

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

MARSHA MAIETTA,
a permanent certificated employee,

Respondent.

OAH No. 2015031119

DECISION

This matter was heard by Eric Sawyer, Administrative Law Judge (ALJ), Office of Administrative Hearings, State of California, in Lompoc, on August 3-7 and 10-14, 2015.¹

Dannis Woliver Kelley, Ingrid A. Meyers, Esq., and Pamela S. Townsend, Esq., represented complainant Trevor McDonald, Superintendent of the Lompoc Unified School District (District).

Marsha Maietta (respondent) represented herself.

The record was held open after the end of the hearing so the parties could submit closing argument briefs, which were timely received and marked for identification as follows: complainant's, exhibit 74; respondent's, exhibit 127. The record was closed and the matter deemed submitted for decision upon receipt of the closing briefs on October 5, 2015.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Board of Education (Board) is the duly elected, qualified and acting governing board of the District, and is organized, existing and operating pursuant to the provisions of the California Education Code and other laws of the State of California.

2. Respondent was at all times a permanent certificated employee of the District.

¹ On April 24 and 25, 2015, the parties stipulated to waive their right to designate a commissioner to hear this matter, and elected to have the ALJ hear the matter alone pursuant to Education Code section 44944, subdivision (c)(1).

3. On January 13, 2015, complainant, in his official capacity as Superintendent for the District, filed with the Board a Statement of Charges and Recommendation for Dismissal against respondent.

4. At a properly noticed Board meeting held on January 13, 2015, the Board determined that cause existed to dismiss respondent from her position as a permanent certificated employee with the District.

5. On January 15, 2015, the District personally served respondent with the Statement of Charges (Charges) and a Notice of Intent to Dismiss (Dismissal Notice), notifying her that, at the expiration of 30 days from receipt of the Charges and Dismissal Notice, her employment with the District would be terminated, unless she timely demanded a hearing.

6. On February 17, 2015, respondent submitted a request for a hearing to challenge her dismissal.

Respondent's Background Information

7. Respondent has obtained the following credentials and certificates from the California Commission on Teacher Credentialing:

A. Since 1983, respondent has possessed a single subject teaching credential in social sciences, allowing her to teach that discipline in grades 12 and below. She testified that she received a math waiver from a local junior college and therefore was able to teach pre-algebra at the seventh and eighth grade levels, as well as algebra, if there is a shortage of credentialed math teachers.

B. Since 1987, respondent has also possessed a multiple subject credential, allowing her to teach all general subjects in a self-contained class and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades twelve and below, including preschool.

C. Since 1999, respondent has also held a Crosscultural, Language and Academic Development (CLAD) Certificate. Respondent can teach in Spanish and English.

8. Respondent first began teaching approximately 31 years ago for the Los Angeles Unified School District. She taught there for six years, teaching grades one through six. Respondent next taught for the Hesperia Unified School District from 1993-1996.

9. Respondent was hired by the District in 1996. She taught math and Spanish in a bilingual program at Lompoc Valley Middle School, and she was also assigned to Fillmore Elementary School. In 2006, she taught regular, non-bilingual math and science core classes.

10. In 2008, respondent was assigned to teach English Language Learners classes in reading, language and writing. She later was assigned to teach seventh grade math and eighth grade pre-algebra classes.

11. At the start of the 2010-2011 school year, respondent voluntarily transferred to take an Independent Study position at the Camino Real Charter School (charter school), which was located on the campus of Maple High School (Maple). Maple is a continuation high school for students who did not succeed at traditional comprehensive high school programs because they had class credit shortages, attendance or behavior problems, or all three. The Independent Study position was not a direct teaching assignment. Within one month of her transfer, however, the charter school dissolved.

12. The charter school students were reabsorbed by Maple or Mission Valley High School. Respondent remained at Maple. The principal at Maple then, and at all relevant times thereafter, was Kim McCollum (Principal McCollum). In the 2011-2012 school year, Respondent continued with Independent Study classes, which were self-paced by the students, but she was also transitioned to be assigned direct teaching classes at Maple in the future, such as Parenting and Study Skills.

The 2011-2012 School Year

13. Pursuant to Education Code section 44660, et seq., and in alignment with the California Standards for the Teaching Profession (CSTP) and the Certified Bargaining Unit Contract (CBUC) between the District and the Lompoc Federation of Teachers (LFT), the District adopted a uniform system for the evaluation and assessment of the performance of its certificated employees. Respondent testified that she had been evaluated as a teacher at the District under the CSTP for several years before coming to Maple. The evaluation is based on the following six standards contained with the CSTP:

- (1) Engaging and supporting all students in learning;
- (2) Creating and maintaining effective environments for student learning;
- (3) Understanding and organizing subject matter for student learning;
- (4) Planning instruction and designing learning experiences for all students;
- (5) Assessing student learning; and
- (6) Developing as a professional educator.

14. On December 7, 2011, Principal McCollum conducted an informal observation of respondent's classroom performance while she was teaching her Parenting class. By December 21, 2011, respondent acknowledged that she had seen and discussed the Informal Observation of Professional Performance Report drafted by Principal McCollum. In that report, Principal McCollum observed that only approximately five students were engaged during the lesson, while the rest were passive or distracted, and that respondent engaged in arguments with her students. Respondent was rated as "Satisfactory" in all of the aforementioned CSTP standards, except standard 2, in which she received a "Needs Improvement" rating. The report included recommendations for respondent's improvement. As a result of this report, respondent voluntarily began working with a District teaching coach, Carolina Allen.

15. A. In February 2012, a few District staff members advised Principal McCollum that respondent had expressed to them that she was upset with the courses she was assigned and the lack of students enrolling in them. Those staff members expressed concern over respondent raising those issues with them and their discomfort with having those discussions with her.

B. On February 16, 2012, Principal McCollum met with respondent in her classroom to discuss the concerns expressed by respondent to others. Principal McCollum did not tell respondent who had reported their concerns to her. Respondent advised Principal McCollum that she was upset over not teaching math and that students were not enrolling in the classes she had been assigned to teach. She also complained that students assigned to her class had more behavior issues than those assigned to other teachers at Maple. Principal McCollum reminded respondent that she had agreed to teach the Parenting and Study Skills classes. She also told respondent that she would be assigned to teach math classes when she was ready. Principal McCollum reminded respondent of the classroom control problems she had earlier observed during the above-described informal observation. Respondent complained that she felt overwhelmed and needed more time to prepare for her new courses.

C. At the conclusion of the meeting, Principal McCollum agreed to cut-back on respondent's Independent Study course to give her more time to prepare for other assignments, and to ask the two Maple math teachers, David Zivich and Melinda Darway, to help her prepare a math course. Principal McCollum advised respondent to bring such concerns to her in the future, and not fellow teachers.

16. A. In March 2012, respondent received a Professional Development Report (or PDR) covering the period of August 2011 to March 2012, which was drafted by Principal McCollum. The PDR contained evaluations of respondent's performance under the six CSTP categories described above.

B. Respondent received "Satisfactory" ratings in CSTP standards 3 through 6.

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C. Respondent received a “Needs Improvement” rating in standard 1 (Engaging and Supporting All Students in Learning). Among other concerns, Principal McCollum observed that respondent had a hard time calling students by name; respondent did not spend time during independent practice talking with, sitting with, or in-depth questioning of students to see if they were learning; and respondent’s methods for checking students’ understanding were not adequate.

D. Respondent also received an “Unsatisfactory” rating in standard 2 (Creating and Maintaining Effective Environments for Student Learning). Principal McCollum observed that respondent began lessons before the bell rang; students were reprimanded in front of the class - leading to arguments between students and respondent; and students were not signing up for respondent’s classes or were asking to transfer out of her classes. Respondent also was not following basic classroom management procedures. Her students were not: asking for permission to move about the room; staying on task during the lesson; or refraining from side conversations. In addition, students argued with respondent; blurted out answers; and laughed at other students during reprimands. Finally, Principal McCollum noted there was a hostile tone in the classroom when respondent was working with students, and students expressed they did not feel respected. Students also remarked that they felt they “g[o]t in trouble for small things.” These issues made it difficult for students to connect with respondent and created a difficult classroom environment.

E. Principal McCollum recommended that respondent work with a District coach through the Peer Assistance and Review (PAR) process to address respondent’s “Unsatisfactory” and “Needs Improvement” ratings. Principal McCollum concluded that respondent had worked “very hard” to develop and implement her Parenting and Study Skills classes, and that math classes would be added to her schedule the following session at her request. Principal McCollum also noted that respondent spent long hours preparing her classes and was performing satisfactorily in several of the other CSTP standards.

The 2012-2013 School Year

17. A. For many years, David Zivich had been the sole math teacher at Maple. At the beginning of the 2012-2013 school year, he was excited to have two new colleagues help him teach the math classes: Melinda Darway (who was a fairly new teacher at that time) and respondent (who had recently agreed to take on math classes). Mr. Zivich was the senior math teacher, but was never formally recognized as a Math Department Chair.

B. As the new school year approached, the three math teachers reviewed information about their prospective students’ abilities and decided assignments. Because respondent lacked experience in direct math teaching in a high school environment, Mr. Zivich gave respondent the “cushiest” schedule. However, Mr. Zivich became upset when information he needed from respondent was not provided. After he and Ms. Darway spent considerable time working on their own to segregate students and organize the upcoming math classes, Mr. Zivich became incensed when respondent balked at continuing to contribute “unless she was paid.”

C. Mr. Zivich and Ms. Darway decided to finish the preparatory work on their own. Finally, after respondent complained to Ms. Darway about the math class schedule that had been devised, Mr. Zivich sent an e-mail about the situation to Principal McCollum. In it, Mr. Zivich described how respondent placed Ms. Darway in an uncomfortable situation while complaining about the schedule (which Darway and Zivich had crafted) and intimating that the union should become involved. Ms. Darway also advised Principal McCollum of respondent's reaction to the math assignments. Even after respondent vented her displeasure, Ms. Darway volunteered to take one of respondent's Parenting classes to give her more time to prepare for the math classes.

