

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

MARIA MIGLIORE (EN 725968),  
A Permanent Certificated Employee,

Respondent.

OAH No. 2016070474

**DECISION**

The Commission on Professional Competence (Commission) heard the above-captioned matter in Los Angeles on December 12 and 13, 2016. The Commission members were Renae Roberts, Helen Shepherd, and Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH).

Complainant was represented by Cherrie Moe, Assistant General Counsel, and My T. Huynh, Associate General Counsel, Los Angeles Unified School District (LAUSD or District).

Respondent Maria Migliore appeared with her attorney, Richard Schwab, Trygstad, Schwab, & Trygstad.

During the hearing, exhibit 52 was ordered sealed to protect confidential information. A separate written order will issue sealing that exhibit.

The matter was submitted for decision on December 13, 2016. Thereafter, the ALJ ordered the matter reopened so that he could review the status of the documentary evidence with counsel for both parties. A telephonic conference was held on March 7, 2017, and the matter again re-submitted for decision on that date. The Commission hereby makes its factual findings, legal conclusions, and order.

**INTRODUCTION AND STATEMENT OF THE CASE**

In this proceeding the District took steps to terminate Respondent, and she demanded a hearing on the matter. Six statutory grounds were asserted in the Amended Accusation as

justifying termination: unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)); immoral conduct (Ed. Code, § 44939); evident unfitness for service (Ed. Code § 44932, subd. (a)(6)); dishonesty (Ed. Code, § 44932, subd. (a)(4)); persistent violation or refusal to obey state laws or regulations, or the district's regulations, for the governance of schools (Ed. Code, § 44932, subd. (a)(8)); and willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District (Ed. Code, § 44939).<sup>1</sup>

In the main, it is alleged that on two occasions Respondent took paid sick leave, and represented and agreed not to be employed elsewhere during her regular work hours, but then worked for a school district in Florida during each leave period. When requested leave, stated in writing and under penalty of perjury, that she had not and would not be so employed.

Respondent provided evidence regarding the facts and circumstances of the events referenced in the Amended Accusation, and asserted she should be retained by the District. However, the District proved the vast majority of the allegations against Respondent, and the Commission finds and concludes, unanimously, that cause for termination has been established.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Complainants Marjorie Josaphat and Jose R. Cantu, Ed.D. each executed the Accusation and the Amended Accusation in this matter while acting in their official capacities as Co-Lead Chief Human Resources Officers of the District.

2. The District commenced this proceeding on May 27, 2016, when Justo H. Avila signed a Statement of Charges against Respondent. Avila was then Chief Human Resources Officer of the District. That Statement of Charges was filed with the District's governing board, which thereafter voted to terminate Respondent.

3. On June 14, 2016, the District gave Respondent written notice of its intent to terminate her, and it served Respondent with a copy of the Statement of Charges. Respondent made a timely request for hearing, which led to the issuance of the Accusation, on July 19, 2016. Respondent then filed a Notice of Defense, and this proceeding ensued. On September 12, 2016, Complainant filed the Amended Accusation. By operation of law, Respondent is deemed to have denied the allegations of the Amended Accusation. All jurisdictional requirements have been met.

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<sup>1</sup> All further statutory references are to the Education Code.

4. Respondent is a certificated teacher employed by the District, and at the times relevant to this decision was teaching second grade students. Respondent holds a multiple subject teaching credential, and she is credentialed for social work. She is separately credentialed or certificated to teach elementary school classes in New York, New Jersey, Connecticut, and Florida. During the time relevant to this proceeding—January through November 2015—Respondent was assigned to teach at 93rd Street Elementary School (93rd Street).

#### *Other Procedural History*

5. Respondent was issued a Notice of Unsatisfactory Acts and a Notice of Suspension for 15 days on February 12, 2016. It is not clear from the record if she actually served the suspension, in that she otherwise taught during the balance of the second semester of the 2015-2016 school year. The Notice of Unsatisfactory Acts asserted that Respondent had engaged in unprofessional and immoral conduct, dishonesty, persistent violation of school laws or reasonable District regulations, and willful refusal to perform regular assignments. These claims were based on assertions that Respondent had been employed in Florida as a teacher on various days while she was on paid illness leave from the District. Other charges, also the subject of this proceeding, were asserted.

