

BEFORE A  
COMMISSION ON PROFESSIONAL COMPETENCE  
FRESNO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of:

OLIVIA ECHEVERRIA-BIS,

A Permanent Certificated Employee,

Respondent.

OAH No. 2015070290

**DECISION**

This matter was heard before a Commission on Professional Competence (CPC) of the Fresno Unified School District in Fresno, California, on December 7 through 11, 2015. The CPC members were Jacqueline S. Tuttle, Andrew Bolls, and Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings.

David A. Moreno, Attorney at Law, represented Fresno Unified School District (District or FUSD).

Joshua F. Richtel, Attorney at Law, represented Olivia Echeverria-Bis (respondent), who was present for the entire hearing.

This matter was submitted for decision when the CPC concluded its deliberations on December 28, 2015.

**SUMMARY**

Respondent is an elementary school teacher. The District seeks to terminate her employment due to unsatisfactory performance. The District established that, after observing and evaluating respondent and giving her adequate assistance and opportunity to improve and address the charges against her, she failed to bring her performance up to a satisfactory level. The District's dismissal of respondent is therefore sustained.

## FACTUAL FINDINGS

1. Respondent is a permanent certificated employee in the District. She has a multiple subject teaching credential that authorizes her to teach grades kindergarten through eight. She also has a master's degree in Education and a Reading Specialist credential. She has been employed by the District for about 11 years. In the past, she worked as a certificated tutor and an elementary school teacher in the fourth and fifth grades. In the 2013/2014 and 2014/2015 school years, she was a third grade teacher at Winchell Elementary School (Winchell).

2. The District seeks to terminate respondent's employment for unsatisfactory performance, based upon allegations that she failed to: (1) check for student understanding throughout each lesson and adapt her teaching to reflect the assessed academic and behavioral needs of all students; (2) plan lessons that utilized a variety of strategies and resources to meet her students' diverse learning needs; (3) assign students to work with partners or in groups to ensure that students were actively listening and participating; (4) create an environment in which students demonstrated positive behavior and consistent participation; (5) make adjustments to instructional time so that all students remained engaged and challenged; (6) use sufficient subject matter knowledge and modeling to support student learning and consistently require students to explain their thinking and justify their responses; (7) implement strategies to facilitate discussion, and extend students' thinking; (8) ensure that each instructional strategy was related to learning goals and objectives articulated to students; (9) include all four elements of Classroom Foundations in each lesson, including a closure that required students to summarize their learning and reflect on criteria for success; and (10) develop lesson plans that included various levels of English proficiency and accommodations for special needs and English learner (EL or ELD) students.

### *Standards and Evaluations*

3. The Collective Bargaining Agreement (CBA) between the District and the Fresno Teachers Association (FTA) for the period from July 1, 2013, through June 30, 2016, sets forth the evaluation and professional standards for the District's certificated employees. In relevant part, the CBA states:

The parties endorse a high level of professional preparation and competence for all members of the bargaining unit. Attaining and maintaining high professional standards requires a joint commitment to provide the assistance, support, and proper teaching environment needed for the success of the bargaining unit member. Standards shall be clear and consistent. The parties shall use the California Standards for the Teaching Profession (CSTP); and the jointly developed Continuum of Standards for the Teaching Profession, which includes the CSTP Indicators (CSTP Continuum), will serve as the guide for reflective practice, continuous improvement, and evaluation.

4. The six CSTPs relevant in this matter are:<sup>1</sup>

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

5. For each of these six CSTPs, the District has developed a continuum of professional standards upon which teachers are evaluated, which include multiple elements for each of the CSTPs.

6. For the observations and evaluations performed during the 2013/2014 school year, the District used the following ratings: Not Observed, Meets Standards – Proficient, Meets Standards – Minimally, and Does Not Meet Standards.