18. A. On October 29, 2012, and as a result of the e-mail from Mr. Zivich and comments made by Ms. Darway, Principal McCollum met with respondent to discuss respondent's conduct. The following day, October 30, 2012, Principal McCollum provided respondent with a written conference summary of the meeting.

B. During the meeting, Principal McCollum informed respondent that, after the master schedule was created one week prior, at least two other District teachers informed her that respondent was vehemently complaining about respondent's course assignment for the following session. Principal McCollum stated that "several staff members" had complained to her, and she testified that "many students" had similarly complained about respondent, but no corroborating evidence was presented of such, other than the complaints by Zivich and Darway. Principal McCollum informed respondent that her negative behavior violated CSTP standard 6.7, which states the expectation that teachers will demonstrate professional responsibility, integrity and ethical conduct in the classroom and school environment; violated the CBUC grievance procedure; interrupted other teachers' educational duties; and constituted creation of a hostile working environment. Principal McCollum also reminded respondent of the meeting they had in February 2012 about respondent complaining to other teachers about her assignments.

C. Principal McCollum, verbally and in writing in the summary she issued, directed respondent to cease this conduct immediately and bring all future complaints to her directly so as not to disrupt the school environment.

D. Respondent disagreed with Principal McCollum and refused to sign the conference summary. She told Principal McCollum that she had a right to have conversations with staff and express herself. Principal McCollum told her she could do so on breaks or after school, but she was not to engage in such behavior when it interfered with staff performing their duties.

E. In her testimony, respondent denied that she vehemently complained to Ms. Darway or otherwise acted inappropriately. She testified that she did not know that Mr. Zivich was upset with her. Because Principal McCollum did not identify who had complained, respondent testified that she was unable to fully respond to Principal McCollum.

19. A. On March 7, 2013, respondent received a Formal Observation of Professional Performance Report (or formal observation report), drafted by Principal McCollum, for a CAHSEE math class taught by respondent on March 6, 2013. The CAHSEE math class was to prepare students for the math portion of the California High School Exit Examination, which they would need to pass in order to graduate. A few days prior to conducting the formal observation, Principal McCollum met with respondent and explained her expectations. In November and December 2012, Principal McCollum also had discussions with respondent regarding her CAHSEE math class, during which she offered thoughts on how respondent could meet the standards in which she had previously received lower ratings, as well as recommended resources respondent could use. In her formal observation report, Principal McCollum rated respondent's performance as follows.

B. Respondent received an "Unsatisfactory" rating in standard 1 (Engaging and Supporting All Students in Learning). Principal McCollum observed that respondent continued to begin the lesson objectives and instructions while students were still entering class; her attempt to use different learning techniques was ineffective as the techniques did not inform instruction or check for understanding; students were consistently shouting out answers with no wait time between the question and answer, nor any structure as to which student answered; and students were engaged in off-task behavior during the lesson.

C. Respondent received an "Unsatisfactory" rating in standard 2 (Creating and Maintaining Effective Environments for Student Learning). Principal McCollum observed respondent continue to reprimand students in front of the class; and classroom management and progressive discipline rules and procedures were still not being followed.

D. Respondent received a "Needs Improvement" rating in standard 3 (Understanding and Organizing Subject Matter for Student Learning). The training and information respondent received was not implemented effectively; she was unable to adapt resources, technology or instructional materials without major support; she was slow to develop courses and consistently requested additional time; and she was still regularly discussing her dissatisfaction with her assigned courses with District staff.

E. Respondent received a "Needs Improvement" rating in standard 4 (Planning Instruction and Designing Learning Experiences for All Students). Principal McCollum observed that respondent had been working with Maple staff to review student data and plan instruction, however, no impact was observed in the classroom; respondent had developed goals for the year, but they had no impact on the classroom; and respondent consistently stated that she needed more time, more training and more help.

F1. Respondent received an "Unsatisfactory" rating in standard 6 (Developing as a Professional Educator) because she had not met her learning goals; her educational goals (additional training, observations and District Task Force meetings) still had no impact on respondent's instruction or student learning; and respondent was continuing to bring complaints to District staff during school hours, disrupting the school environment and creating a hostile work environment.

F2. Although not clear, it appears that this part of the formal observation report related to an e-mail complaint Principal McCollum received from Teresa Redden on November 16, 2012, about an interaction she had with respondent in a copy room. Ms. Redden reported that respondent “was complaining about having to grade CAHSEE prep math tests and only have 3 days to prep for this course.” Ms. Redden explained that she tried to redirect respondent and offer solutions, but she found the conversation with respondent was negative and uncomfortable. Principal McCollum sent respondent an e-mail on November 26, 2012, reminding her of the prior directive that respondent should bring concerns or complaints to Principal McCollum and not disrupt the school environment.

G. Finally, Principal McCollum listed several recommendations for respondent’s improvement, including that she receive support through the District’s PAR program. During their meeting, respondent disagreed with Principal McCollum’s criticisms, and she was not receptive to Principal McCollum’s suggestions. Respondent testified that because Principal McCollum did not identify who had complained about her, she (respondent) did not know whether Ms. Redden actually had a problem with her. She also testified that she did not receive help from her fellow math teachers. She generally disagreed that she was performing poorly at this time and testified that she was following directions given to her by Principal McCollum.

20. A. On April 19, 2013, respondent received a PDR, drafted by Principal McCollum. The PDR covered respondent’s performance as a teacher for the 2012-2013 school year, teaching classes in Parenting, Study Skills and CAHSEE math.

B. Relying primarily on her observations contained in the above-described October 30, 2012 conference summary and March 7, 2013 formal observation report, Principal McCollum gave respondent ratings of “Unsatisfactory” in standard 1 (Engaging and Supporting All Students in Learning); “Unsatisfactory” in standard 2 (Creating and Maintaining Effective Environments for Student Learning); “Needs Improvement” in standard 3 (Understanding and Organizing Subject Matter for Student Learning); “Needs Improvement” in standard 4 (Planning Instruction and Designing Learning Experiences for All Students); “Needs Improvement” in standard 5 (Assessing Student Learning); and “Unsatisfactory” in standard 6 (Developing as a Professional Educator). Principal McCollum listed several recommendations for respondent’s improvement, including that she participate in the District’s PAR program. In conclusion, Principal McCollum noted that, “I believe [respondent] needs continuous sustained support to meet the requirements of the district and state on teacher effectiveness in the classroom. It is my hope that with sustained supervision and review, she will make the necessary progress to ensure the appropriate classroom climate. . . .”

C. Respondent testified that, in her view, Principal McCollum’s PDR was unfair, focused too much on negatives, and ignored her positive performances. She also testified that Principal McCollum overly focused on “small things” and micro-managed her teaching.

D. Respondent submitted a written rebuttal to the PDR on or about April 29, 2013. She provided a lengthy discussion wherein she essentially denied all of the observations and deficiencies noted by Principal McCollum, and concluded that she believed the PDR contained items that were “false, or intentionally misleading.” In addition, respondent submitted a complaint to the District against Principal McCollum, in which she alleged, “Principal was unfair and unprofessional in her evaluation methods in my PDR, including behaviors and accusations that violated my due process rights as a teacher. She has created a ‘hostile work environment’ toward me.” Because this was an internal “staff versus staff” complaint, the LFT did not become involved. Respondent testified that her complaint was investigated by the Human Resources Department, but that no other action was taken.

Respondent is Referred to the District’s PAR Program

21. Due to her consistent unsatisfactory performance ratings of respondent and noted ongoing areas of concern, Principal McCollum referred respondent to the District’s PAR program on or about April 25, 2013. In the PAR referral document she drafted, Principal McCollum noted respondent’s need for continued support to meet the requirements of the State and District for teacher effectiveness in the classroom. Specifically, Principal McCollum requested support for respondent in classroom management and progressive discipline; as well as delivery of direct instruction lessons using appropriate, research-based strategies, checking for understanding, and consistent classroom procedures. Respondent was advised of the referral.

22. Referrals of tenured certificated staff to the District’s PAR program are governed by the Trust Agreement between the District and LFT. The Trust Agreement states that the purpose of the PAR program is to provide quality support and assistance to tenured teachers who have been referred for having unsatisfactory performance. Decisions in the PAR program are made by a panel, which is comprised of four members designated by the LFT and three members designated by the District. The PAR panel reviews all referrals and independently decides whether to accept the teachers in question; and if so, what plan of action is necessary for improvement. The Trust Agreement also contains an “Adjudication” clause, providing a pathway for the resolution “if a dispute arises concerning this trust agreement. . . .”

23. Respondent’s referral was reviewed by the PAR panel. The panel decided that “as a result of [respondent’s] progress during the 2012-2013 school year and the corresponding Professional Development Report (PDR), the [PAR] panel directed that [respondent] participate in the Peer Assistance Review (PAR) Program. The action plan will focus on the [CSTPs].” Carol Arnerich, the LFT Executive Director, testified that the PAR panel must have access to a reasonable amount of documentation before it decides to accept a tenured teacher referred to PAR. After being accepted into PAR, Heather Anderson was assigned as respondent’s PAR Consulting Teacher. Ms. Anderson was tasked with providing respondent support and assistance to help her improve her performance.

24. A. By June 4, 2013, a PAR Action Plan was created and provided to respondent. The Action Plan detailed the specific areas of concern and focus, actions to be taken by respondent, and support to be provided to her. The Action Plan specified that the following areas of the CSTPs were unsatisfactory or in need of improvement:

Standard One: Engaging and Supporting All Students in Learning

1.4 Uses a variety of instructional strategies, resources and technologies to meet students' diverse learning needs.

1.6 Monitors student learning and adjusts instruction while teaching

Standard Two: Creating and Maintaining Effective Environments for Student Learning

All elements.

Standard Three: Understanding/Organizing Subject Matter for Student Learning

3.1 Demonstrates knowledge of subject matter/ academic content standards, and State curriculum frameworks

3.3 Organizes curriculum to facilitate all students' understanding of the subject matter.

3.4 Utilizes instructional strategies that are appropriate to the subject matter.

Standard Four: Planning Instruction and Designing Learning Experiences for All Students

4.1 Uses knowledge of students' academic readiness, language proficiency, cultural background and individual development to plan instruction.