6. After Respondent was served with the Notice of Unsatisfactory Acts and Notice of Suspension, she was given notice that the District intended to conduct an Administrative Review hearing, with the purpose of allowing her a chance to respond to the Notices. The hearing, referred to at times in this proceeding as a “Skelly” hearing, or “the Skelly,” was initially scheduled for March 18, 2016, but was reset to April 14, 2016.<sup>2</sup>

7. (A) The Skelly hearing occurred on April 14, 2016, and was conducted by Dr. James Noble, Administrator of Operations for the District’s Local District South. During the proceeding, Respondent was provided with a number of documents pertinent to the matter, including copies of pay records. Respondent and her attorney stated her position, including a claim that she did not work in Florida during her regular work hours for the District, and that the amount of work she did was minimal.

(B) On April 21, 2016, Dr. Noble wrote to Respondent and informed her that notwithstanding Respondent’s assertions and arguments, he intended to recommend her dismissal to the District’s governing board. The District’s Statement of Charges followed.

8. From the time of the Notice of Unsatisfactory Acts through the end of the 2015-2016 school year in June, Respondent continued to teach at 93rd Street.

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<sup>2</sup> This is the shorthand reference typically used to cite the case *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, where the California Supreme Court held that before a permanent employee could be disciplined, some preliminary steps must be taken to ensure due process.

*Findings on the Allegations of the Amended Accusation*

9. (A) It was established, as alleged, that on January 12, 2015, Respondent signed a District Certificated Request for Leave of Absence form (Certificated Request for Leave) requesting leave from January 13, 2015 through May 30, 2015. Near the bottom of the document, set out in a box, it states in part: “I certify I was not and will not be employed elsewhere during my regular work hours within the time period claimed on this certification” (Ex. 48.)

(B) The certification statement was clearly set out above the place on the Certificated Request for Leave where Respondent signed the document. The last line of text above Respondent’s signature states: “I declare under the penalty of perjury that I have read the paragraph above, and it is true and correct.” (Ex. 48, underline in original.)

10. Thereafter, Respondent went to Florida, and worked for the Collier County Public Schools (Collier Schools). She worked for the Collier Schools on 16 days between February 19, 2015, and May 26, 2015. The dates she worked for Collier Schools are: February 19 and 23; March 2, 3, 6, and 27; April 6, 23, and 24; May 1, 7, 12, 13, 15, 19, and 26, 2015. Each of these work days were during the period of paid leave that was granted to Respondent after she submitted the January 2015 Certificated Leave Request.

11. On February 6, 2015, Respondent took and completed two training programs for the Collier Schools. One course was entitled “Diversity Awareness: Staff to Staff.” The other was entitled “Blood Borne Pathogen Exposure Prevention.”

12. On June 1, 2015, Respondent returned to the District from her paid leave and returned to work. She then worked for four days, from June 1 to June 5, 2015, which was the end of the 2014-2015 school year. Thereafter, on the first day of the next school year (2015-2016), August 17, 2015, Respondent started another paid leave.

13. (A) In August 2015, Respondent submitted another Certificated Request for Leave. As with her January Certificated Request for Leave, Respondent certified that “I was not and will not be employed elsewhere during my regular work hours within the time period claimed on this certification.” (Ex. 23.) As with the January Certificated Leave Request, the last text before Respondent’s signature states: I declare under the penalty of perjury that I have read all of the paragraph above, and it is true and correct.” (*Ibid.*, underline in original.)

(B) Respondent’s second Certificated Request for Leave was signed by Respondent on August 14, 2015. The second page of the document, however, acknowledges that request for leave was received on August 12, 2015. Respondent requested leave from August 17, 2015 to January 11, 2016, and her request for leave was granted.

14. Meanwhile, in August 2015, Respondent accepted an offer of employment from the Collier Schools, to work as a second grade teacher, at Village Oaks Elementary School. She worked as a second grade teacher for the Collier Schools on August 7, 2015, at

Village Oaks Elementary School. Later that day, she rescinded her acceptance of employment with Collier Schools. However, on August 8, 2015, she contacted Collier Schools, and enquired if the teaching position was still open. Collier Schools informed Respondent that the position had been filled.

15. On August 12, 2015, Respondent submitted a District Certification of Health Care Provider form to the District. The form stated that Respondent's initial date of incapacity was June 18, 2015, and that her anticipated day of return to the District was January 11, 2016.<sup>3</sup>

16. On November 4, 2015, Respondent submitted another document to the District, a District Request to Return from Leave. It stated Respondent was not available to work until November 20, 2015.

17. During the period from August 15, 2015 until November 20, 2015, Respondent worked on the following days for Collier Schools, even though she was on paid leave from the District, based on her second Certificated Request for Leave. Those days that she worked are: October 22, November 4, 6, 10, and 13, 2015.

