms. Washburn that Ms. Shepherd was being accused of being intoxicated at work. At that point, Ms. Dawson sent a text message to Ms. Quiroga informing her that she was the one who reported Ms. Shepherd’s possible intoxication to Ms. Asman, and she would like to remain anonymous. When Ms. Shepherd did not return to the meeting, Ms. Dawson “started panicking” and “wanted to withdraw her statement” because she “feared retaliation at work” if she was wrong.

11. Ms. Dawson had been at “happy hours” before with Ms. Shepherd and never saw Ms. Shepherd intoxicated. She felt this was “really a recent thing.” Ms. Shepherd is a good teacher and a good person and Ms. Dawson did not want to be the cause of “all of this.” She does not regret reporting it because her intention was “for the safety of students” and she believed she was doing the right thing. However, Ms. Dawson does question whether it might have “turned out better” if she had personally spoken to Ms. Shepherd directly rather than reporting it. The whole process has “taken a toll” on Ms. Dawson’s “mental and physical health.”

TESTIMONY OF REBECCA ASMAN

12. Ms. Asman’s testimony is summarized as follows: She has been the school psychologist at Arroyo Vista since July of 2022. Ms. Asman has worked in many capacities as a psychologist and teacher, including working in another state. At Arroyo Vista, her primary duties include working primarily with children in the special education program.

13. On February 15, 2023, Ms. Asman was walking across the school courtyard when she “heard someone calling” to her. She turned around and it was Ms.

Dawson, who had "tears in her eyes." Ms. Dawson was "very shaky." Ms. Dawson claimed she believed Ms. Shepherd was "under the influence" in the curriculum expert meeting and she "felt triggered." Ms. Dawson related some of her family history to Ms. Asman concerning substance abuse issues and it was clear that it "brought up a lot of emotions." Ms. Dawson requested that Ms. Asman accompany her back to the meeting because she was not comfortable. Ms. Asman went to seek advice from Mr. Tandy, and both Ms. Asman and Mr. Tandy decided to accompany Ms. Dawson back to the meeting.

14. When they arrived, Ms. Shepherd, Mr. Fenton, and Ms. Washburn were still in the meeting. Ms. Asman observed that Ms. Shepherd's "eyelids were drooping" a bit and she was "not as awake as normal." Ms. Shepherd was covering her mouth when she talked and her "speech was a little slurred." This was in contrast to how Ms. Shepherd normally spoke, which was always "articulate, outspoken, and confident." Ms. Asman stayed in the meeting for about 15 minutes. Eventually, Ms. Shepherd was asked to leave the meeting by Ms. Quiroga, and Ms. Quiroga said she was "taking over."

15. Ms. Asman remembers Ms. Dawson saying she wanted to remain anonymous and "did not want to endure the stress of whatever may come" from the series of events. The whole issue made Ms. Asman feel stressed and worried for her colleagues, which includes Ms. Shepherd. She has no regrets about being involved, however, because it is her job to "keep student's safe."

16. On cross-examination, Ms. Asman noted that she never smelled alcohol in the conference room. She also noted that she usually parks in the parking lot next to Ms. Shepherd. That morning, she had seen Ms. Shepherd pull into the parking lot

and she parked correctly. She did not hit anything with her car. When Ms. Shepherd exited her car, Ms. Shepherd did not trip or stumble.

TESTIMONY OF ANDREW TANDY

17. Mr. Tandy's testimony is summarized as follows: He has been a school psychologist with the CVESD for 10 years. During the 2022-2023 school year he was assigned to Arroyo Vista. At Arroyo Vista, his primary duties include working with children in the special education program.

18. On February 15, 2023, he "thinks" he recalled seeing Ms. Shepherd pull fast into the parking lot. He recalls the day because it was when everyone found out that their then principal was not going to be at the school any longer. When the principal is not there, Ms. Quiroga would be in charge because she was the assistant principal.

19. On February 15, 2023, Ms. Asman came to him and said that Ms. Dawson was "very stressed" and had "a concern" about Ms. Shepherd. He accompanied Ms. Asman to the curriculum expert meeting and "immediately" smelled alcohol when he walked into the room. Ms. Shepherd, Mr. Fenton, and Ms. Washburn were already in the meeting. While at the meeting, Mr. Tandy observed Ms. Shepherd's demeanor to be "subdued." She was also "covering her mouth" while she talked. Ms. Shepherd usually projects her voice very well and on this occasion, she was talking "slower and quieter" than normal.

20. Mr. Tandy left the meeting and "immediately texted Ms. Quiroga." It was approximately 9:39 a.m. He stated in the text that she needed to call him because there was a concern about a staff member. Ms. Quiroga asked who reported the concern, and Mr. Tandy texted back that Ms. Dawson had reported the concern but

wanted to be anonymous. When Ms. Quiroga called him back, Mr. Tandy related the concerns from Ms. Dawson and what he observed. Ms. Quiroga told him not to permit Ms. Shepherd to interact with any students until she arrived. Mr. Tandy positioned himself in another room where he could see Ms. Shepherd to ensure she did not leave. Ms. Shepherd did leave briefly to go to her classroom but went back to the meeting.

21. Mr. Tandy has “no regrets” about reporting the incident to Ms. Quiroga because if the teacher of his children were intoxicated, he would want it reported because it is a safety concern.

TESTIMONY OF ARNOLD FENTON

22. Mr. Fenton’s testimony is summarized as follows: Mr. Fenton has been a fourth grade teacher at Arroyo Vista for 10 years. He has also taught kindergarten, first grade, sixth grade, and as a substitute.

23. Mr. Fenton recalls February 15, 2023, because on that date, the teachers received an email informing them that the principal – Mr. Ricoy – would not be returning to the school. Mr. Ricoy had been the principal for four years. In Mr. Ricoy’s absence, Ms. Quiroga would become the most senior administrative officer at the school. Mr. Fenton arrived early on February 15, 2023. He estimated it was approximately 7:00 a.m. to 7:30 a.m. He likes to arrive early because that is when he is “most clear-headed.” Mr. Fenton first saw Ms. Shepherd around 8:30 a.m. in the workroom. The workroom has mailboxes, copy machines, and other supplies. He asked Ms. Shepherd if she had heard the information regarding Mr. Ricoy not returning as the principal, and he recalled her being “shocked” and “thrown off-guard regarding the suddenness of the information.” Ms. Shepherd is normally kind-hearted, optimistic, friendly, warm, bubbly, and positive. After hearing the news about Mr. Ricoy, she

became more "aggressive" in her tone. When asked what he meant by "aggressive," Mr. Fenton said he means Ms. Shepherd had a more "curt" and "sharp" speaking pattern.

24. Classes started at 8:45 a.m. He went to his class, took attendance, collected homework, and reminded the children to behave during the VAPA activities because his class could be "kind of squirrely." Mr. Fenton arrived at the curriculum expert meeting around 9:00 a.m. He believed Ms. Shepherd arrived last. The curriculum expert meeting is a time for the fourth grade teachers to discuss things like field trips and student needs. Mr. Fenton sat next to Ms. Shepherd. He recalled Ms. Dawson sat across from Ms. Shepherd and Ms. Washburn might have been across from him. Since Ms. Shepherd was new to the fourth grade, she was asking a lot of questions. Her demeanor was "curt" and "slightly aggressive" and the others had to keep explaining certain things to her. As she continued to ask questions, his "calmness was starting to fade." The meeting "got interrupted" when Mr. Tandy and Ms. Asman entered. At some point, Ms. Washburn suggested a break, so everyone took about a 10 to 15 minute break.