4.2 Establishes and articulates goals for student learning.

4.4 Plans instruction that incorporates appropriate strategies to meet the learning needs of all students.

Standard Five: Assessing Student Learning

5.1 Applies knowledge of the purposes, characteristics, and uses of different types of assessments.

5.2 Collects and analyzes data from a variety of sources to inform instruction.

5.3 Reviews data, both individually and with colleagues, to monitor student learning.

5.4 Uses assessment data to establish learning goals and to plan, differentiate and modify instruction.

Standard Six: Developing as a Professional Educator

6.7 Demonstrates professional responsibility, integrity and ethical conduct.

24. B. The Action Plan further provided for “Teacher Behaviors” with specific directives. Respondent was directed to follow the recommendations noted below:

1. Create and maintain a physical environment that engages all students. Design and implement specific procedures and routines to effectively use instructional time.

2. Create plans for daily lessons that implement direct instruction techniques and a variety of instructional strategies.

a. Lesson plans for the following week will be submitted by Thursday to the administrator and consulting teacher to allow for feedback and recommendations.

3. Establish effective protocols for assertive discipline utilizing the BEST manual for consistent implementation of positive and corrective reinforcements.

4. Use a variety of instructional strategies and resources to increase the assessed learning needs and rigor for all students. Will differentiate instruction based on students’ strengths, interests, and needs.

5. Organize and utilize instructional strategies and curriculum materials to support student achievement and ensure access to the CORE curriculum.

6. Provides opportunities for students to use available materials, resources, and technologies to extend understanding and critical thinking.

7. Develop and articulate goals for student learning
8. Develop a system to routinely communicate accurate and timely information with stakeholders in a professional manner.
9. Collaborate with colleagues concerning instruction and student achievement. Bring concerns and complaints directly to the administrator.

24. C. The Action Plan specified the various forms of support that respondent would be provided, mainly focusing on the functions performed by Ms. Anderson and Principal McCollum.

D. Finally, the Action Plan provided that “[s]atisfactory completion of this action plan serves as a condition of employment.”

25. In her complaint submitted to the District in May 2013, respondent stated that she had been referred to PAR simply because Principal McCollum did not like her and because respondent had exercised her union rights in the past. Respondent offered no testimony concerning the propriety of the PAR panel accepting her referral to the program.

The 2013-2014 School Year and Respondent’s Performance in PAR

26. On September 16, 2013, Principal McCollum observed respondent teach her CAHSEE math class and thereafter completed an Informal Observation of Professional Performance Report. Principal McCollum rated respondent as “Unsatisfactory” and “Needs Improvement” in each category she observed. She noted that respondent began instruction before the bell rang; students had side-conversations and were not paying attention; and respondent was unaware of her surroundings to the extent that one student was standing beside her and she did not seem to notice him. The informal observation report included recommendations for respondent’s improvement. Respondent submitted a written rebuttal.

27. A. On September 5 and 11, 2013, Ms. Anderson visited respondent’s classroom to observe her. She thereafter sent e-mails to respondent summarizing what she saw. Ms. Anderson tried to include encouraging remarks and constructive criticism. The two met on September 13th. At respondent’s request, Ms. Anderson agreed to focus on standard 2 (Creating and Maintaining Effective Environments for Student Learning) because respondent seemed overwhelmed with the Action Plan. Ms. Anderson testified that she had never before had to make such a limitation with other teachers she coached in PAR. The two discussed an upcoming informal classroom observation that Ms. Anderson would conduct.

B. On September 17, 2013, Ms. Anderson observed respondent teach her Parenting class and completed an Informal Observation of Professional Performance Report. Ms. Anderson rated respondent as “Unsatisfactory” and “Needs Improvement” in many categories she observed; and gave respondent such ratings overall for standards 1-4. Ms.

Anderson noted that respondent asked questions of the class, but then answered them herself – meaning that there were minimal expectations placed on students. Ms. Anderson observed that classroom procedures were not established; students were calling out answers; students were not following directions; not all students participated; cell phones were visibly used; students were listening to music while wearing headphones; students interrupted respondent with demands; students dismissed themselves at the end of class; and one student told respondent to “shut up” as he left. Recommendations for improvement were noted.

C. It was clear from Ms. Anderson’s testimony that this was the time when she first became concerned about respondent. At this point in time, Ms. Anderson had noticed that her meetings with respondent were difficult because respondent was not focused, was defensive and she complained about not having various resources. Ms. Anderson felt the complaints were not warranted. For example, respondent complained about not having a textbook “to teach out of,” but Ms. Anderson’s view was that teachers rarely, if ever, have a textbook that will provide them with all of their curriculum and almost always they have to devise or create parts of their own curriculum. Ms. Anderson felt that respondent’s complaints distracted her from focusing on improving her performance.

D. Respondent wrote a rebuttal to Ms. Anderson’s report, in which she stated she was “rebutting what I feel to be exaggerated and unfair unsatisfactoriness in some of the Standard 2 areas.” Respondent concluded, “I feel that Ms. Anderson’s lack of experience with continuation schools is causing her to micro-manage everything I do!”

28. On October 15, 2013, Principal McCollum observed respondent teach her CAHSEE math class and completed an Informal Observation of Professional Performance Report. Respondent received ratings of “Unsatisfactory” and “Needs Improvement” for standards 1 through 5, and a “Satisfactory” for standard 6 (Professional Development). The informal observation report included several recommendations for respondent’s improvement. Principal McCollum testified that at this point, respondent had been late turning in lesson plans. Respondent had requested Principal McCollum to focus on just one or two standards at a time, but Principal McCollum was advised by the District that she could not ignore other standards that were part of the Action Plan. Around this time, respondent had asked for materials to help her develop her CAHSEE curriculum. Principal McCollum advised respondent where she could get them and facilitated transfer of a cabinet to store them in her classroom. Principal McCollum also agreed to allow respondent to take time away from her classes so she could observe other Maple teachers perform in their classrooms.

29. A. On December 2, 2013, Ms. Anderson observed the end of respondent’s second period class and the beginning of her third period class. Ms. Anderson noted that respondent had not implemented her recommendations regarding classroom management and respondent reprimanded students from the front of the room at least three times. Ms. Anderson had advised her previously to approach them and quietly remind them of her expectations. Ms. Anderson documented this observation in an e-mail she sent to respondent, which included additional recommendations for improvement.

B. Ms. Anderson testified that she was disheartened by what she saw that day. Respondent was teaching as she had when she started the PAR program. The students were not engaged. She felt as though respondent was not following her recommendations and spent her time deflecting responsibility for her poor performance.

C. Respondent replied to Ms. Anderson's e-mail. She asked Ms. Anderson to model BEST practices for her, as well as to observe Principal McCollum and other teachers perform. Ms. Anderson testified that respondent's e-mail did not make sense to her because she did not need to see other teachers model her suggestions in order for respondent to improve. Nonetheless, in the ensuing weeks, Principal McCollum modeled one class for respondent, as did Ms. Anderson. As discussed below, respondent was also allowed to watch other Maple teachers perform in their classrooms.

30. On December 10, 2013, Ms. Anderson accompanied respondent on four classroom observations in which they observed four teachers use different instructional strategies. Ms. Anderson summarized these strategies and provided them to respondent in a detailed e-mail on December 13, 2013. Some of respondent's students were in the classes taught by the other teachers. Ms. Anderson testified that those students behaved better than in respondent's class. Ms. Anderson was also surprised when respondent told her that the observations confirmed to her that she was teaching satisfactorily, because she felt she was doing everything that was being done by the four teachers observed. Ms. Anderson did not agree with respondent. Ms. Anderson grew more concerned about respondent.

31. On December 12, 2013, Principal McCollum conducted a demonstration lesson in respondent's classroom, at her request. Her primary intent was to show respondent how she should manage her classroom. Principal McCollum's demonstration was observed by Ms. Anderson. On December 16, 2013, Ms. Anderson summarized the lesson for respondent in a detailed e-mail. She pointed out various strategies respondent could use. Ms. Anderson testified that respondent did not need to see many of those strategies modeled for her; but in time she realized that respondent was not using them anyway.

32. On December 19, 2013, Principal McCollum and Ms. Anderson reviewed respondent's PAR Action Plan with her and revised it as necessary. A copy of the augmented Action Plan was provided to respondent. The December revisions to the Action Plan noted that all of the directives were still "ongoing," and that additional recommendations were added. For example, respondent was directed to ensure daily instruction matched the lesson plans; create seating charts; greet students as they entered the classroom; use less than 25 percent of weekly instruction for copying notes; and communicate daily lesson objectives clearly. Ms. Anderson testified that she did not believe that respondent was following her recommendations.

33. A. Over the following weeks, Principal McCollum and Ms. Anderson conducted several informal observations of respondent teaching in her classroom. At various points during these observations, Ms. Anderson noted students were off-task; lesson plans were not provided on time; more than one daily lesson objective was on the board; seating

charts were not created; respondent was not meeting students at the door; instruction provided was at odds with the lesson plan; no introduction was given to provide context; and students were not using established procedures to answer questions.

B. Ms. Anderson testified that during this period she was becoming frustrated because respondent was not implementing her suggestions; or when respondent did try them, she did not consistently use them. Ms. Anderson's frustration was demonstrated by her demeanor during her testimony, in which she appeared to become emotional when discussing these events. Ms. Anderson felt that respondent was arguing with her over elementary suggestions, such as using seating charts, and that it seemed to her as though respondent felt she knew better how to teach. For example, Ms. Anderson told respondent at least ten times to greet students at the door, a suggestion echoed by Principal McCollum. However, respondent did not consistently do so. Ms. Anderson was also frustrated that respondent consistently failed to timely turn in her lesson plans for review prior to her classes, a subject covered in several e-mails from Ms. Anderson to respondent.

34. A. On January 24, 2014, respondent met with Principal McCollum to go over her expectations of respondent's performance in an upcoming formal observation. The two reviewed respondent's PAR Action Plan, the CSTP, and the formal observation report template. Respondent agreed to submit a lesson plan before the observation.