18. During 2015, Respondent earned over \$1,400 from working for Collier Schools.

19. (A) It was not established, as alleged, that Respondent applied for work with the Collier Schools on February 6, 2015. However, she did apply for work with the Collier Schools in September 2015. She was then on paid leave from the District. The application asked if she was then "currently employed." Respondent answered "no." (Ex. 23, p. 1.) The application is clearly dated in September 2015 at the end of the document, and she stated she could start work during that time period. It appears that the February 6, 2015 date, which runs across every page of the application, may be a reference to when the form was generated by the Collier Schools.

(B) As part of her application to the Collier Schools, Respondent gave the following information regarding her work experience and teaching experience:

- (i) Dates of employment, 7/2011 to 8/2014
- (ii) School District, Los Angeles Unified
- (iii) Grade & Subjects, Second grade/all subjects
- (iv) Reason for Leaving, Need to live closer to my mother and grandmother.

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<sup>3</sup> As noted in Factual Finding 13(B), the District acknowledged request for leave on August 12, 2015. That date may reflect the submission of the Certification of Health Care Provider.

(C) Other parts of the application, however, indicated that Respondent was still employed by the District. For example, in response to a question as to how much notice she would have to give her current employer, she provided a date. And, in a section that set out some of her job history, she stated that she was “currently in Los Angeles.” (Ex. 25, p. 3.)

(D) Respondent testified that she wanted to appear available for employment by Collier Schools so stated that she was not employed, but did state she needed to give a month’s notice. On balance, Respondent’s statement to the Collier Schools to the effect that she was not then employed while she was on leave was potentially misleading, but not dishonest.

20. (A) It was established, as alleged in Paragraph 10 (a) of the Amended Accusation, that all District teachers were (and are) obligated, as part of their employment, to avoid conflicts of interest and improper outside income. It was further established that such obligations were part of Respondent’s regular assignment as a teacher in the District, and that she failed to comply with her obligations, without reasonable cause, by taking employment in another school system while she was on paid leave from the District.

(B) It was established, as alleged in Paragraph 10 (c) of the Amended Accusation, that demonstration of professional responsibility, integrity, and ethical conduct is a regular assignment of all District teachers, and that Respondent failed to comply with that obligation, without reasonable cause, by taking employment in another school system while on paid leave from the District.

(C) By twice signing a Certificated Request for Leave, and stating therein that she would not and had not worked during regular school hours, Respondent acted unethically, and evinced a lack of integrity. This is especially the case regarding the second of the two Certificated Requests for Leave, because it was signed after she had worked for Collier Schools while on a previous leave. Thus her certified statement, that she had not and would not work elsewhere, looking back was false, and looking forward was made false by her working for Collier Schools in the fall of 2015.

(D) Respondent’s actions constituted violations of the District’s Ethic’s Policy. Her actions constituted a violation of the California Standards for the Teaching Profession as well.

#### *Respondent’s Assertions*

21. (A) Respondent asserted that she did not necessarily work in Florida during her regular District work hours, relying on the time difference of three hours between Florida, and Los Angeles. That assertion was made at the Skelly and during this proceeding. However, the documentary evidence indicates that most of the days when she worked at Collier Schools did overlap with work hours in Los Angeles. Respondent testified that her typical work day at 93rd Street School started at 7:50 to 8:00 a.m., and that if she worked



beginning at 8:15 in the morning Florida time, a full day in Florida would overlap with Respondent's normal work hours for the District. That is, if she worked seven hours in Florida, beginning at 8:00 a.m. Florida time, and left work at 3:00 Florida time, she was working in Florida from 8:00 a.m. until noon Los Angeles time.

(B) Respondent worked seven hours or more for Collier Schools on 13 days: February 19 and 23; March 3, 27, and 30; April 6, 23, and 24; May 1, 7, 15, and 19; and November 6, 2015. She worked four or more hours, which would have created a smaller overlap, on March 2 and 6, May 8, and October 22, 2015.

(C) Relying (after the fact) on the time differences between Los Angeles and Collier County, Florida, is antithetical to the obvious conditions and representations made by Respondent in the January and August 2015 Certificated Leave Requests.

22. (A) Respondent testified she did not read the provisions of either of the Certificated Requests for Leave closely, as it was "fine print." Respondent also testified that she read the document to mean that she could not take a job or sign a contract to work for another entity, implying she believed part-time work was acceptable. She testified on direct exam that "it was hard to understand if I could work, [or] not work. I don't think I read it correctly. It's hard to read as well."