25. When the meeting resumed, the union representative, Ms. Acosta, came in and asked Ms. Shepherd to leave with her. Once they left, everyone started to wonder what happened. Because they had all been informed that day that Principal Ricoy would not be returning, those in the meeting started theorizing that perhaps as he departed, Mr. Ricoy "tried to throw Ms. Shepherd under the bus and take her down with him" because she was always very "vocal" with him. Whenever there were meetings with Mr. Ricoy, Ms. Shepherd always asked a lot of questions about expenditures. Mr. Fenton believed that Ms. Shepherd found Mr. Ricoy to be an ineffective leader, especially when it came to finances. She also found him to be

lacking in knowledge about classrooms and with his communication with staff. Ms. Shepherd was also very frustrated with him because of his lack of management concerning cleanliness when COVID was happening, and online instruction, etc.

26. Later, Mr. Fenton learned that Ms. Shepherd was removed from the curriculum expert meeting possibly because of alcohol. He was in "disbelief" because he did not suspect Ms. Shepherd was under the influence of alcohol that day. He did not notice Ms. Shepherd slurring her speech or unsteady on her feet. That is why he was in such disbelief when he learned about the issue. Mr. Fenton noted that he often saw Ms. Shepherd talking with her hands around her mouth so even if others observed that at the meeting, it was not uncommon in his experience. The meeting lasted until about 11:30 a.m.

27. Mr. Fenton did recall an argument at some point before the curriculum expert meeting between Ms. Shepherd and Ms. Dawson. Ms. Dawson interjected herself into a conversation that Ms. Shepherd was having with another teacher regarding an extension of the dual immersion program. Ms. Shepherd was expressing her concern regarding the possibility of English speaking teachers being displaced. Ms. Dawson took that to mean that Ms. Shepherd did not support the dual immersion program. As Ms. Shepherd provided facts to Ms. Dawson supporting her position, she did so in a calm manner, but Ms. Dawson became more defensive.

28. Mr. Fenton has spent time with Ms. Shepherd outside the classroom, and has observed her drinking. Usually she would have wine, whisky, or tequila. He recalled one time, on February 11, 2023, she drank too much of a drink he had made for her but she did not finish it. After that, she became a bit "loopy," and her speech was slurred. She was "not balanced." She was so impaired he was concerned she might be experiencing a health problem like a seizure or something. He did express to her

"many years ago" a concern about her drinking, but never expressed any concerns about attending Alcoholics Anonymous (AA) or seeking any kind of assistance. He knows she had gastric bypass surgery at some point and that it might make her body respond differently to alcohol.

29. Ms. Shepherd has communicated to him in recent times that she has been experiencing insomnia for "multiple years." She has also shared with him that she has "knee issues" and "mobility challenges," which leaves her in constant pain.

30. Mr. Fenton described Ms. Shepherd as "passionate" about teaching and always willing to help others. Ms. Shepherd assisted many teachers during COVID when everyone was teaching online, because there were many teachers who struggled with technology. Mr. Fenton considers Ms. Shepherd a "good friend." He has met her family and considers Ms. Shepherd to be "trustworthy."

TESTIMONY OF KAREN WASHBURN

31. Ms. Washburn's testimony is summarized as follows: Ms. Washburn has been teaching for 23 years, with most of her teaching experience being in the fourth grade. She has also taught a few third grade classes. During the 2022-2023 school year, Ms. Washburn taught the fourth grade at Arroyo Vista.

32. Ms. Washburn recalled hearing about the "heated" argument Ms. Shepherd had with Ms. Dawson regarding funding for the dual immersion program versus English-only instruction, and how it has not always been "equitable." Mr. Rincoy was always very supportive of the dual immersion program. It seemed that every year the school would add a dual immersion classroom – which would mean the loss of an English-only class.

33. On February 15, 2023, Ms. Washburn arrived at school around 7:30 a.m. While in the curriculum expert meeting, it was a "bit more heated" than normal because Ms. Shepherd was "challenging" the things they were discussing. Ms. Washburn was sitting across the table from Mr. Fenton, and Mr. Fenton was "'pushing back" against what Ms. Shepherd was saying. Ms. Washburn did not notice Ms. Shepherd covering her mouth and did not smell alcohol. Her speech was rapid, and sometimes did not make complete sense, however, Ms. Washburn knows sometimes people can be that way with too much caffeine. Ms. Washburn felt Ms. Shepherd was "a bit off" that day and just not her "normal self." Ms. Washburn said she could not attribute her observations to alcohol.

34. Ms. Washburn recalled seeing Ms. Shepherd later that same day in the principal's office. Someone told her Ms. Shepherd had to go home for the day because Ms. Shepherd was not feeling well. Although she said Ms. Shepherd having come into work that day after having consumed alcohol did not impact her personally, she feels very bad for Ms. Shepherd.

TESTIMONY OF CRISTINA QUIROGA

35. Ms. Quiroga's testimony, and notes she made concerning her recollection of pertinent matters, are summarized as follows: Ms. Quiroga has worked for the CVESD for two years. She has been the acting principal at another elementary school since July 2023. During the 2022-2023 school year, she was the Associate Principal at Arroyo Vista. In that capacity, her duties included supporting the principal, conducting classroom evaluations, and acting as the administrative designee when the principal was not there. Prior to coming to the CVESD, Ms. Quiroga taught elementary school for 20 years in another district.

36. On the morning of February 15, 2023, she was in the district office (not at Arroyo Vista). She was informed that Mr. Ricoy would not be returning as principal as he was going on a leave of absence. She was instructed to email all staff to let them know and informed that she would be the highest ranking administrative official at Arroyo Vista in his absence.

37. Ms. Quiroga recalled being contacted at by Mr. Tandy around 9:39 a.m. concerning Ms. Shepherd possibly being under the influence of alcohol. Ms. Quiroga immediately called Jason Romero, the Assistant Superintendent, to receive guidance. Ms. Quiroga drove to Arroyo Vista. It took her about 20 minutes to arrive. She estimated that she arrived around 10:15 a.m. Once at Arroyo Vista, she contacted Ms. Acosta, a first grade teacher and teacher's union representative and had her come to the office. Text messages around that same time indicated that Ms. Quiroga let Ms. Shepherd speak with her union representative and attorney before any questioning was conducted. Ms. Quiroga was told that if Ms. Shepherd agreed to submit to an alcohol test, she should take her to get tested. Angela Rosendale, D.Ed., Senior Director of Human Resources, came to Arroyo Vista and gave Ms. Quiroga the forms to effectuate the alcohol and drug testing.

38. Ms. Shepherd met with Ms. Acosta and spoke with her attorney for some time. The teacher's union president, Rosie Martinez, also arrived and met with Ms. Shepherd and Ms. Acosta. Meanwhile, Ms. Quiroga conducted a few interviews with school staff concerning the incident. After Ms. Shepherd met with Ms. Acosta and Ms. Martinez, Ms. Quiroga informed Ms. Shepherd that she had reason to believe she was under the influence of an alcoholic beverage, that other staff members had reported smelling alcohol, and that she smelled alcohol. Ms. Quiroga asked Ms. Shepherd if she thought she was under the influence and Ms. Shepherd said she did not "believe" that

she was. Ms. Quiroga gave Ms. Shepherd an order to get tested. According to Ms. Quiroga's notes, this occurred around 11:19 a.m.

39. Ms. Quiroga drove Ms. Shepherd and Ms. Martinez to Sharp Rees-Stealy Medical Center (Sharp). They arrived at Sharp around 12:30 p.m. Dr. Rosendale followed in her own car. They all waited a long time. During that time, she observed Ms. Shepherd "grabbing the wall" when walking from one point to another and also observed that she seemed "sluggish." Normally, Ms. Shepherd is "energetic and smiling." Medical staff called Ms. Shepherd to come back to submit to a breath test around 1:43 p.m. Once the testing was complete, the breath test results showed Ms. Shepherd's results were 0.07 and 0.068 percent.