B. On January 27, 2014, Principal McCollum conducted a formal observation of respondent teaching her CAHSEE math class. On January 29, 2014, respondent received the Formal Observation of Professional Performance Report drafted by Principal McCollum.

C. Respondent received an "Unsatisfactory" rating in standard 1 (Engaging and Supporting All Students in Learning). Principal McCollum observed several students engaging in side-conversations in off-task subjects throughout the lesson; proximity was not being used as a behavior management tool; students were waiting for answers to be given instead of solving problems themselves; students were without materials as the lesson began; respondent failed to follow-up on assertive discipline; and the directive given to establish effective protocols for assertive discipline using BEST practices for consistent implementation of positive and corrective reinforcements was not followed.

D. Respondent received an "Unsatisfactory" rating in standard 2 (Creating and Maintaining Effective Environments for Student Learning). Principal McCollum observed that expected classroom procedures were not clear; students were still calling out answers; students became noisy and off-task; corrective reinforcements were not consistently implemented; seating charts were not submitted; students using cell phones were not corrected; and PAR Action Plan items 1 and 3 were not in place.

E. Respondent received an "Unsatisfactory" rating in standard 3 (Understanding and Organizing Subject Matter for Student Learning). Principal McCollum observed the lesson plans were consistently late; lesson plans did not always match the objective; and lesson plans were not always followed during the class.

F. Respondent received an “Unsatisfactory” rating in standard 4 (Planning Instruction and Designing Learning Experiences for All Students) for many of the reasons stated above.

G. Respondent received a “Needs Improvement” rating in standard 5 (Assessing Student Learning) because Principal McCollum did not observe respondent using pre-testing and/or post-testing in the classroom or effective formative assessment to tie instruction to verified student needs.

H. Respondent received a “Needs Improvement” rating in standard 6 (Developing as a Professional Educator), as the Action Plan and directives were not wholly being implemented and respondent’s lesson plans were not turned in on time.

I. Principal McCollum listed several recommendations for improvement.

J. Respondent wrote a rebuttal to the formal observation report. She complained that Principal McCollum had made “some untrue remarks” about her and that the process was unfair because Principal McCollum did not acknowledge her improvements or positive changes. She also complained that she had not been given any publisher curriculum to teach her courses and concluded that “I believe this is now a union issue.” Through the course of several pages of comments, respondent specifically denied most of the observations noted by Principal McCollum in her observation report and the poor ratings.

35. Over the following few weeks, Principal McCollum and Ms. Anderson made informal observations of respondent’s classroom. Ms. Anderson provided written recommendations on how respondent could improve her teaching, suggested resources she could use, and reiterated prior requests for timely lesson plan submission. Principal McCollum testified that during these informal observations, she saw respondent demonstrating the same problems as before, especially poor classroom management.

36. On February 25, 2014, Ms. Anderson observed respondent teach her CAHSEE math class and completed a Formal Observation of Professional Performance Report on March 3, 2014. Respondent received “Unsatisfactory” and “Needs Improvement” ratings in four of the six standards that were observed, but “Satisfactory” ratings in standards 3 and 6. Ms. Anderson included recommendations for improvement and detailed recommendations for continued implementation of the PAR Action Plan. Ms. Anderson testified that respondent had selected this class for the formal observation. However, respondent later complained to Ms. Anderson that she still felt she was new to CAHSEE. Ms. Anderson testified that was not a valid excuse, because she felt even a brand new teacher could meet the standards teaching this class. She also testified that respondent continued to disregard many of her suggestions.

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37. A. On February 27, 2014, respondent received a PDR, drafted by Principal McCollum and Ms. Anderson. The PDR details their informal and formal observations of respondent from August 2013 to February 2014.

B. For the reasons discussed above, among others, the PDR detailed that respondent received an “Unsatisfactory” rating in standard 1 (Engaging and Supporting All Students in Learning); a “Needs improvement” rating in standard 2 (Creating and Maintaining Effective Environments for Student Learning); an “Unsatisfactory” rating in standard 3 (Understanding and Organizing Subject Matter for Student Learning); an “Unsatisfactory” rating in standard 4 (Planning Instruction and Designing Learning Experiences for All Students); a “Needs Improvement” rating in standard 5 (Assessing Student Learning); and a “Needs Improvement” rating in standard 6 (Developing as a Professional Educator).

C. The PDR noted that the PAR Action Plan was not being followed or implemented in a consistent way by respondent, as required items were often late or missing elements; lessons and instructional strategies were not embedded into daily instruction and classroom procedures or vital elements were missing; instruction was interrupted by classroom management issues on a regular basis; and progressive discipline was not being effectively utilized. Accordingly, overall, respondent’s effectiveness of instruction had not improved significantly. Several recommendations for improvement were included in the PDR.

D. The PDR was initially drafted by Principal McCollum. Ms. Anderson reviewed it and suggested revisions. Both finalized the PDR document together and concurred on the ratings and conclusions expressed therein. Ms. Anderson testified that respondent had not improved while she worked with her. In some areas, respondent showed temporary improvement; but the following day she would revert back to old practices. Ms. Anderson believed that students were not learning in respondent’s classroom and their time was being wasted. Principal McCollum testified similarly. Specifically, she noted that, by the time of the PDR, respondent had not shown sustained improvement. While respondent put some suggestions into practice, she did not thereafter sustain them. Principal McCollum concluded that respondent had not followed the PAR Action Plan.

E. Respondent disagreed with the PDR and submitted a rebuttal on or about March 16, 2014. She complained that the PAR process was unfair, in that Ms. Anderson met with and shared information with Principal McCollum and vice versa. She was concerned that Principal McCollum was unfairly influencing Ms. Anderson’s observations and conclusions about her. Respondent complained that she was accountable for too many standards and that nobody could have focused on so many. She also complained that she had not received intensive support, and that Ms. Anderson and Principal McCollum only modeled one lesson for her each. She explained in great detail why she disagreed with most of the ratings given to her. In conclusion, she stated that she was following the PAR Action Plan, she was improving as a teacher and was proud of her performance at Maple.

Respondent is Formally Disciplined in Spring 2014

38. A. On April 8, 2014, the District served respondent with a “Notice of Unprofessional Conduct and Unsatisfactory Performance,” pursuant to Education Code sections 44932 and 44938 (Notice). The Notice described the events discussed above, including respondent’s unsatisfactory performance documented in her March 2012 PDR, her negative interactions with colleagues, referral to PAR and documented poor performance during the PAR program thus far. Respondent was advised that her conduct toward fellow staff members was unprofessional and thereby violated District Board Policies 4119.21 and 4119.21 E, copies of which were attached to the Notice.

B. The Notice also provided the following directives to respondent:

- Conduct yourself in a professional manner at all times;
- You have been provided with a significant amount of comprehensive directives in the numerous reports, referenced above and attached hereto. Immediately review and comply with all of the directives given to you by the District in those reports;
- Immediately review and comply with any future directives given to you by the District;
- Review and comply with the Education Code sections and Board Policies referenced above.

C. On April 30, 2014, respondent submitted a written rebuttal to the Notice. She reiterated her prior rebuttals and denials of the events described in the Notice. She also contended that she was improperly placed into the PAR program because she was “targeted” by Principal McCollum. She complained that the comments attributed to other teachers were untrustworthy hearsay and that many of the critiques of her teaching were “blatant lies,” untruths, or the product of her not being provided with adequate support or resources.

39. A. On April 9, 2014, Principal McCollum received a written complaint from Mr. Zivich, who indicated that respondent had disrupted him, earlier that morning, as he was preparing for his classes, with complaints about a report she received from the District, presumably the aforementioned Notice. Mr. Zivich wrote that respondent spoke to him in an aggressive and unprofessional tone and, when he told her that he did not wish to discuss the subject with her any longer, that respondent aggressively pursued him into another building and continued to “rant.” Mr. Zivich also complained that respondent had “wrongly accused” him on many occasions of “divulging sensitive information.” During the hearing, Mr. Zivich testified that students were nearby when respondent confronted him. He also testified that after abruptly telling her to stop and then leaving for the office, respondent put her hand on

his back or shoulder and followed him into the office. Mr. Zivich denied divulging any confidential or sensitive information about respondent and testified that he was extremely bothered by this incident, which was clear from his complaint to Principal McCollum, as well as his demeanor while testifying about it.

B. That same day, Principal McCollum spoke with respondent about this incident. Respondent admitted that she showed Mr. Zivich “the letter she received from the District about unprofessional conduct.” But she told Principal McCollum she only approached Mr. Zivich about the document because he was the Maple site representative for the LFT; she denied continuing to discuss it with him after he told her to stop.

C. During the hearing, respondent testified similarly to the account she gave to Principal McCollum. Her testimony that she only approached Mr. Zivich in his capacity as the site union representative was disingenuous. It is clear that she believed Mr. Zivich had disclosed something personal or confidential about her to Principal McCollum and/or the District and she wanted to confront him about that. There is no indication that she attempted to enlist him to support her in challenging the Notice or sought his guidance as a site representative. Respondent also denied accusing Mr. Zivich of doing anything improper, but her testimony was not credible. It is clear from Mr. Zivich’s written complaint, as well as his testimony during the hearing, that that was precisely what respondent was doing. Respondent admitted that she asked Mr. Zivich about how information that only he knew got into the Notice. There would have been no purpose for this conversation but for respondent to confront Mr. Zivich about the information in that part of the Notice.

D. In her testimony, respondent denied following Mr. Zivich into the office or touching him. She testified that she also had business in the office, and that she “held back” for a minute before also entering the office. No other witness to this incident was presented. However, Mr. Zivich was interviewed about the incident by LFT Executive Director Carol Arnerich in August 2014, during which time Mr. Zivich denied being pushed or physically touched by respondent. Under these circumstances, it was not established that respondent continued to aggressively pursue Mr. Zivich after he told her to stop talking to him or that she became physical with him after he did so.