(B) The Commission finds that Respondent's written certifications that she had not and would not work elsewhere during her regular District work hours, to be clear and legible, and obvious to any reasonable teacher signing the form near the statement.<sup>4</sup> Furthermore, in each Certificated Request for Leave Respondent stated under the penalty of perjury she had read the paragraph containing the certification, and that everything she stated was true and correct. As shown above, that statement was underlined, drawing the eye to that oath.

(C) Respondent testified that she had signed other Certificated Requests for Leave after 2012 and prior to the two that are in issue in this case. She said she did not fully read them, and had not asked District personnel about the meaning of the statement pertaining to not working during regular work hours. If that is true, her consistent negligence is hardly a defense to making false statements.

23. Respondent's credibility suffered as a result of her protestations. Her misconduct occurred over a period of months, and she appeared to have little remorse, except, perhaps, for being found out.

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<sup>4</sup> The Commissioners were able to read a less-than-perfect photocopy of each Certificated Request for Leave. It is fairly inferred that the originals were somewhat easier to read.

*The Morrison Factors*

24. (A) Where there is conduct that might justify termination of a teacher, an examination must still be made of whether or not that conduct indicates that the teacher in question is unfit to teach. The misconduct must be shown to have some rational connection, some nexus, to the teacher's ability to teach in the District.

(B) This requirement was first set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229. In that case a teacher had been discovered to be homosexual, though there had been no inkling of that fact within the school. The California Supreme Court held that such alone was not enough to discipline his teaching credential, requiring that some connection of his private conduct be made to his job duties and performance had to be shown. The court listed a number of factors that might be considered in determining whether or not unfitness to teach had been established, but the court ultimately did not find a sufficient connection between the conduct and fitness to teach.

25. (A) The first factor to consider is the likelihood that the conduct may have adversely affected students or fellow teachers. While the principal at 93rd Street asserted that Respondent's actions hurt students, there is little or no hard evidence of such. On the other hand, there may have been an impact on the District or other teachers, in that while Respondent was living and working part time in Florida, the District must have arranged to have other teachers covered her assignment at 93rd Street.

(B) Another factor is the proximity or remoteness in time of the conduct. In this case the misconduct occurred fairly recently, in 2015. In this regard, it should be noted that Respondent twice signed Certificated Requests for Leave.

(C) Another factor is the type of certificate held by the teacher, which in this case is a multiple subject credential allowing Respondent to teach elementary school students.

(D) Extenuating or aggravating circumstances is another *Morrison* factor. In this case there are few extenuating circumstances. Respondent provided evidence that she has had significant medical problems, and personal problems, but that does not excuse or justify false statements to the District. In aggravation Respondent had notice of District policies, including its Ethics Code and other policies. She had executed Certificated Requests for Leave prior to signing the two in question. Finally, her second 2015 Certificated Request for Leave falsely implied that she had not previously worked elsewhere during her regular District work hours.

(E) The praiseworthiness or blameworthiness of the motives resulting in the conduct should be considered. There is no praiseworthiness to the Respondent's conduct, but it was blameworthy to make false statements to the District, and to work, even part time, while on paid illness leave.



(F) Another factor is the likelihood that the conduct in question will recur. The Commission believes that there is a significant likelihood that the Respondent's dishonest conduct would recur. While it might not recur in the context of working while on leave, it is likely she could exhibit dishonesty in another context. As noted by the Court of Appeal, dishonesty is not readily compartmentalized. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.)

## LEGAL CONCLUSIONS

### *Legal Conclusions Generally Applicable To All Claims:*

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944, and Factual Findings 1 through 3.

2. (A) It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence," including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, at 1052.)

(B) The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. That the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative. (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

(C) "On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted—but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability." (*Wilson v. State Personnel Board* (1976) 58 Cal.App.3d 865, at 877-878, quoting *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

3. “Unprofessional conduct” as used in section 44932, subdivision (a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) However, the conduct in question, to amount to unprofessional conduct, must indicate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. “Evident unfitness for service” as used in section 44932, subdivision (a)(5), properly means “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” 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. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence (Zuber)* (1992) 2 Cal.App.4th 1429, at 1444.)

5. “Immoral conduct,” of which Respondent has been accused, is not confined to sexual matters. It 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 (*Weiland*); *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

6. “Dishonesty” needs no especial definition, as it is an ordinary term known to the members of the Commission. However, within the context of these proceedings, not every act of dishonesty will constitute grounds for discipline. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*).)<sup>5</sup>

7. In order for a teacher to be terminated under section 44932, subdivision (a)(7), for persistent disobedience of applicable rules and regulations, it must be established that there has been continuous and constant refusal to obey, or behavior motivated by an attitude of continuing insubordination; a single instance of disobedience is insufficient. (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) It is reasonable to apply such reasoning to section 44939.