40. The whole experience was very overwhelming because she knows the consequences of being under the influence and she felt bad for Ms. Shepherd. Ms. Quiroga has no remorse for handling the situation the way she did, however, because she feels she had to do what she did. The day after this incident, Ms. Shepherd initiated a medical leave of absence. A substitute was assigned to her classroom for the rest of the school year.

TESTIMONY OF JASON ROMERO

41. Mr. Romero's testimony is summarized as follows: Mr. Romero is the Assistant Superintendent for the CVESD. He has held this position for two years and three months. He has extensive experience in the field of education, including teaching and supervision positions. His duties include "human capital management," which entails recruiting, hiring, retention, staff development, building relationships with staff, and communicating with staff unions.

42. On February 15, 2023, he recalled being contacted by Ms. Quiroga concerning an employee possibly being under the influence of alcohol. He informed her that one of the senior directors would be sent to provide support to her, in this case, it was Dr. Rosendale. He then contacted the union president, Rosie Martinez. He recalled having a discussion with Dr. Rosendale about getting Ms. Shepherd tested, and also possibly calling the police if she refused because of the "safety of our students." He recalled it took a long time to get her tested. Mr. Romero noted that the "legal limit" for driving is 0.08 percent or above and he felt that the longer they had to wait they would not get the right results. After they got the breath test results, he called the superintendent and they got a substitute for her class.

43. Mr. Romero said the district moved for dismissal because of the "safety of our students," who are mostly nine and ten years old in fourth grade. Other issues that he felt made this a serious case was because staff were concerned, knowing Ms. Shepherd was still a 0.07 percent blood alcohol concentration several hours after being in class, and her being able to effectively manage students in the classroom. Mr. Romero referred to a document entitled, "Elementary Classroom Teacher, K-6," and said Ms. Shepherd failed to meet the job description because she was not a role model, put students in a position of vulnerability, and failed to meet the safety requirements by not being sober. He also referred to a document entitled, "Board Policy 4020 – Alcohol and Drug Free Workplace." He said that because she consumed alcohol she violated this policy and "when a law is broken" he feels this means the board should terminate a teacher. Mr. Romero did not indicate what "law" Ms. Shepherd broke. Mr. Romero said that rehabilitation might have been offered if an employee had a problem with alcohol and approached the district first to notify them of the problem. He said had Ms. Shepherd done this, the district might have referred her to the Employee Assistance Program.

44. On cross-examination, Mr. Romero opined that the “first 15 minutes” of the day are the most “unsafe times” for students because that is when they are at their most vulnerable. He believes Ms. Shepherd coming to work with alcohol in her system is a safety concern and he has “zero tolerance” for that conduct. He also admitted, however, that other than the breath test at Sharp and staff smelling alcohol, he did not have any evidence that showed Ms. Shepherd was impaired. Finally, Mr. Romero stated that he feels allowing Ms. Shepherd to come back to work would send a message that an employee gets “one free chance” to come to work “intoxicated.”

TESTIMONY OF DR. ANGELA ROSENDALE

45. Dr. Angela Rosendale is the Senior Director of Human Resources for the CVESD and has worked for the district since 2002. Dr. Rosendale has held a number of positions in the field of education, including teaching various grades in elementary school, associate principal, coordinator of curriculum, and principal. Her current duties include recruiting, training, supporting supervisors and teachers, and labor union negotiation.

46. On February 15, 2023, Mr. Romero contacted Dr. Rosendale regarding Ms. Shepherd possibly being intoxicated. That morning, Dr. Rosendale was a few miles away from the district office engaged in contract negotiations, which were supposed to take place all day. Dr. Rosendale informed Mr. Romero to let those in charge know to make sure Ms. Shepherd had a union representative present, and if Ms. Shepherd agreed, to have her submit to a chemical test.

47. When Dr. Rosendale arrived at Arroyo Vista, Ms. Shepherd was speaking with her attorney on the phone in the principal’s office. Dr. Rosendale met with Ms. Quiroga, who gave her the same information Mr. Romero had related to her earlier. Dr.

Rosendale, Ms. Martinez, and Ms. Quiroga entered the office after Ms. Shepherd got off the phone, and Dr. Rosendale smelled alcohol. Ms. Shepherd agreed to submit to a chemical test and they went to Sharp around 12:10 p.m.

48. While Dr. Rosendale, Ms. Quiroga, Ms. Martinez, and Ms. Shepherd waited in the waiting room at Sharp. Ms. Shepherd "went to the bathroom several times" and "was drinking lots of water." When the breath test results came back, they were 0.070 and 0.068, which Dr. Rosendale equated with "being under the influence of alcohol." Dr. Rosendale pointed out that the "legal limit" for driving is 0.08 percent. Following the test, Dr. Rosendale drove Ms. Shepherd home, accompanied by Ms. Martinez. During that ride, the conversation was mostly light, regarding their children, and other "chit chat." Ms. Shepherd thanked Dr. Rosendale for the support, and Dr. Rosendale observed Ms. Shepherd seemed to be "OK" walking into her home. Dr. Rosendale informed Ms. Shepherd she was being placed on administrative leave.

49. Dr. Rosendale reviewed several exhibits and explained why they are pertinent to this matter. She noted that, on February 23, 2023, Ms. Shepherd provided a doctor's note from Gabriela Mogrovejo, M.D., indicating Ms. Shepherd was seen at Scripps Coastal Hillcrest Family Medicine (Scripps) on that date, and would be unable to return to work until April 24, 2023. That medical leave was extended two additional times, through August 28, 2023.

50. Dr. Rosendale referred to a document dated May 1, 2009, signed by Ms. Shepherd, acknowledging receipt of various board policies, including Board Policy 4020, regarding a drug and alcohol free workplace. Section 1b of Board Policy 4020 defines "under the influence" as follows:

[W]hen, as a result of ingesting drugs or alcohol, his/her physical and mental abilities are impaired to the extent that such a person is not able to perform his/her job duties without impairment.

51. Dr. Rosendale opined that, due to being “under the influence of alcohol,” Ms. Shepherd violated that policy because she was unable to teach, supervise, or ensure student safety, which are requirements set forth in the job duty description of an elementary classroom teacher. Dr. Rosendale also opined that Ms. Shepherd also violated Board Policy 4020 by being “under the influence” of alcohol, but did not indicate how Ms. Shepherd’s physical or mental abilities were impaired to such an extent that she could not perform her job duties. She explained that conducting field sobriety tests are “not within her purview,” she is “not equipped” to determine the level of intoxication, and she feels since others “smelled” alcohol it meant Ms. Shepherd was “under the influence.”

52. Ultimately, Dr. Rosendale signed the draft Statement of Charges although it was Mr. Romero who made the decision to terminate Ms. Shepherd’s employment.

TESTIMONY OF SHARON CASEY

53. Sharon Casey is the Assistant Superintendent of Student Services for CVESD, and served as the *Skelly* officer in this case. She reviewed a statement written by Ms. Shepherd, and the blood alcohol levels obtained from the breath tests at Sharp. Because Ms. Shepherd still had alcohol in her system nine hours after arriving at school, Ms. Casey considered her to be “impaired.” Ms. Casey explained that staff have to be “role models” for the children and did not feel Ms. Shepherd’s conduct

conformed to that standard. As such, she upheld the recommendation to terminate Ms. Shepherd's employment.

54. On cross-examination, Ms. Casey testified that she could not say Ms. Shepherd's conduct "modeled" intoxication because she did not observe Ms. Shepherd on February 15, 2023. She had no statements from any students indicating how Ms. Shepherd acted with them on February 15, 2023. Also on that date, no students were injured as a result of Ms. Shepherd's conduct and no students were otherwise harmed as a result of Ms. Shepherd's conduct.