40. A. On April 22, 2014, Principal McCollum received a copy of a complaint about respondent from Maple Counselor Laura Newbre to LFT President Martha Bauer. Ms. Newbre complained that respondent had confronted her in an unprofessional, aggressive manner and accused her of “stacking” her classes with difficult students. Respondent threatened to raise her complaint with the union, which presumably precipitated Ms. Newbre to contact Ms. Bauer. Ms. Newbre stated that respondent’s actions made her feel stressed and uncomfortable, so much so that she experienced back spasms. Ms. Bauer advised Ms. Newbre that she was not sure she could help, but she referred Ms. Newbre to the District’s Human Resource Department and advised her to further document any negative interactions with respondent. It is clear from Ms. Bauer’s e-mail response that she was sympathetic to Ms. Newbre and did not believe she had done anything wrong to respondent. Moreover,

during the hearing Ms. Bauer testified that she had received complaints from other teachers about respondent's similar behavior, which she believed were credible.

B. Ms. Newbre testified during the hearing and reiterated the substance of her written complaint to the LFT. Ms. Newbre testified that respondent accused her of stacking her classes with problem students in order to make her life "miserable." Ms. Newbre credibly denied that assertion, testifying that she had a hard enough job finding appropriate classes for the diverse student body at Maple without adding an overlay of making things hard on respondent. Moreover, respondent presented no credible evidence explaining why Ms. Newbre would behave in such a way. To the contrary, Ms. Newbre credibly explained how class schedules were developed and certain students were assigned to respondent.

C. During the hearing, respondent testified that most of Ms. Newbre's complaint was true, but that she behaved in that manner because she was upset over the events as they were unfolding. However, respondent questioned whether Ms. Newbre suffered back spasms.

41. A. In April 2014, other staff members complained to Principal McCollum about respondent bringing up her personnel issues to them under unwelcomed circumstances.

B. One such staff member was Brian Murphy, Maple's Safe School Liaison. Mr. Murphy submitted a written complaint to Principal McCollum on April 25, 2014, about an incident that happened a few days before when respondent approached him and began an unsolicited "tirade" about certain students assigned to her class by Ms. Newbre. During the hearing, Mr. Murphy credibly testified that this "tirade" made him feel uncomfortable and that he did not think it was fair or appropriate for respondent to involve him in such an issue. During the hearing, respondent conceded that she was frustrated at that time; she probably told Mr. Murphy what he recounted; and that she was just "griping" but not "ranting."

C. On April 24, 2014, Maple teacher Doug English submitted a written complaint to Principal McCollum in which he advised her that respondent approached him in the copy room and remarked that her classes were "full of discipline problem" students, and that she "insinuated" how that happened. Mr. English did not testify, but respondent did not necessarily deny the substance of his complaint. Instead, respondent testified that while the two were in the copy room she simply expressed her opinion to him on how difficult students (who she called "toxic twins") were assigned to her class. Respondent testified that she did not seek out Mr. English and that she did not interrupt his teaching.

D. On April 29, 2014, Principal McCollum met with respondent concerning the complaints she received from respondent's co-workers. She advised respondent that such comments made her co-workers uncomfortable, interfered with their educational duties and were in direct violation of the directives that had been given to her previously. Respondent told Principal McCollum that she had the right to express her displeasure about events at school with co-workers.

42. It was not established by a preponderance of the evidence, as alleged in the Charges, that students shared complaints about respondent on a regular basis, or that other teachers had to calm students down after their interactions with respondent. None of respondent's former students were called to testify, nor were any statements or other documents from any former student offered. None of the teachers who were called as witnesses testified about any such events. While Principal McCollum vaguely alluded to such problems, she did not offer any details in her testimony.

43. A. On or about May 6, 2014, respondent received a written reprimand (May Reprimand) from Hugo A. Pedroza, Ph.D., the District's Director of Human Resources, regarding the various complaints made about her to Principal McCollum by her co-workers. The May Reprimand also mentioned the student complaints discussed immediately above (which were unsubstantiated). Respondent was reminded that she previously had been directed by Principal McCollum and the District to refrain from bringing her concerns and complaints to staff other than her principal in October 2012, November 2012, in her June 2013 PDR and in the April 2014 Notice. Respondent was advised that her conduct violated CSTP standard 6.7, in that her complaining to other staff disrupted the school environment and created a hostile work place. Respondent was advised that her conduct similarly violated portions of her PAR Action Plan pertaining to standard 6. Respondent was also advised that her conduct violated Board Policies 4119.21 and 4119.21 E for the same reasons. Respondent was given a number of directives, including that she "[t]reat all District employees, or any individual with whom you interact, with proper respect, courtesy, and professionalism."

B. On May 19, 2014, respondent submitted a written rebuttal to the May Reprimand. She contended that most of the reprimand was "full of illegalities and untrue accusations" that were "meant to be 'defamatory' to me." She denied having any inappropriate interactions with co-workers, and she vehemently denied that any of her students shared complaints about her to others. Respondent contended that Principal McCollum prompted the other co-workers to complain about her and that she (respondent) was one of the "LEAST disruptive people here of the school environment." Respondent concluded that she had the right to express her opinions on such matters to her colleagues.

The 2014-2015 School Year

44. Before the beginning of the 2014-2015 school year, respondent met with Ms. Arnerich, Ms. Bauer, and Mike Terman, a field representative of the California Federation of Teachers. Mr. Terman had attended prior meetings with respondent and LFT staff. Ms. Arnerich advised respondent that she would start the school year under the 90 day period of improvement specified in the Notice and subject to the PAR Action Plan. Ms. Arnerich advised respondent that she was subject to further discipline for violating the Notice and she encouraged respondent to comply with the PAR Action Plan. Respondent told Ms. Arnerich that she was out of line for making those suggestions. Mr. Terman told respondent that he did not want to see her situation turn into a termination. Respondent told the group, "It's okay if I am dismissed from employment. I will just take my case to court."

45. A. Between August 15, 2014, and August 20, 2014, Principal McCollum received complaints from several Maple staff members that respondent disrupted their work to complain about perceived work issues in a confrontational and accusatory manner. Those complaints were submitted by certificated employees Kristin Anderson, Melinda Darway, Doug English, David Zivich, and non-certificated staff April Martin and Brian Murphy.

B. In each instance, the involved staff members complained that they felt uncomfortable by respondent's actions and found it difficult to work under the circumstances. In fact, Mr. Zivich advised Principal McCollum that he would no longer speak to respondent unless a third party was present to witness the interaction. Ms. Darway had also been gravely offended by some untrue comments respondent made about her relationship with Mr. Zivich. Ms. Newbre similarly did not want to be alone with respondent as a result of her conduct.

C. On September 2, 2014, Principal McCollum met with respondent to go over the complaints she received from the Maple staff members. Respondent was assisted by LFT President Bauer and LFT Executive Director Arnerich. Because Principal McCollum did not identify the six complaining staff members, but only summarized the substance of their complaints, respondent did not know exactly how to respond, though she had an idea of the identities of some of the complaining staff members. Respondent did not necessarily deny making the comments. She maintained that she had the right to express herself on campus and commented that some of those involved were "tattlers." She also accused some of the teachers of having secret meetings without inviting her to join.

D. On September 10, 2014, Principal McCollum issued a written Reprimand (September Reprimand) to respondent regarding these incidents. Respondent was once again directed to bring her complaints about work-related issues to the principal and to not disrupt the school environment "with your issues."

E. On or about September 29, 2014, respondent submitted a written rebuttal. She contended that she was being prohibited from expressing herself in the workplace, and denied that she disrupted other teachers or negatively impacted the school environment. She accused other teachers of engaging in similar conduct. For the most part, she argued that she simply made "comments" but not "complaints." Since she had not been provided with the identities of those involved, she commented on interactions with other staff members who were not the subject of complaints made to Principal McCollum.

F. During the hearing, respondent did not necessarily deny the substance of the complaints made against her by the others. She reiterated many of the points she made in her rebuttal to the May Reprimand. She admitted that she was upset over the events of the prior spring, but she tended to down-play her conduct. She testified that she did not understand why she could not express herself to her colleagues; in her mind, she was not complaining, she was just communicating.

46. A. On September 17, 2014, Principal McCollum observed respondent teach her CAHSEE math class and completed an Informal Observation of Professional Performance Report.

B. Principal McCollum rated respondent as either “Unsatisfactory” or “Needs Improvement” in all six of the CSTP categories. During Principal McCollum’s observation, she saw students engaging in side conversations during the lesson; and students appeared to be waiting for answers to be given to them instead of solving problems for themselves.

C. Several recommendations for improvement were included in the report. Principal McCollum met with respondent to review the report on September 26, 2014.

47. A. On October 13, 2014, Principal McCollum received an e-mail from Maple teacher Matthew Makowetski. He described “an uncomfortable interaction I had with” respondent, in which he asked her if he could take photographs of her homeroom and students during the day. Respondent replied, very vociferously, ““Why? I’m being fired. Why are you going to do it now? I’m being fired. Why are you doing it now after 5 years?”” Mr. Makowetski wrote that respondent repeated that phrase three or four times.

B. On October 14, 2014, Principal McCollum sent an e-mail to the District’s new Director of Human Resources, Barry Schimmel, advising him of the complaint she received from Mr. Makowetski, and adding that during a staff meeting the previous day respondent “brought up concerns about the changes in her homeroom last year while she was out on administrative leave.” (Respondent had been placed on administrative leave the prior spring related to either the Notice or May Reprimand.) Principal McCollum expressed concern that respondent’s behavior was negatively impacting students and staff at Maple and she asked for direction from the District.

C. On a date in October 2014 not specifically established, but not long after Principal McCollum’s October 14, 2014 e-mail to Mr. Schimmel, respondent was placed on paid administrative leave by the District. She never returned to the classroom. In January 2015, she received the Charges and Dismissal Notice referenced in Factual Findings 3-5 above and this matter commenced. She has remained on paid leave while this matter has been pending.²

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² The events described in Factual Findings 44 and 47 were not alleged in the Charges and will not be considered for purposes of cause for discipline, but they may be considered when evaluating the *Morrison* factors and ultimate disposition of this case as discussed in the Legal Conclusions below.