7. For the observations and evaluations performed during the 2014/2015 school year, the District used the following ratings: Not Observed, Demonstrates Expertise, Meets Standards, Growth Expected, and Not Meeting Standards.

8. As set forth in the District’s Continuum of Standards for the Teaching Profession, the District has four Classroom Foundations that must be present in each lesson a certificated employee teaches: (1) objective (what students should know, understand, and be able to do); (2) instruction aligned to the objective (how the instructional activities line up with the objective); (3) assessment (how the teacher determines if the students are “getting it,” and monitors and adjusts the lesson accordingly); and (4) closure (how the teacher sums up and closes the lesson).

*Lesson Observations, Performance Evaluations, and Teacher Development Plans for the 2013/2014 School Year*

9. Sandra Aguayo began working as the principal at Winchell in the 2013/2014 school year. Prior to becoming Winchell’s principal, Ms. Aguayo was a vice principal at a

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<sup>1</sup> In its forms and documents, the District used both Roman and Arabic numerals to number the CSTP Standards. This decision will use Arabic numerals.

different District elementary school. Before that, Ms. Aguayo worked as a District instructional coach for two years. Beginning in the fall 1999, Ms. Aguayo worked as a third and fifth grade teacher at a charter school.

10. The 2013/2014 school year was the first year the District began implementing the Common Core standards. During this first year of Common Core, the District did not evaluate teachers who had been rated as meeting all standards proficiently during previous school years. Teachers who had been rated as not meeting standards the previous year were required to be evaluated during the 2013/2014 school year.<sup>2</sup> Principals had discretion to evaluate teachers who had been rated as meeting standards minimally the previous year. There were no evaluations of respondent offered into evidence for any school years prior to the 2013/2014 school year. But there was testimony that respondent had received ratings of Meets Standards - Minimally before the 2013/2014 school year. Ms. Aguayo decided to evaluate respondent during the 2013/2014 school year.

11. First Semester Lesson Observations. Ms. Aguayo observed respondent's third-grade class during the first semester of the 2013/2014 school year. On October 27, 2013, Ms. Aguayo conducted a formal observation of respondent's classroom. Ms. Aguayo also observed respondent's classroom formally on November 19, 2013. Respondent requested that the November 19, 2013 observation be thrown out and redone. A redo observation was conducted on December 16, 2013. Vice Principal Christina Preas joined Ms. Aguayo for the observation on December 16, 2013. Respondent was notified before the formal observations. She provided lesson plans for Ms. Aguayo to review before observing the class.

12. Ms. Aguayo and Ms. Preas took literal notes of their observations when they were in respondent's classroom. After the lessons, Ms. Aguayo typed her observations in formats that addressed each of the CSTPs, and included detailed data of Ms. Aguayo's findings and her conclusions as to whether respondent met each of the CSTP elements. Ms. Aguayo met with respondent after the lesson observations to review her findings and conclusions.

13. For the October 27, 2013 lesson observation, Ms. Aguayo rated respondent as either Meets Standards – Proficient or Meets Standards – Minimally on all the observed CSTP elements. For the December 16, 2013 lesson observation, Ms. Aguayo rated respondent as either Meets Standards – Minimally or Does Not Meet Standards on all the observed CSTP elements other than CSTP 6.6, managing professional responsibilities to maintain motivation and commitment to all students, on which Ms. Aguayo rated respondent as Meets Standards - Proficient.

14. The CSTP elements on which respondent was rated as not meeting standards for the December 16, 2013 lesson observation were:

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<sup>2</sup> Probationary and temporary teachers were also evaluated during the 2013/2014 school year.