TESTIMONY OF MARTIN BREEN, EXPERT FORENSIC TOXICOLOGIST

55. Martin Breen has a Bachelor of Science in biology and chemistry from St. Mary's University, and a Master of Science in Criminalistics from California State University, Los Angeles. He completed post-graduate studies in biological sciences and sports psychology throughout the 1980s and 1990s. Mr. Breen has held positions as a Criminalist, Supervising Criminalist, and Senior Forensic Scientist with the Orange County Sheriff-Coroner Forensic Science Services since the 1970s. In these various positions, he has conducted forensic analyses of biological fluid samples, trained forensic scientists, conducted forensic alcohol analyses and assisted law enforcement agencies in analyzing alcohol test results, conducted investigations and incident reconstructions at crime scenes, and testified as an expert over 2,500 times in the field of forensic toxicology throughout state and federal courts in California. Mr. Breen has also published extensively concerning interpretation of blood alcohol concentration results and been a speaker on the same subject at many professional conferences. Mr. Breen is an expert in the field of forensic toxicology and in the interpretation of blood alcohol concentrations.

56. Mr. Breen explained that, when a person ingests alcohol less than five percent of the alcohol actually is absorbed in the stomach; rather, a majority of it enters the bloodstream by being absorbed in the small intestine. The molecule that makes up alcohol in beverages gets absorbed very quickly; it is totally absorbed in about 40 to 60 minutes. The absorption rate is also affected by the type of alcohol consumed, how strong a drink is, and other factors. As alcohol gets absorbed into the bloodstream, it will begin to affect the brain.

57. The primary organ of eliminating alcohol from the bloodstream is the liver. Generally, alcohol in the blood is reduced/burned off in the bloodstream by approximately 0.015 percent per hour. Drinking water does not increase or decrease the metabolic burn off rate for alcohol, nor does coffee change it. Drinking coffee also does not affect the onset of the effects of alcohol on the brain. That is not to say consuming caffeine will not affect a person, it is just that it will not change the metabolic rate for burn off.

58. Mouth alcohol from belches and burps dissipates in about 15 minutes. Therefore, when testing someone for alcohol using a breathalyzer, it is necessary to watch the person for 15 minutes before the test to ensure any results are not the result of mouth alcohol.

59. Mr. Breen noted that if someone can smell alcohol on another person's breath, "studies" have determined that the blood alcohol concentration of that person is typically between 0.06 percent and 0.10 percent. Gastric bypass surgery does not have any effect on a person's ability to metabolize alcohol. While it may delay the movement of alcohol through the small intestine, it does not do so by very much. Studies have also shown while a person who may not normally drink who all of a sudden drinks hard liquor can sometimes "shock the pyloric valve" which would keep

alcohol in the stomach, it is not typical and that occurs in less than five percent of the cases.

60. Retrograde extrapolation is a manner of calculating someone's blood alcohol concentration by working backwards from the breath test and considering the burn off rate to estimate what someone's blood alcohol concentration was at an earlier time. Based on Ms. Shepherd's breathalyzer tests that showed results of 0.070 at 1:50 p.m. and 0.680 percent at 2:13 p.m., Mr. Breen estimated that around 8:30 a.m. earlier that day when Ms. Shepherd arrived at school, Ms. Shepherd's blood alcohol concentration was approximately 0.15 percent.

61. Mr. Breen referred to a chart in evidence that he created, entitled, "Effects of Alcohol on Driving Ability: Gradient of Progressive Impairment." He uses this chart to explain how alcohol impairs drivers at different blood alcohol concentrations. However, as this chart was designed to show how alcohol affects the average person and does not take into account individual characteristics such as age, weight, amount consumed, drinking habits, food consumed, and other factors, it was of little value in deciding Ms. Shepherd's level of impairment. It also was directed at impaired driving, not teaching.

62. Mr. Breen explained that when a person is "under the influence" they may not actually cognitively perceive that they are "under the influence." Also, "just because they don't demonstrate their impairment does not mean they are not impaired." Nonetheless, Mr. Breen did not have any data showing that Ms. Shepherd had any problems with gross motor coordination, long term memory deficiency, problems with balance, or any of the other symptoms of intoxication listed on his chart that he associated with a blood alcohol concentration of 0.015 percent.

Evidence Presented by Respondent

TESTIMONY OF ROSALENA MARTINEZ

63. Ms. Martinez's testimony is summarized as follows: Ms. Martinez is the Associate President for the teacher's union pertaining to the CVESD. It is a full-time position and she was just elected for her second two-year term. The union has over 1,400 members. Ms. Martinez has been a teacher for over 27 years in multiple districts.

64. On February 15, 2023, Mr. Romero called her and informed her that there was a teacher at Arroyo Vista who was "under the influence." She left to go to Arroyo Vista and arrived around 10:00 a.m. or 10:30 a.m. She also spoke with union staff to get an attorney referral so Ms. Shepherd could speak with an attorney. She told the school staff not to ask Ms. Shepherd any questions until she arrived.

65. When she arrived, Ms. Acosta, a secretary, and Ms. Quiroga were present with Ms. Shepherd. She asked if she could speak with Ms. Shepherd alone, and was permitted to do so. Ms. Martinez has encountered other employees being under the influence before on at least two occasions. When considering whether someone is impaired, pertinent factors are whether the person is able to express an idea coherently, if the person can speak in a manner that makes sense, whether the person's appearance is unkempt or disheveled, and if the person is fidgety. She spoke with Ms. Shepherd for about 10 minutes or so, and during their discussion, Ms. Shepherd was able to communicate effectively. Ms. Shepherd did not cover her mouth with her hands, did not slur her words, and did not otherwise seem impaired. When she finished speaking with Ms. Shepherd, Dr. Rosendale had just arrived. Ms. Quiroga informed her that Ms. Shepherd would be required to submit to a biological fluid test.

66. Ms. Quiroga drove Ms. Shepherd and Ms. Martinez to Sharp. During the car ride, they all engaged in “small talk” about their children and other topics. When they arrived, they all walked into the office. At one point, Ms. Quiroga pointed out that Ms. Shepherd grabbed the wall, but Ms. Martinez did not see that occur. Ms. Martinez said Ms. Shepherd was not unsteady on her feet at all. It seemed like they had to wait a long time at Sharp. When the test was over, Ms. Martinez did not recall anyone saying anything about results, she just recalled that Ms. Shepherd wanted to call her husband. Ms. Shepherd’s husband could not come, so Dr. Rosendale took Ms. Shepherd home and Ms. Martinez accompanied them.

CHRISTINA ACOSTA

67. Ms. Acosta’s testimony is summarized as follows: She is a first grade dual immersion teacher at Arroyo Vista and has been a teacher 26 years. Ms. Acosta is the on-site union representative. From what she knows of Ms. Shepherd, she would describe her as a phenomenal teacher.

68. On February 15, 2023, she remembered being called to the office. She did not know she was going to represent another teacher. When she arrived, she asked to speak with Ms. Shepherd. She believed it was about 9:00 a.m. or 9:15 a.m. She advised Ms. Shepherd of what was being alleged. Ms. Acosta did not observe any symptoms of impairment. She did not smell any alcohol, she did not see anything unusual about how Ms. Shepherd was acting that day. She did notice Ms. Shepherd’s hands were shaking, but noted that her own hands were shaking, too, because of the seriousness of the allegations.

TESTIMONY OF LAUREN SHEPHERD

69. Ms. Shepherd's testimony, and documents she provided that supplement and explain her testimony, are summarized as follows: Ms. Shepherd has a Bachelor of Science degree in applied sciences with a major in liberal studies and minor in geology, and a Master of Arts degree in teaching with a focus on English Language Arts. She has a multiple subject credential with Crosscultural, Language, and Academic Development Certificate. She also has a supplemental science K-12 introductory science credential. Ms. Shepherd used to have a mild to moderate education specialist credential but no longer does. Ms. Shepherd has held many teaching positions dating back to 1985, at the elementary and high school levels. Other jobs she held outside of teaching included medical billing, accounts receivable, office management, and client account management for a medical software company. She was in the medical software field for 17 years before becoming a teacher. Ms. Shepherd never had any substance abuse issues in any of her positions.