Applicable Board Policies

48. Board Policy (BP) 4119.21 is the District's statement of Professional Standards and it specifies the Board's expectations for how employees are to behave. The preamble of this policy states, "The Governing Board expects district employees to maintain the highest ethical standards, exhibit professional behavior, follow district policies and regulations, abide by state and federal laws, and exercise good judgment when interacting with students and other members of the school community. Employee conduct should enhance the integrity of the district, advance the goals of the district's educational programs and contribute to a positive school climate. . . ."

49. BP 4119.21 E is the District's Code of Ethics of the Education Profession. It includes a preamble in which it is stated that an educator "recognizes the magnitude of the responsibility inherent in the teaching process. The desire for the respect and confidence of one's colleagues, of students, of parents, and of the members of the community provides the incentive to attain and maintain the highest possible degree of ethical conduct."

Respondent's Evidence

50. A. No evidence was presented indicating that respondent had been subject to discipline at the District prior to the events involved in this case.

B. Respondent testified that prior to teaching at Maple, she had received mainly satisfactory evaluations from her other supervisors. However, respondent presented no corroborating evidence, such as evaluations, prior to her time at Maple.

C. The record indicates that respondent had transferred to the charter school under less than favorable circumstances. For example, in notes she contemporaneously kept, respondent referred to being the victim of "secret meetings" and harassment by other teachers at Lompoc Valley Middle School. (Ex. 119, p. 7.) In her rebuttal to the Reprimand issued in May 2014, respondent accused Principal McCollum of using school personnel to make negative complaints about her, which respondent claimed had been done to her and others "at another campus." (Ex. 124, p. 4.)

51. Respondent called and questioned the following witnesses:

A. Daniel Jacobson was a fellow teacher with respondent at Maple. Mr. Jacobson testified that respondent was cooperative and professional with him and that he did not witness her acting unprofessionally with any other teacher "first hand." However, Mr. Jacobson also testified that it should not take a few years to master student behavior at a continuation school like Maple, as respondent contended. To the contrary, he testified that substitutes can do a "fabulous job" and that it took him about one year to master the environment. He also did not remember teacher meetings being cancelled in spring 2014, as respondent contends, and that, in any event, such meetings were routinely cancelled for lack

of agenda material. Mr. Jacobson also denied being solicited by Principal McCollum for negative remarks or complaints made by respondent.

B. Petra Kohler is an attendance clerk at Maple. She testified that respondent was not rude to her or her colleagues. Ms. Kohler heard other teachers make negative remarks about respondent, but she never heard respondent complain about her colleagues. Nor did Ms. Kohler hear Principal McCollum make any negative remark about respondent.

C. Magdalena Flores was a bilingual instructional assistant, who helped various teachers at Maple, including respondent. She testified that some Maple students had difficult behaviors, and that she had seen fights break out in class; but none ever in respondent's classroom. She also testified that some students developed a bond with respondent in her Parenting class. But she never heard Principal McCollum say anything negative about respondent. Principal McCollum simply asked Ms. Flores to tell her if she heard any teachers make negative comments about others because she wanted to maintain a good environment at Maple. Ms. Flores had a hard time answering questions about whether respondent complained about other teachers or acted unprofessionally. However, after long pauses following such questions, Ms. Flores ultimately conceded that on a regular basis respondent made negative comments about other teachers at Maple.

D. Vicki Murray was the PAR Consulting Teacher who replaced Ms. Anderson at the beginning of the 2014-2015 school year. Respondent indicated in her last rebuttals and in her testimony that Ms. Murray was a better PAR coach than Ms. Anderson and generally had a more favorable view of respondent's performance. However, it was clear from Ms. Murray's testimony that she did not have a favorable opinion of respondent's performance in the few months she worked with her before respondent was placed on administrative leave in October 2014. Ms. Murray testified that she tried to support and encourage respondent and that sometimes respondent did well when she applied Ms. Murray's recommendations. However, Ms. Murray found that respondent was not consistent in doing so and overall her performance was not satisfactory. She often observed students not engaged with respondent's lessons and saw many of the same classroom management problems earlier seen by Ms. Anderson and Principal McCollum. Respondent also failed to timely provide lesson plans. Ms. Murray recommended that respondent remain in the PAR program to remedy the problems she saw in the two months she worked with respondent.

E. The union staff members who testified did not support respondent. LFT Executive Director Carol Arnerich did not agree with respondent's complaints that the PAR process had been improperly or unfairly applied to her. She did not believe Principal McCollum unfairly evaluated respondent. She testified that respondent was not receptive to suggestions on how to improve her performance. The area representative, Mr. Terman, simply testified that Principal McCollum should have taken a secondary role in the PAR process to Ms. Anderson, which happened as a result of a meeting convened not long after the PAR process began. He denied ever telling respondent that the District should have provided a rubric for her to use in measuring or achieving improvement in the CSTP standards identified in her Action Plan.

F. In sum, respondent's witnesses did not corroborate her positions taken in this case. None of those witnesses testified that respondent was a good teacher or satisfactorily performed her duties at Maple, including Ms. Murray. While Mr. Jacobson and Ms. Kohler denied seeing respondent act rudely or unprofessionally with other Maple staff members, that testimony gives one pause in light of the number of documented instances where respondent had acted in such a way as to trigger complaints by other teachers. In any event, it is not the position of the District that respondent acted unprofessionally to every teacher at Maple, nor would one expect the evidence to establish the same. On the other hand, respondent's witnesses did corroborate key parts of the District's case. For example, Ms. Murray was clear that respondent's teaching performance remained unsatisfactory in September and October 2014; all the witnesses denied being solicited by Principal McCollum to complain about respondent; Ms. Flores conceded that respondent regularly complained about other teachers; and respondent's union does not support her.

52. Respondent contends that she was improperly and unfairly targeted by Principal McCollum. She also contends that Principal McCollum solicited other teachers to make complaints about her. Respondent's contentions are not credible for the following reasons:

A. No motive was established for Principal McCollum to behave in such a way. In her rebuttals, complaints and testimony, respondent theorized several motivations, none of which were credible or supported by the evidence.³ For example, respondent testified that Principal McCollum wanted to "push out" of Maple the former charter school teachers. In some of her rebuttals, respondent next contended that Principal McCollum wanted to "get rid of" older teachers like her who earned more salary than newer teachers. Respondent later argued in rebuttals that Principal McCollum was upset that respondent had exercised her rights as a union member. Finally, respondent argued in her closing brief that Principal McCollum wanted to remove respondent to make way for science teachers at Maple. The fact that respondent ascribed so many different motivations to Principal McCollum undercut her credibility on this issue.

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³ A party who fails to plead affirmative defenses waives them. (*California Academy of Sciences v. County of Fresno* (1987) 192 Cal.App.3d 1436, 1442.) The contention that conduct amounted to arbitrary unconstitutional discrimination in the application of school district rules and regulations amounts to new matter generally viewed as an affirmative defense. (*Feist v. Rowe* (1970) 3 Cal.App.3d 404, 412.) The same is true for claims of race, gender and age discrimination, or freedom of speech and association. (*Takahashi v. Board of Educ.* (1988) 202 Cal.App.3d 1464, 1476-1477.) In this case, respondent made no mention in her request for a hearing or prehearing documents that she was claiming the acts of Principal McCollum or the District were motivated by respondent's gender, age or because she had exercised her rights as a union member. She thereby waived the right to present them as a defense to her dismissal during the hearing.

B. In her interactions with respondent, Principal McCollum appeared measured and patient. None of the staff who testified had anything negative to say about Principal McCollum, who also seemed to have the esteem of the LFT officers who testified. Moreover, each staff member who testified, whether called by the District or respondent, denied being solicited by Principal McCollum to make complaints about respondent or having heard Principal McCollum make negative comments about respondent. Since Principal McCollum retired from the District well before the hearing, there would have been no reason for any of those staff members to “hold their tongue” about her. To the contrary, the Maple teachers and staff who complained to Principal McCollum about respondent did so on their own accord, after being subjected to complaints and “rants” that left them feeling uncomfortable in respondent’s presence.

C. LFT President Martha Bauer received complaints about respondent from other teachers, who indicated respondent had interrupted their District duties. Ms. Bauer believed those complaints were credible. That fact corroborates Principal McCollum’s testimony about receiving several complaints from others about respondent, which in turn was corroborated by the persuasive testimony of the involved staff members who had complained to her. In addition, LFT Executive Director Arnerich testified that Principal McCollum was not unfair to respondent in her evaluations or during the PAR process. Mr. Terman offered no complaints or critiques about Principal McCollum, other than his desire that she take a secondary role during the PAR process (which she did). If Principal McCollum had acted unfairly or improperly toward respondent, it is expected that members of respondent’s bargaining unit would indicate so when directly questioned. They did not.

D. Overall, it was established that Principal McCollum received bona fide complaints about respondent from Maple staff members. Moreover, Principal McCollum’s observations and evaluations of respondent’s teaching performance were corroborated by the observations and evaluations made by Ms. Anderson and Ms. Murray. That corroboration indicates that Principal McCollum’s evaluations of respondent’s performance were earnest and not motivated by a personal agenda.

53. Respondent also contends that she was improperly referred to, accepted by, and evaluated through, the PAR process. However, LFT President Bauer and Executive Director Arnerich disagreed. Both testified that respondent should have been referred to PAR, that she was properly accepted into the program and that the PAR process was fairly applied to her. Ms. Bauer and Ms. Arnerich personally assisted respondent during various meetings with Principal McCollum and District staff before and during the PAR process. As leaders of the LFT during the time in question, Ms. Bauer and Ms. Arnerich were responsible for ensuring the fairness of PAR and respondent’s treatment during the PAR process. Under these circumstances, the fact that Ms. Bauer and Ms. Arnerich do not support respondent on this point is significant. Finally, respondent never utilized the grievance resolution provision of the Trust Agreement governing the PAR process.

54. Respondent contends that she was not given appropriate support or resources for her assignments at Maple. Respondent’s argument is unpersuasive for several reasons.

A. All the certificated staff who testified indicated that an assignment at a continuation high school is not in itself difficult, other than being able to deal with some behavior challenges that are not insurmountable. Nobody testified that respondent needed the support and resources she complains that she was not provided.