8. As noted in the Factual Findings, even where grounds to terminate have been established, such as immoral conduct, dishonesty, evident unfitness for service, or refusal to follow rules and regulations are established, it must also be established that such conduct

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<sup>5</sup> As stated in *Fontana*, “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.” (*Fontana, supra*, 45 Cal.3d at 220, fn. 12.)

renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230; *Fontana, supra*, 45 Cal.3d 208; *Zuber, supra*, 4 Cal.App.4th 1429, 1444-1445; See *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 321.)

#### *Legal Conclusions Pertaining to the Specific Allegations of the Accusation*

9. It was established that Respondent was dishonest in violation of Education Code section 44932, subdivision (a)(4), based on Factual Findings 9 through 23. She twice made false written statements to the District, and she made a somewhat misleading statement to the Collier Schools. This Conclusion is based on Factual Findings 9 through 19, 21 and 22, and Legal Conclusions 1, 2, and 6. (See also *Bassett Unified School District v. Commission on Professional Competence* (1988) 201 Cal.App.3d 1444, 1452 [any reasonably competent person knows you can't be paid by two employers for working the same hours].)

10. It was established that Respondent violated or refused to obey the school laws of the state, or reasonable regulations of the Board. Her violations were persistent, as they occurred on many days over a period of months. Therefore, she violated section 44932, subdivision (a)(8), based on Factual Findings 9 through 23, and Legal Conclusions 1, 2, and 7.

11. (A) It was established that Respondent engaged in unprofessional conduct by making false statements to the District in obtaining leave, and by working for another District while on paid leave, in violation of section 44932, subdivision (a)(1). This Conclusion is based on Factual Findings 9 through 23, and Legal Conclusions 1, 2, and 3.

(B) The Code requires that a teacher that has allegedly engaged in unprofessional conduct be given 45 days' notice of the unprofessional acts, so that the teacher may mend his or her behavior. (Ed. Code, § 44938, subd. (a).) The District may not act on a charge of unprofessional conduct until that 45-day period has run. (*Id.*) The District gave such a notice, and allowed 45 days to run before filing the Statement of Issues. (Factual Findings 2, 3, and 5.) Thus, there is no jurisdictional failing of the type found in *Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251.

(C) There is no evidence of other unprofessional acts of the type alleged in the period following the service of the Notice of Unprofessional Acts, which occurred on February 12, 2016. On the other hand, Respondent did not seek any paid leave, and with the District's knowledge of her behavior, she had every motive not to engage in further dishonest conduct. Given the Commission's concern that some other dishonest conduct could occur, it is difficult to find or conclude that Respondent has mended her ways. Her teaching during the period after February 12, 2016 is an evidentiary matter, to be weighed against other evidence in the case. (*Blake v. Commission on Professional Competence* (1989) 212 Cal.App.3d 513, 517.)

12. It was not established that Respondent is evidently unfit to teach within the meaning of section 44932, subdivision (a)(6), based on Legal Conclusion 4. There was insufficient evidence regarding her temperament; that she remained in her assignment after she received her Notice of Unsatisfactory Acts indicates that her temperament was not and is not an issue.

13. It was not established that Respondent has engaged in immoral conduct within the meaning of section 44939, based on Legal Conclusion 5. While her conduct was not honest, it was not depraved or so rising to the level contemplated by the cases cited in Legal Conclusion 4.

14. It was not established that Respondent refused to perform regular assignments without reasonable cause, as prescribed by the reasonable rules and regulations of the District. At bottom, her leave had been approved, and the record showed, for the second leave period, a medical justification.

15. The *Morrison* factors indicate that Respondent is not fit to teach in the District. (Factual Findings 23 & 24.) Based on all the foregoing, the Commission finds and concludes that Respondent should be terminated from her position as a certificated employee of the District.

## ORDER

Respondent Maria Migliore shall be terminated as a certificated employee of the Los Angeles Unified School District, forthwith.

DATED: March 11, 2017

DocuSigned by:

*Rena Roberts*

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RENAE ROBERTS  
Commission Member

DATED: March 16, 2017

DocuSigned by:

*Helen Shepherd*

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HELEN SHEPHERD  
Commission Member

DATED: March 10, 2017

DocuSigned by:

*Joseph D. Montoya*

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JOSEPH D. MONTOYA  
Administrative Law Judge  
Office of Administrative Hearings