70. Ms. Shepherd always wanted to be a teacher since her early childhood. One of her earliest memories was getting leftover ditto sheets and "playing school" with other kids in the neighborhood. Even though she wanted to be a teacher, she got married instead. The other jobs she held for 17 years paid her well and helped her and her husband support their family. She and her husband of 36 years have two adult children, ages 31 and 28. She learned the morning before she gave testimony in this hearing that she will have a new grandchild.

71. Ms. Shepherd went back to school at age 36 to pursue her dream of becoming a teacher. Before Ms. Shepherd came to Arroyo Vista, she taught at five other sites. Ms. Shepherd always had good teacher evaluations, including her most recent evaluation, from June of 2022, where she was ranked "effective" as a teacher in

every area. Ms. Shepherd tries to be a positive role model with students and parents, and feels that she has always respected others and resolved conflicts in positive ways. She said her "positive attitude towards learning is infectious and she believes it inspires her students to want to be good learners." She has received many letters and notes from students and parents in appreciation of her work. She received a Certificate of Recognition in 2017 for her service, having been selected as a "classroom hero" by local organizations, according to the certificate, in acknowledgement of her "dedication and passion for kids and for going above and beyond [her] role of Teacher." Ms. Shepherd has also been very active in extracurricular activities while working for the CVESD.

72. Regarding the exchange between herself and Ms. Dawson concerning the dual immersion program that occurred before February 15, 2023, and which was referred to in other testimony, Ms. Shepherd explained that she was having a conversation with other teachers in the lounge regarding that program. While Ms. Shepherd was relating information to those teachers, Ms. Dawson interjected herself into the conversation and immediately began accusing Ms. Shepherd of "misinformation" and "stirring up trouble." Ms. Shepherd explained to her that the information she was providing about the dual immersion program was factual and was in the minutes from a meeting the teachers had had about the program. Ms. Shepherd walked away to eat her lunch and Ms. Dawson followed her and continued asserting her position. Ms. Shepherd says she is just as passionate about the dual immersion program as Ms. Dawson, but she believed Ms. Dawson took her relating of certain facts as indicating she did not support the program. At any rate, later that day, Ms. Shepherd apologized to Ms. Dawson for the heated exchange.

73. Ms. Shepherd explained that her alcohol use really started during COVID. The isolation and the transition to online education, working seven days a week, having a strained relationship with her husband, and the issues at school with an ineffective principal not committed to the COVID sanitation protocols, all contributed to her depression. Once teachers returned to the classroom after the worst of COVID had passed, there was also an increase in social drinking. Ms. Shepherd, during this time, also started experiencing sleep problems. At the time, she suffered from menopause, osteoarthritis in her hips and knees, had just had gastric bypass surgery, had occasional blood pressure and glucose fluctuations, depression, and anxiety. She could not take NSAIDS for her pain because they are contraindicated for gastric bypass patients, so she would use patches and other topical things to address her pain. To fall asleep, she would first try to watch television, do puzzles, listen to white noise, or listen to audio books. If none of that worked, she would have a drink to try and relax. She even tried melatonin but that did not work either and she was "not raised" to use pills. Ms. Shepherd described her drinking habits as consuming three to five drinks approximately four days a week. The drinks typically would contain wine, bourbon, vodka or gin. Ms. Shepherd said she had consumed alcohol late at night in the past, but never later than 2:00 a.m.

74. In the early morning hours of February 15, 2023, Ms. Shepherd consumed three vodka drinks. Her first drink was about 1:00 a.m. or 1:30 a.m., and her last drink was about 4:00 a.m. or 4:30 a.m. The three vodka drinks contained a few ice cubes, about six ounces of LaCroix soda, and she topped them off with vodka. The tumbler she used was approximately 10 ounces, and Ms. Shepherd estimated each drink contained two to three ounces of vodka. Ms. Shepherd was required to arrive at work at 8:15 a.m., but arrived around 8:30 a.m. Because she was running late, she may have pulled into the school parking lot more quickly than normal.

75. Regarding the curriculum expert meeting, she did not deny that she "kind of got into it" with Mr. Fenton. However, Ms. Shepherd said she and Mr. Fenton had a history of "challenging each other." After she was asked to step out of the curriculum expert meeting, she recalled being asked by Ms. Quiroga whether she "believed" she was intoxicated and she answered that she did not "believe" she was. Ms. Shepherd said while she was waiting to be tested at Sharp, her mouth was dry and she had been talking so much (to her attorney, to her sister, to her husband, and others) so she was drinking water from the cooler in the waiting room. She did not consume any food and did not recall if she had any snacks. The doctor at Sharp performed some kind of "field sobriety type" exam and made notes on a form entitled, "Occupational Health Services Physician's Exam for 'For Cause' Drug Exam." On that form, the doctor circled the box that said, "no clinical signs of impairment." Thus, the blood alcohol results "did not make sense" to her because of all the time that had passed since she last drank alcohol.

76. Following the events of the day, after Dr. Rosendale dropped her off at home, she started drinking as much as she could "to end it before [her] husband got home." Her intention was to try to induce alcohol poisoning. She also cut her wrists. Ms. Shepherd woke up later that night at Bayview Hospital Crisis Intervention Unit and remained there from that night until the next day, February 16, 2023, her sobriety date. The following week, she went to her primary care doctor on February 23, 2023, who recommended she enroll herself in an intensive outpatient program at Sharp Mesa Vista Hospital (Sharp Mesa). Her doctor wrote a note to place her on medical leave.

77. Thereafter, Ms. Shepherd engaged in substantial rehabilitation while she remained on extended leave. During that time, nobody from the district ever asked her for any evidence of rehabilitation. Ms. Shepherd realized on February 20, 2023, when

she attended her first Alcoholics' Anonymous (AA) meeting that she was an alcoholic. Ms. Shepherd attended two intensive outpatient programs (at various times between February 15, 2023, and present) and an inpatient program (from June 8 through June 14, 2023).

78. On March 4, 2023, Ms. Shepherd was admitted to a Dual Diagnosis Intensive Outpatient Program at Sharp Mesa (Dual Diagnosis program). The program lasted until May 8, 2023. The Dual Diagnosis program is a day treatment program that offers integrated treatment for patients who carry both psychiatric and substance abuse or addiction diagnoses. The focus of the treatment, as indicated by a letter from the primary therapist and case manager of the program, is relapse prevention, symptom management, disease education, medication management, sober living skills, cognitive therapy, and coping skills. During that time, Ms. Shepherd attended individual and group therapy regularly, attended AA treatment regularly, and underwent random biological fluid testing for drugs and alcohol.

79. Also between May 31, 2023, and August 18, 2023, Ms. Shepherd attended a Cognitive Behavior Intensive Outpatient program. That program was initially five days a week, but lessened to three days per week towards the end of the program. Patients would attend a class first and then group therapy afterwards. The classes pertained to anger management, mindfulness, problem solving, and how to deal with mental health concerns like depression and anxiety. There was a lot of homework in those classes that pertained to each individual's issue, and when the groups convened after class, they would share their homework. For a brief period during this outpatient program, Ms. Shepherd attended an inpatient program, as described below. Ms. Shepherd remains in "after care" through this program, which

included therapy on Monday afternoons and as of the date of this hearing, she had two more sessions remaining.

80. From June 8 through June 14, 2023, Ms. Shepherd entered an inpatient program that included group therapy, recreation therapy, individual meetings with psychologists, medical monitoring, and medication adjustment. Ms. Shepherd chose to enroll in the inpatient program because it was shortly after the CVEDS board voted to terminate her employment and she was “really struggling” with suicidal ideation. Ms. Shepherd’s attendance in this program was verified by a letter from Kayla Shires, Psy.D.