B. Respondent was provided access to Instructional Coach Carolina Allen, her two PAR Consultants Ms. Anderson and Ms. Murray, and was allowed to observe other Maple teachers in action. In addition, Ms. Anderson and Principal McCollum each modeled a lesson for respondent.

C. Respondent was provided with various types of resources, including CAHSEE materials so copious she needed a file cabinet moved into her classroom; SOAR Study Skills materials; an algebra webinar; WEST ED classroom management tools; access to the Santa Barbara County Education Office's professional development catalogue; the *Battling Boredom* book (strategies to engage students); access to the Teacher Resource Center; and the Harry Wong lecture on discipline and procedures. Respondent generally testified that these items were not useful; however, it was not established that she gave a good faith attempt to use them or even that she consulted them.

D. Ms. Anderson and Ms. Murray did not agree with the comments and complaints respondent made about not being provided appropriate support or resources.

55. During her time at Maple, and throughout the hearing, respondent has maintained that she had an unfettered right to express herself and her opinions as to her assignments and personnel issues at Maple to other staff members. She argues that she cannot be subject to dismissal for doing something she has the right to do. However, respondent's argument is unpersuasive for a number of reasons:

A1. Respondent has cited no legal authority supporting her position. However, it has been held that a school teacher may be disciplined for sending to his supervising principal, in response to an evaluation of his performance, a letter that included a series of personal attacks upon the supervisor, published to persons having no direct interest in them, which were made by the teacher solely to vent his anger against his supervisor and not for any purpose relevant to the issues under discussion. (*Shimoyama v. Board of Education* (1981) 120 Cal.App.3d 517, 526-527.)

A2. A teacher at school does not have an unfettered constitutional right to do or say whatever she would like. One significant consideration is whether the teacher's criticism is "at a proper time and in an appropriate place and manner." (*Adcock v. Board of Education* (1973) 10 Cal.3d 60, 69.) Significant state interests which must be considered are: maintaining proper employer-employee relations; whether the person involved is in a direct working relationship with the person affected by the publications; the effect on efficiency and harmony; the need for loyalty and confidentiality; and the effect on discipline. (*Id.*)

A3. In the specific instance when the object of a teacher's attacks is his immediate superior, the threat to harmony and discipline is inevitable. "If attacks upon a superior such as here were given constitutional protection, it would require a hardy administrator indeed to maintain a working relationship and to risk criticizing a subordinate's performance, knowing that the subordinate was free with impunity to retaliate by broadcasting accusations implying that the administrator was a conspirator, a liar and a hypocrite." Such expressions do not enjoy constitutional protection from discipline. (*Shimoyama v. Board of Education, supra*, 120 Cal.App.3d at pp. 526-527.)

A4. Respondent is subject to even less protection, in that her complaints sometimes involved her colleagues, and were made either directly to those colleagues or to other teachers. Respondent's venting of her anger resulted in complaints from several teachers and had the tendency to disrupt and depreciate the environment at Maple, so much so that some of those involved avoided respondent or flatly refused to be alone with her. Under these circumstances, the overriding interests of the District maintaining proper employer-employee relations, the effect on the efficiency and harmony at Maple, and the effect on discipline, all point to respondent having no legal protection for behaving as she did.

B. BP 4119.21 and BP 4119.21 E each require teachers to act professionally and with integrity when interacting with District colleagues. To the extent that respondent's conduct violated those policies, she could be subject to discipline.

C. Respondent constantly told those she complained to, and in her rebuttals to the District, that the directives given to her to not make such complaints to colleagues during work-time "was a union issue." However, the union failed to take any action on her behalf, indicating that the union did not agree with respondent's position. One would expect that if respondent had received an illegal or inappropriate directive in this regard, the bargaining unit representing her would act on her behalf.

56. Respondent's performance during the hearing highlighted some of the problems noted above. For example, respondent had to be reminded repeatedly of events occurring or advisements given to her just hours or minutes before. During the hearing, she appeared unfocused, disorganized and unprepared. She often asked for help from opposing counsel in organizing or understanding her own exhibits. She was unable to follow simple directions, which were given to her frequently, including to not interrupt witnesses who were testifying, comment on their testimony or make visceral, physical reactions to the testimony. In making this finding, the ALJ recognizes that the proceeding had to be stressful for respondent, who is not an attorney, but with that thought in mind, the ALJ nonetheless concludes that respondent likely performed in a similar manner at school.

57. Respondent's defense is primarily supported by her testimony that her teaching was satisfactory during the time in question, and that her interactions with her colleagues were professional. Respondent's credibility therefore is an issue. However, her credibility was under-cut by the following events which indicate that her perception of events, both in real-time and in retrospect, is and was suspect.

A. Maple faculty often held CARE team meetings, in which student behavior and progress was discussed. Respondent insisted that several CARE team meetings were intentionally cancelled but then held at secret locations so that she would be prevented from attending them. No evidence supported her theory, other than her uncorroborated testimony that an unidentified janitor once told her he saw other teachers meeting without her. On the other hand, the teachers who testified confirmed that CARE team meetings were routinely cancelled for lack of agenda material or lack of interest. Principal McCollum was not involved in organizing or running those meetings, and no motive is apparent for other staff members to act as respondent contends. Moreover, though respondent grumbled about such meetings being cancelled, she undertook no effort to provide issues that could be added to the agenda to insure that the meetings went forward or took any other action to organize and convene such meetings on her own.

B. Respondent insisted that Principal McCollum set up a “secret listening post” in an adjoining, vacant classroom. Respondent has consistently maintained that, from this location, Principal McCollum and/or others secretly listened to what respondent was doing in her classroom. In fact, Principal McCollum testified that respondent once told her she believed that the Superintendent and unspecified Board members were also listening to her from this location. Every witness questioned about it denied the existence of such an installation. Respondent provided no direct evidence supporting her theory, other than she once saw chairs arranged in a semi-circle in the adjoining classroom. That happened after Principal McCollum advised respondent how she could get a key to open the adjoining classroom. It is not clear why Principal McCollum would facilitate respondent getting a key in the midst of such a conspiracy and not beforehand remove or rearrange the chairs. In any event, Maple’s Safe School Liaison, Brian Murphy, testified that on occasion the adjoining classroom was used for mediations or for sport activities when other classrooms were unavailable, which would explain why chairs were found in that arrangement.

C. Respondent submitted an excerpt from a parent/student handbook, in which several Maple teachers and their classes were identified and described. (Ex. 115, pp. 1-2.) The author of that document was not identified. Respondent testified that while other teachers were referred to by their last names in the summaries, respondent was only referenced by her first name, which she contends was disrespectful and demonstrated the low regard held for her at Maple. However, that document is not exactly as respondent described in her testimony. For example, Mr. Zivich was referred to as “Z” in three instances, which is his nickname. Mr. Makowetski was also referred to as “Mako” twice, which is his nickname. Deborah Flagg, a Resource Counselor, is not even referenced in the summary after her name and assignment are identified, unlike other staff members. On the other hand, the minutes of a staff meeting held in August 2013 (ex. 65), presumably created at Principal McCollum’s direction, list all teachers, including respondent, by their last names, with the exception of Mr. Zivich (listed as “Mr. Z”) and Zak Claycamp (listed as “Claycamp”). Thus, respondent’s perception of being treated disparately in the parent/student handbook was demonstrated to be unfounded.

D. Finally, respondent has steadfastly maintained that her second PAR Consulting Teacher, Ms. Murray, had a favorable opinion of her teaching. As discussed above, Ms. Murray did not.

58. In her closing brief, respondent makes a number of miscellaneous arguments, including that she was only given elective courses to teach, which contained younger, more immature, and harder to control students; most of Principal McCollum's observations and evaluations were incorrect and she did not include enough positive information; and that other teachers, such as Mr. Zivich and Ms. Darway, were treated more favorably by Principal McCollum, and given more time to prepare for their courses. Respondent's support for those arguments essentially was her self-serving and uncorroborated testimony. As discussed above, respondent's credibility was under-cut such that her testimony alone on these topics was insufficient to establish her contentions. Moreover, her testimony was contrary to the concerted testimony of the other witnesses, including some of those she called.

59. A. Respondent's strongest argument is that testing data (ex. 101, p. 1) shows that there was a four percent increase in the number of tenth grade Maple students who passed the CAHSEE Math examination for each of the 2012/2013 and 2013/2014 school years. Those are the two full school years in which respondent was the only teacher who taught that course at Maple. Respondent uses that fact to argue that her performance could not have been objectively unsatisfactory if her students performed better on the CAHSEE Math examination than in the prior and subsequent years when others taught the CAHSEE Math course.

B. However, the presented data is vague and respondent's interpretation of the raw results is not the only one available. For example, the data shows that the same number of students passed the CAHSEE Math exam in respondent's first year teaching the course as the prior year, and yet a four percent increase was still shown on the data. In addition, the data shows that there were similar increases at the two other high schools and for the District overall during the same time period, which suggests there may have been another dynamic at play. For example, Maple Counselor Laura Newbre testified that the data in question was not statistically significant and that one student having a higher score or fewer students taking the examination after respondent was placed on leave could explain the numbers. Principal McCollum similarly testified that CAHSEE scores can be affected by changes in the number and identity of students taking the exam from year-to-year. She also pointed out that the data in question only covered tenth grade students, and that the missing results of students in the other grades taking the test would be a better reflection of overall student performance.

C. While it was not established that respondent's argument is incorrect, the ambiguous nature of the data and existence of other competing theories explaining it preclude a finding that respondent's interpretation of the data is correct. In any event, the testing data, standing alone, is insufficient to withstand the great weight of all the other evidence presented and explained above.

60. In her rebuttals, complaints and testimony, respondent has accepted little responsibility for her actions. She failed to demonstrate any recognition that her acts may have upset, offended, or at least put-off, her colleagues. In her closing brief, it is clear that respondent believes she did nothing wrong, even after her lengthy opportunities to question and listen to witnesses who clearly and consistently testified that she had. This dynamic is consistent with the observations that respondent was not receptive to suggestions for improvement made by Principal McCollum, Ms. Anderson and Ms. Arnerich. Under these circumstances, there is no reason to believe that respondent's performance or behavior at the District would change in any manner.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In this case, the District has the burden of proving the allegations of the Charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

Cause for Dismissal

2. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in section 44932, subdivision (a), are established. In this case, the District seeks respondent's dismissal based on subdivisions (a)(2) [unprofessional conduct], (a)(5) [unsatisfactory performance], (a)(6) [evident unfitness for service], and (a)(8) [persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her].

3. A. It was established by a preponderance of the evidence that respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(2).

B. Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming a member of the profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.)

C. Respondent engaged in an ongoing pattern of behavior that was likely to, and had, significantly impacted the Maple staff and administration. She was repeatedly disruptive, argumentative and hostile toward several colleagues at Maple in the course of their duties. She often complained to fellow staff members about Principal McCollum and other teachers, so discourteously and vehemently, that her colleagues submitted written

complaints to Principal McCollum. Some of those involved were so uncomfortable with respondent that they asked to never be alone with her. Despite repeated verbal and written warnings to not engage in such behavior, respondent continued to do so, even after receiving the Notice in April 2014, a Reprimand in May 2014 and another Reprimand in September 2014. Such conduct violated CSTP 6.7, a state standard, and District Board policies 4119.21 and 4119.21 E, together which formulated professional standards requiring District teachers to act courteously and respectfully with other members of the District community. Respondent's actions under-cut the mandates of those standards and created a disruptive and negative environment at Maple. Under these circumstances, respondent's behavior violated the rules and ethical codes of the State and District, and was unbecoming of a member of the teaching profession in good standing. (Factual Findings 17-19, 24, 38-41, 43, 45, 48-49, 52, and 55.)

4. A. It was established by a preponderance of the evidence that respondent engaged in unsatisfactory performance within the meaning of section 44932, subdivision (a)(5).

B. The term "unsatisfactory performance" is not specifically defined in the Education Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in section 44932, and it is not to be presumed that the Legislature intended to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that "unsatisfactory performance" does not include any other cause for dismissal specified in section 44932.

C. While unprofessional conduct can be determined by analyzing a teacher's conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by his or her employing school district. Section 44938 supports this proposition as follows. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance. Section 44938 refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs in an unsatisfactory manner to her employing school district.

D. However, it has been observed that the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed in an unsatisfactory manner.

E1. In this case, respondent's conduct rose to the level of unsatisfactory performance. Respondent's primary supervisor, Principal McCollum, believed respondent was teaching in an unsatisfactory manner. Respondent was referred to and accepted by the District's PAR program. The PAR program was substantially staffed by members of respondent's bargaining unit, some of whom testified in this case that respondent's referral to PAR was appropriate and demonstrated she had deficiencies in her performance as a teacher for the District. The two PAR Consulting Teachers assigned to work with respondent uniformly concluded that respondent's performance in the PAR program was unsatisfactory. It cannot be ignored that respondent presented no witness, other than herself, who testified that respondent taught in a satisfactory manner at Maple.

E2. The District developed an assistance plan with respondent to help her meet District standards and apply appropriate classroom management strategies. However, respondent continually failed to comply or meet the expectations articulated in her PAR plan. She also refused to follow multiple directives from her supervisor Principal McCollum to not complain to her colleagues in the course of their duties. Respondent was finally given a Notice in April 2014 outlining her unsatisfactory performance in the classroom and interacting with her colleagues. Respondent thereafter continued to engage in behavior and conduct reflecting a general lack of motivation to improve as a teacher.

F. Under these circumstances, the District's conclusion that respondent's performance was unsatisfactory cannot be viewed as arbitrary or capricious. (Factual Findings 13-49 [except 44 and 47], and 51.)

5. A. It was established by a preponderance of the evidence that respondent is evidently unfit for service as a teacher, pursuant to section 44932, subdivision (a)(6).

B. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "'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." (*Id.*)

C. In this case, respondent was given notice of the District's concerns and repeated opportunities to correct and improve her performance. She refused to do so and thereby continued to create an antagonistic work environment for her peers. She continued to engage colleagues in a hostile and negative way after repeated verbal and written warnings to not do so. Respondent was also advised how to improve her performance as a teacher on multiple occasions, through multiple venues, such as informal and formal observations, meetings, the PAR plan and in working with two PAR Consulting Teachers. Many of the suggestions made by Principal McCollum and Ms. Anderson were made multiple times over the course of months and still generally ignored by respondent. Although respondent sporadically followed some of the suggestions made to her, on balance she refused to carry them out and instead preferred to teach her own way. It is clear from respondent's written

rebuttals and testimony that she had no understanding of how she negatively impacted her colleagues and that she has no intention of acting toward them any differently. It is also clear that she believes she is a good teacher and that her performance needs no improvement. Her behavior during the hearing demonstrated that respondent at times has difficulty monitoring and controlling her behavior. Under these circumstances, it was established by a preponderance of the evidence that respondent's problems connote a fixed character trait which is not remediable. (Factual Findings 13-49 [except 44 and 47], 55, 56 and 60.)

6. A. It was established by a preponderance of the evidence that respondent persistently violated or refused to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, within the meaning of section 44932, subdivision (a)(8).

B. Cause for discipline here may be based on the violation of school rules or district policies. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) However, there must be a "showing of intentional and continual refusal to cooperate." (*Id.* at p. 1196.) The violation must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

C. In this case, over the course of a few years, respondent persistently violated or refused to obey the rules governing her employment within the meaning of section 44932, i.e., directives to remain professional in her interactions with District staff, as well as BP 4779.21 and BP 4119.21 E. Respondent was given several verbal and written directives to not engage in such behavior, all of which she ignored because she believed she had an unfettered right to express herself to other staff members. Thus, respondent persistently and willfully disregarded those policies and directives. (Factual Findings 17-19, 24, 38-41, 43, 45, 48-49, 52, 55 and 60.)

Analysis of the Morrison Factors

7. A. In deciding whether cause for dismissal exists for the amorphous concepts of unprofessional conduct and evident unfitness for service, it also must be established that a teacher's misconduct relates to her fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230). The *Morrison* analysis does not apply to cause for dismissal for unsatisfactory performance or persistent violation of school rules, laws or policies because such theories, by definition, have a direct nexus with teaching. (*Id.*, at pp. 227-230). With regard to the two identified causes for dismissal that must be analyzed, all of the factors suggested by *Morrison* were considered and compared to the facts established above. Not all "*Morrison* factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established,

but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

B. As applied in this case, the applicable factors clearly demonstrate that respondent's misconduct had a direct relationship with teaching and respondent's unfitness to teach. (Factual Findings 1-60.)

1. The likelihood the conduct may adversely affect students or fellow teachers. Respondent's misconduct adversely affected several of her fellow teachers. Respondent consumed a great deal of her supervisor's time trying to manage her. Principal McCollum and Ms. Anderson documented that respondent's poor teaching negatively impacted student learning in the classroom.

2. The degree of such adversity. The adversity against fellow teachers was moderate; some were greatly bothered by respondent's conduct, some were annoyed. Overall, respondent's behavior negatively impacted the Maple environment.

3. The proximity or remoteness in time of the conduct. The misconduct is proximate.

4. The type of teaching certificate held by the party involved. This factor has no application.

5. The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. Neither aggravating nor extenuating circumstances were proven.

6. The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent's conduct is blameworthy. She is a veteran teacher with several years of experience. She knew or should have known that her interactions with fellow staff were inappropriate and unproductive. She also refused to accept suggestions intended to improve her performance. She essentially picked a fight with Principal McCollum and dared the District to fire her so she could contest it in a legal proceeding.

7. The likelihood of recurrence of the questioned conduct. It is highly likely that respondent would engage in the same activity if put back in a District classroom. Respondent has ignored directives from her supervisor and suggestions by those trying to help her. She has accepted very little responsibility for her misconduct and demonstrated no remorse for her actions.

8. The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. It is not foreseen that this will happen. As discussed in Factual Finding 55 above, respondent did not have a constitutional right to complain, rant and vent her displeasure with her supervisor and some of her colleagues to fellow staff members.

Disposition

8. “The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction.” (*California Teachers Ass’n v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, a Commission (or an ALJ sitting alone) still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 222.)

9. A. In this case, respondent engaged in conduct which violated several provisions of the Education Code. Respondent has engaged in a pattern of unprofessional conduct, unsatisfactory performance, evident unfitness for service, and persistent violation of or refusal to obey Board policies and rules governing her employment. Her conduct caused concern to staff, and the District has lost confidence in her abilities and judgment. Respondent repeatedly refused to maintain her professionalism with staff and to abide by clear directives from her supervisor.

B. The District received consistent complaints about respondent’s inappropriate treatment of fellow staff members. Respondent also struggled with classroom management and control. And, over a few years, respondent failed to meet the District’s fundamental expectations; failed to execute her job duties in a satisfactory manner; and failed to meet the State and District’s standards for the teaching profession. Respondent’s job performance resulted in an assistance plan, which she failed to follow; numerous unsatisfactory performance reviews; placement in the District’s PAR program, which she failed to complete; and a Notice of Unsatisfactory Performance and Unprofessional Conduct as well as two reprimands. Despite all of those efforts, respondent has been unwilling to remediate or improve. Respondent showed little progress, if any, in her ability to effectively manage her classroom, engage her students, effectively teach her subject matter, and get along with her colleagues.

C. Based on the above, it is clear that respondent is unable to remedy her performance and behavior issues.

10. The District established that respondent engaged in serious misconduct, which provides numerous legal grounds to discipline her. Progressive discipline was used, but was not successful. Respondent presented no mitigation, rehabilitation or remorse for her actions. Under these circumstances, similar misconduct would be likely should respondent be placed back in a District classroom. Dismissal is therefore warranted. (Factual Findings 1-60, Legal Conclusions 1-9.)

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ORDER

The dismissal of respondent Marsha Maietta from employment with the Lompoc Unified School District is sustained.

DATED: December 16, 2015

DocuSigned by:
Eric C. Sawyer
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ERIC SAWYER
Administrative Law Judge
Office of Administrative Hearings