81. Ms. Shepherd also meets with a private psychologist, Jen Bachtold, Ph.D. She has been seeing Dr. Bachtold from February 28, 2023, to present. Dr. Bachtold is not part of the Sharp Mesa system. Dr. Bachtold helped Ms. Shepherd create a coping and relapse prevention plan. Dr. Bachtold also wrote a letter supporting Ms. Shepherd’s testimony regarding their meetings together, noting that Ms. Shepherd has made significant progress in her therapy and maintained sobriety. Together, they developed a list of triggers and the therapy focuses on how to prevent those triggers from causing a relapse. The therapy employs evidence-based treatment modalities that are adjusted according to the progress made.

82. Ms. Shepherd also sees a private psychiatrist and continues to attend AA at least once every day. She submitted medical billing records, a list of AA attendance sheets, pictures of all the sobriety tokens she has earned and explanations of benefits (medical billing) as evidence of her AA attendance and doctor visits.

83. Ms. Shepherd uses an application on her own that helps remind her on a daily basis to take the medication she is prescribed for her mental health issues. Ms.

Shepherd articulated the 12 steps of the AA program and said the most important thing is recognizing the harm a person causes when they are drinking. She is currently on Step 4 of 12, which involves making amends. Ms. Dawson is on her list. If Ms. Dawson was willing to speak with her, Ms. Shepherd said she would like to thank Ms. Dawson for her courage and what Ms. Dawson did for her. Though this process has been "grueling," Ms. Shepherd is "grateful to [Ms. Dawson] beyond measure." Ms. Dawson's actions put her on "the path of self-awareness towards sobriety." Now Ms. Shepherd has returned to the person she was before she started drinking.

84. Ms. Shepherd described AA as her lifeline. She explained that going to meetings and working the steps are her daily job and she is committed to that for her lifetime in order to help maintain her sobriety. Ms. Shepherd stated if she encountered coworkers who wanted to go out and drink, she would politely decline the invitation. She also surrounds herself with individuals who are supportive of her, such as Mr. Fenton, and having people she can trust will also help her maintain sobriety. Ms. Shepherd tries to keep herself busy so she is never bored or isolated, and develops positive routines in her life. She does this because boredom and isolation are triggers for her. Although she plans to still volunteer for extracurricular activities if she is allowed to return to work, she would take on less activities than she had before.

85. Ms. Shepherd expressed remorse for having alcohol in her system when she reported to work on February 15, 2023. She honestly did not believe she had alcohol in her system. She was tired and crabby but she felt that she would just get coffee and power through the day because she was tired all the time. She went through a Starbucks drive-through and went to work. She has punished herself continuously since that date, and does not know if she will ever truly forgive herself for her lapse in judgement. This incident obviously taught her that alcohol was a problem

for her and she has learned that she cannot drink anymore. Once a person is an alcoholic, there is no such thing as drinking “in moderation.” And she is fine with that because to her, not drinking has so many more benefits than drinking.

86. Ms. Shepherd is “determined and committed” to never drink again. She knows her triggers and how to cope/manage those triggers. She does not even allow alcohol in her home anymore. Ms. Shepherd believes she is fit to resume teaching because she is good at her job. She makes strong connections with students and families. She fosters relations of mutual respect and trust. She achieves results, both academically and behaviorally/socially. She is passionate about teaching and although there are no guarantees in life, Ms. Shepherd can assure the district that she is “100 percent” committed to remaining sober.

Pertinent Documentary Evidence

87. A document entitled, “U.S. Department of Transportation (DOT) Alcohol Testing Form” dated February 15, 2023, had two breath sample results attached. One was a 0.070 percent blood alcohol concentration obtained at 1:50 p.m. The other was a 0.068 percent blood alcohol concentration obtained at 2:13 p.m. A full drug screen was also conducted and that came back negative for every substance tested.

88. A form dated February 15, 2023, and entitled, “Occupational Health Services Physician’s Exam for ‘For Cause’ Drug Exam,” signed by the physician who examined Ms. Shepherd prior to her breathalyzer test at Sharp, showed the doctor asked Ms. Shepherd a number of questions and examined her physical state. The doctor noted “no clinical evidence of impairment.”

Applicable District Policies

89. The district submitted various documents that constitute policy for the CVESD, including the following:

90. Board Policy 4020, Drug and Alcohol Free Workplace. This policy states no employee shall, among other things, use or be under the influence of any alcoholic beverage, "before, during, or after school hours at school or in any other District workplace." It further defines "under the influence" as when a person's "physical or mental abilities are impaired to the extent that such person is not able to perform his/her job duties without impairment." The policy gives the CVESD board authority to take disciplinary action, up to and including termination. Administrative Regulation 4020, Drug and Alcohol Free Workplace Notice to Employees, recites the principles stated in Board Policy 4020, and describes various actions that the CVESD may take for violations.

91. Board Policy 4057, Employee Safety. This policy states that safety is the responsibility of all employees, and the board expects all employees to use safe workplace practices. Administrative Regulation 4057, Employee Safety, recites the principles stated in Board Policy 4057, and describes various actions the CVESD may take for violations.

92. Board Policy 5131.6, Alcohol and Other Drugs. This policy states that the use of alcohol or other drugs adversely affects a student's ability to achieve academic success, is physically and emotionally harmful, and has serious social and legal consequences. The policy further states it is the board's desire to keep the district free of alcohol and other drugs to create a safe environment conducive to learning. The policy contains multiple ways that the district will go about its duties to ensure the

workplace is free of alcohol and drugs. Administrative Regulation 5131.6, Alcohol and Other Drugs, recites the principles stated in Board Policy 4057, and describes various actions the CVESD may take for violations.

93. Board Policy 5142, Safety. This policy states general principles concerning the safety of students and explains the duties of employees and other staff in various scenarios that may pose an adverse effect on student safety. Administrative Regulation 5142, Safety, recites the principles stated in Board Policy 5142, and provides additional clarification on what staff should do in specific scenarios to maintain student safety.

LEGAL CONCLUSIONS

Applicable Law

1. Complainant has the burden of proving the allegations. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) "Preponderance of the evidence" means evidence that has more convincing force than that opposed to it. 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. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (§§ 44932, 44934, & 44944.)

3. When a school board recommends dismissal for cause, one may only vote for or against the dismissal; the Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (§ 44944, subd. (d)(1).)

4. Pursuant to Education Code section 44932, a permanent certificated teacher may be dismissed for immoral conduct (*Id.* at subd. (a)(1)), dishonesty (*Id.* at subd. (a)(4)), and evident unfitness for service (*Id.* at subd. (a)(6)). A district may also immediately suspend the employee from his or her duties for immoral conduct. (§ 44939, subd. (b).)

5. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” The court delineated the following criteria to determine whether a teacher’s conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.*, at pp. 229-230.)

6. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the *Morrison* factors, the court provided additional factors that may be considered to

determine if there is a nexus between the conduct and a teacher's fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.*, at fn. 5.)

IMMORAL CONDUCT

7. There is broad discretion in determining what constitutes immoral conduct in the context of teacher disciplinary matters. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.) The term "immoral conduct" stretches 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* (1969) 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 and *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.)

8. Immoral conduct alone cannot serve as a basis to terminate a teacher unless the conduct indicates the teacher is also unfit to teach. (*Palo Verde, supra*, at p. 972.)

EVIDENT UNFITNESS FOR SERVICE

9. Unfitness for service means "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound." (*Palo Verde, supra*, at p. 972.) As a threshold matter, the *Morrison* criteria are examined to ascertain whether the conduct in question indicates it is related to the teacher's fitness to teach. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) In this

sense, the purpose of examining the *Morrison* criteria is to establish a nexus between the proven conduct and fitness to teach.

10. However, even if the *Morrison* analysis shows a nexus between the conduct and fitness to teach, it must also be determined that the alleged conduct shows evident unfitness for service. (*Morrison, supra*, at p. 1445.) "Evident unfitness for service" means clearly not fit for teaching, ordinarily by reason of temperamental defects or inadequacies; it connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

DISHONESTY

11. In *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220, fn 12, the California Supreme Court required application of the Morrison factors to the determination of "dishonesty." As the Court noted: "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Ibid.*)

12. In an often-cited definition, the court stated in *Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717:

Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As put by the court in *A/sup v. State*, 91 Tex. Cr. 224, 'dishonesty

denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.'

Evaluation of the Factual Allegations

13. The issue is threefold: whether the conduct in the Statement of Charges occurred, if that conduct violates a statute (here, immoral conduct, evident unfitness, or dishonesty), and if so, whether respondent is unfit to teach.

14. The evidence established that Ms. Shepherd, a veteran teacher with an unblemished record, arrived at work on February 15, 2023, with alcohol in her system. Although hours later her blood alcohol concentration was 0.07 and 0.06 percent, Mr. Breen's credible and learned testimony regarding retrograde extrapolation suggested that her blood alcohol concentration at the time she arrived at school would have been higher. It is impossible to know precisely how much higher, however, because there are many factors that influence how a person metabolizes alcohol. Nonetheless, any amount of alcohol in her system when she arrived for school that day was, at a minimum, unprofessional.

15. However, alcohol in one's system is not enough to warrant termination from her teaching position. It requires a showing of immoral conduct or evident unfitness for service. The district in this case treated the concepts of the blood alcohol concentration limit for *driving* a vehicle as being "*under the influence*" for all purposes. They are not - and this distinction is important. This confusion likely occurred because of the zero-tolerance policy for consuming alcoholic beverages and commitment to an alcohol-free workplace expressed in the various board policies and administrative regulations. Simply because a teacher violated that policy does not mean the teacher is "under the influence." Board Policy 4020 and Administrative Regulation 4020 define

“under the influence” as a person whose “physical or mental abilities are impaired to the extent that such person is not able to perform his or her job duties without impairment.”

16. The evidence did not show that Ms. Shepherd was impaired to such an extent that she could not perform her job. She woke up on February 15, 2023, went to Starbucks, got her coffee in the drive through, drove to work, parked her car, led her students to class, presided over class until the curriculum expert meeting, arrived at the meeting, and began discussing topics with the other attendees. It was not until that meeting that anyone even noticed anything different about Ms. Shepherd and their testimony did not establish impairment. Ms. Dawson testified she smelled alcohol, Ms. Shepherd’s demeanor was “typical of someone who was under the influence of alcohol,” and her speech was “a little bit slurred.” Ms. Dawson said Ms. Shepherd’s eyelids were “a little down,” her facial muscles were “relaxed,” and there was “some pushback” because Ms. Shepherd was addressing issues that had already been addressed before she arrived. Ms. Asman observed Ms. Shepherd’s eyelids were dropping a bit and she was “not as awake as normal,” covered her mouth when she talked, and her speech was “a little slurred.” Mr. Tandy smelled alcohol on Ms. Shepherd, noticed she covered her mouth when she talked, and that her demeanor was “subdued.” However, none of these observations showed Ms. Shepherd’s physical or mental abilities were impaired such that she was unable to do her job, and some of those observations were contradicted by the testimony of other witnesses.

17. Even if they did establish impairment, the observations of the above-referenced individuals are not consistent with the observations of Mr. Fenton, who was the only one actually seated right next to Ms. Shepherd in the curriculum expert meeting. Although Ms. Shepherd did engage in heated conversation in which Mr.

Fenton described her speech as "aggressive" and "curt," he never smelled alcohol on her and at no time suspected her of being under the influence. Mr. Fenton did not indicate that any discussions were hampered or that they were otherwise unable to conduct the curriculum expert meeting because of any impaired behavior by Ms. Shepherd. Indeed, Mr. Fenton explained on cross-examination that he did not attribute Ms. Shepherd's "curt" tone during the discussion as being attributable to being "under the influence." Though Mr. Fenton is a friend of Ms. Shepherd, he did not appear to have any bias in favor of Ms. Shepherd and his testimony was credible. Mr. Fenton's testimony did not establish Ms. Shepherd's physical or mental abilities were impaired to the extent that she was unable to perform her job duties.

18. Dr. Rosendale also smelled the odor of alcohol but did not articulate any physical characteristics or observations that showed Ms. Shepherd was "under the influence." To the contrary, it appeared that all Ms. Shepherd's interactions with Dr. Rosendale were normal and professional throughout the day, up to and including when Dr. Rosendale drove Ms. Shepherd home after Ms. Shepherd submitted to the chemical test at Sharp. During that drive, Ms. Shepherd, Dr. Rosendale, and Ms. Martinez even engaged in "chit chat" about their children. Nonetheless, Ms. Rosendale opined that Ms. Shepherd was unable to teach, supervise, or ensure the safety of the children in her class because she was "under the influence" of alcohol. Her basis was because the chemical test showed Ms. Shepherd's blood alcohol concentration was 0.0720 and 0.068, and the "legal limit for driving is 0.08 percent." It is true that the Legislature determined the highest blood alcohol concentration a person can have for purposes of driving a motor vehicle is 0.08 percent, however, a blood alcohol concentration of 0.08 percent has not been established as per se impaired for all purposes. Dr. Rosendale's testimony did not establish that Ms. Shepherd's physical or

mental abilities were impaired to the extent that she was unable to perform her job duties. In fact, the evidence suggested she did perform them.

19. None of the other witnesses who interacted with Ms. Shepherd on February 15, 2023, added any compelling evidence that Ms. Shepherd was impaired to the extent that she was unable to perform her job duties. When asked on cross-examination whether there was any evidence of impairment besides the breath test and odor of alcohol, Mr. Romero testified that he did not have any “evidence of impairment” but was concerned that not terminating Ms. Shepherd’s employment would “send a message” that a teacher gets “one free chance” to come to work intoxicated. But, the evidence did not show Ms. Shepherd was “intoxicated.” Ms. Casey’s testimony echoed Mr. Romero’s testimony, mainly, that she was concerned about protecting children. Concern about the perception other employees might have, and being worried about protecting the children, are certainly valid concerns. However, no evidence was put forth to show Ms. Shepherd actually posed a danger to anyone. In other words, worry about the potential for a *future* problem does not establish that Ms. Shepherd’s *present* physical or mental abilities were impaired to the extent that she was unable to perform her job duties, as stated in Board Policy 4020 and Administrative Regulation 4020.

20. And finally, even the document signed by the physician at Sharp showed “no clinical evidence of impairment.” In sum, while it is clear that Ms. Shepherd had alcohol in her system when she reported to work on February 15, 2023, a preponderance of the evidence did not show she was “under the influence” within the meaning of applicable law or board policy. In fact, the weight of the evidence points to the contrary.

21. Regarding the allegations about dishonesty, the district conflated the concepts of fact and opinion. Ms. Quiroga asked Ms. Shepherd if she *believed* she was “under the influence.” There are two problems with this question. First, no definition of “under the influence” was given. “Under the influence” means something different in case law, criminal law, civil law, and administrative law. Commonly, when law enforcement questions individuals suspected of driving under the influence, an officer will ask whether the person feels the effects of the alcohol. This question is clear regarding what is being asked; asking a person whether they are “under the influence,” is vague. At any rate, Ms. Shepherd answered that she did not *believe* she was under the influence. That was her opinion, and she is entitled to it. Even if the evidence had established that Ms. Shepherd was “under the influence,” which it did not, Ms. Shepherd’s response was a subjective one. She did not believe she was under the influence, and she cannot be faulted for her subjective opinion. She was not dishonest. The allegation of dishonesty, in violation of Education Code section 44932, subdivision (a)(1), was not established.

22. Simply put, although Ms. Shepherd had alcohol in her system when she reported for work on February 15, 2023, and having alcohol in her system may have violated Board Policy 4020 and Administrative Regulation 4020, the evidence does not support a finding that Ms. Shepherd posed a danger to students or staff, or that she was otherwise “impaired” or “under the influence,” within the meaning of board policy and applicable law, such that she could not perform her job duties.

Ms. Shepherd is not Unfit for Service and Termination is Not Warranted

23. For the reasons discussed above, a preponderance of the evidence did not establish that Ms. Shepherd’s conduct was immoral, or that she is unfit to teach.

24. Immoral conduct is that which is hostile to the welfare of the general public and contrary to good morals, inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness, willful, flagrant, or shameless, among other things. (*Weiland, supra*, at p. 811.) On this record, as discussed above, at best, Ms. Shepherd's conduct was unprofessional and evidence of very poor judgement. However, she was not charged with violating Education Code section 44932, subdivision (2), unprofessional conduct, she was charged with immoral conduct. While she should not have consumed alcohol so close in time to when she had to report for work, and she does not dispute as much, that conduct does not rise to the level of immoral conduct within the meaning of applicable law. The allegation that Ms. Shepherd violated Education Code section 44932, subdivision (a)(1), was not established.

25. Finally, whether Ms. Shepherd's proven conduct shows she is unfit to serve under Education Code section 44932, subdivision (a)(6), warrants a review of the *Morrison* factors.

26. Likelihood that the conduct may have adversely affected students or fellow teachers. The evidence did not show that Ms. Shepherd's conduct had any adverse effect on her students. No students testified about any adverse effects. No evidence showed anything adverse happened in Ms. Shepherd's classroom during the time she was in class. The evidence did show Ms. Shepherd had an adverse effect on other CVEDS staff by virtue of having to put the curriculum expert meeting on hold, and spend a significant amount of time driving her to a testing location, getting her tested, and having school administration take time away from duties they were otherwise required to do.

27. Degree of such adversity anticipated. Although several teachers and other district staff were inconvenienced on February 15, 2023, it was one day, one time. In teacher misconduct cases, it is not unusual for the alleged misconduct to extend for months, if not years, and encompass many students, teachers, and other staff. There were no instances in this case of any adverse effect on students. Other than the same inconvenience as discussed above by virtue of having to take time away from their schedules to get Ms. Shepherd tested, and the unfortunate "trigger" experienced by Ms. Dawson as a result of smelling alcohol, the degree of adversity in this case was relatively low.

28. Proximity or remoteness in time of the conduct. The conduct is recent, having occurred on February 15, 2023.

29. Type of teaching certificate held by the teacher. Ms. Shepherd holds a multiple subject teaching credential, and as such, is responsible for teaching elementary school children. If Ms. Shepherd had been extremely intoxicated, or conducted herself in a manner such that she was irresponsible, impaired, and otherwise unable to perform her job, this factor would be concerning. Children often cannot fend for themselves and depend on teachers to keep them safe. Nonetheless, in this case, the evidence did not show Ms. Shepherd's conduct actually adversely affected those she is responsible for teaching under her credential.

30. Extenuating or aggravating circumstances, if any, surrounding the conduct in question. The extenuating circumstances in this case are that Ms. Shepherd was suffering from depression, insomnia, and other personal issues that caused her to make the poor choice to drink so close in time to reporting for work. COVID was an unusual time, created uncharacteristic periods of isolation for everyone, and no doubt significantly contributed to Ms. Shepherd's mental health. Ms. Shepherd identified the

isolation as one of her triggers. Moreover, her perception that the principal at AVESD was not adhering to sanitation protocols (whether true or not) in the midst of a deadly pandemic was also an extenuating factor in that it added to the stress placed on her mental health. There were no aggravating circumstances. Although the district argued Ms. Shepherd failed to take responsibility, that was not the case. Ms. Shepherd not only took responsibility for the events of February 15, 2023, she also detailed each and every rehabilitative step she has taken to demonstrate her commitment to sobriety, as outlined above.

31. Praiseworthiness or blameworthiness of the motives resulting in the conduct. Ms. Shepherd drank irresponsibly. This conduct is certainly not praiseworthy, and although her motives to drink the morning of February 15, 2023, were mostly because she could not sleep, those motives are blameworthy because Ms. Shepherd should have made the better choice and not gone to work that day.

32. Likelihood of the recurrence of the conduct in question. This is a major factor that cuts in favor of Ms. Shepherd and outweighs most of the other factors. It is rare that, after only one instance of having alcohol in one's system while at work, any professional undertakes the many efforts towards rehabilitation exhibited by Ms. Shepherd. Rehabilitation is a "state of mind" and the law looks with favor upon rewarding with the opportunity to serve, one who has achieved "reformation and regeneration." (*Pacheco v. State Bar* (1987) 43 Cal.3d 1041, 1058.) Rather than make excuses for what occurred, Ms. Shepherd explained the circumstances of her life in February 2023, how she identified what her triggers were, and demonstrated an unwavering commitment to sobriety. She used her medical leave to attend not one but two outpatient programs. She recognized during the second program that she needed a little extra help and voluntarily entered a brief inpatient program. She attends AA not

because she has to, but because she has made it a way of life. She attends therapy and her therapist is supportive of her return to work. She has surrounded herself with positivity and, with the assistance of behavioral health professionals, developed a relapse prevention plan. She has been sober since February 16, 2023, and by all indications, used the February 15, 2023, incident as a wake-up call. Ms. Shepherd recognized how one instance of bad judgement could not only affect her career, but could affect others, as well. On this record, given all the rehabilitative steps she took and continues to take, the likelihood of recurrence is low.

33. Extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. This factor does not apply.

34. "Evident unfitness for service" means clearly not fit for teaching, ordinarily by reason of temperamental defects or inadequacies; it connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) Or, put another way, unfitness for service means "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound." (*Palo Verde, supra*, at p. 972.) Based on an overall consideration of the *Morrison* factors, and this case law, a preponderance of the evidence did not show Ms. Shepherd engaged in any conduct that renders her unfit to serve. To the contrary, she has worked hard and continues to work hard, to ensure that her unblemished multi-decade teaching career is not defined by the single, isolated incident that occurred on February 15, 2023. Having been placed on notice that her conduct is not acceptable

and not what the school district expects, Ms. Shepherd received that message and has done everything in her power to remediate her behavior.

Conclusion

35. In a teacher dismissal case, the Commission may only vote for or against the dismissal; it may not impose probation or an alternative sanction. (Ed. Code, § 44944, subd. (d)(1).) On this record, for the reasons discussed above, and in light of the record as a whole, dismissal is not warranted.

ORDER

The appeal by respondent Lauren Shepherd of her dismissal from employment with the Chula Vista Elementary School District is granted. The district's request to dismiss her is denied. Ms. Shepherd shall not be dismissed from employment with the district. The Notice of Intent to Immediately Suspend Without Pay; Notice of Recommendation for Dismissal; and Statement of Charges filed against Ms. Shepherd, are hereby dismissed.

//

//

//

//

//

The district's decision to immediately suspend respondent without pay is reversed. The district shall provide respondent back pay for any lost wages, benefits, and compensation from any time she was suspended without pay.

DATE: 12/12/2023

John R Solomon

[John R Solomon \(Dec 12, 2023 10:16 PST\)](#)

JOHN R. SOLOMON

Commission Member

DATE: 12/13/2023

Marisela Recendez

MARISELA RECENDEZ, ED.D

Commission Member

DATE: 12/13/2023

Kimberly J. Belvedere

KIMBERLY J. BELVEDERE

Administrative Law Judge

Office of Administrative Hearings