- 1.5 Promoting critical thinking through inquiry, problem solving, and reflection.
- 1.6 Monitoring student learning and adjusting instruction while teaching.
- 2.2 Creating physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students.
- 2.4 Creating a rigorous learning environment with high expectations and appropriate support for all students.
- 2.7 Using instructional time to optimize learning.
- 3.1 Demonstrating knowledge of subject matter, academic content standards, and curriculum frameworks,
- 3.4 Utilizing instructional strategies that are appropriate to the subject matter.
- 3.6 Addressing the needs of English Learners and students with special needs to provide equitable access to the content.
- 4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students.
- 5.1 Applying knowledge to the purposes, characteristics, and uses of different types of assessment.
- 6.1 Reflecting on teaching practice in support of student learning.

15. For the December 16, 2013 lesson observation, Ms. Aguayo raised particular concerns with respondent's failure to effectively monitor students' learning during the lesson and adjust her instruction while teaching to meet the needs of all students. Ms. Aguayo also raised concerns that respondent asked students mainly yes/no questions with no follow-up questions about how the students had arrived at their responses in order to check for student understanding. Ms. Aguayo was further concerned that respondent had not planned activities and did not prompt students to interact with each other during instruction to optimize instructional time to meet student needs.

16. Preliminary Evaluation. On December 23, 2013, respondent received a Preliminary Evaluation dated December 19, 2013. She was rated as Meets Standards – Minimally on CSTPs 1, 5, and 6, and as Does Not Meet Standards on CSTPs 2, 3, and 4.

The Preliminary Evaluation included a summary of Ms. Aguayo's classroom observations. Ms. Aguayo set forth her findings and conclusions with regard to each of the CSTPs.

With regard to CSTP 1, Ms. Aguayo noted that respondent "struggled to engage students in critical thinking, problem solving, and reflection." As a result, students "had minimal opportunities to engage in learning experiences that would support their development in problem solving, reflections, autonomy, interaction, and choice."

With regard to CSTP 2, Ms. Aguayo noted that respondent "struggled to maintain high standards for individual and group behavior." As a result, "students were not immersed in a learning environment that supported and fostered positive student behavior for all students." Ms. Aguayo noted further that, during the observations, respondent "did not use instructional time to optimize learning." As a result, "students spent instructional time waiting for work to be checked or focused on activities not align[ed] to grade level concepts and/or skills."

With regard to CSTP 3, Ms. Aguayo stated that respondent "struggled to organize curriculum to facilitate student understanding of subject matter." As a result, "all students were not provided the necessary opportunities, supports, and instructional strategies to master grade level standards and skills."

With regard to CSTP 4, Ms. Aguayo stated that respondent "did not consistently develop short term instructional plans to support student learning." As a result, "all students were not provided the necessary opportunities to master grade level standards and skills."

With regard to CSTP 5, Ms. Aguayo stated that respondent "has been able to use assessment information to share timely and comprehensible feedback with students and their families, but struggled to use data to plan, differentiate, and modify instruction consistently." As a result, "students' assessed and individual needs did not inform instructional decisions consistently."

With regard to CSTP 6, Ms. Aguayo stated that respondent "struggles to reflect on teaching practice in support of student learning and engaging in continuous and purposeful professional growth and development." As a result, "students have not benefitted from consistent delivery of content and improved instructional practices based on reflection and feedback."

17. First Teacher Development Plan. On January 31, 2014, respondent received a Teacher Development Plan (First TDP) for the second semester of the 2013/2014 school year. The purpose of the First TDP was to identify the teaching standards that required improvement and to set forth strategies to help respondent improve her performance. The First TDP identified CSTPs 2, 3, and 4 as the standards as to which respondent required improvement. Specifically, the First TDP identified the following elements within these three CSTPs:

- 2.3 Establishing and maintaining learning environments that are physically, intellectually, and emotionally safe.
- 2.5 Developing, communicating, and maintaining high standards for individual and group behavior.
- 2.7 Using instructional time to optimize learning.
- 3.1 Demonstrating knowledge of subject matter, academic content standards, and curriculum frameworks.
- 3.3 Organizing curriculum to facilitate student understanding of the subject matter.
- 4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students.
- 4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all students.

The First TDP included SMART goals for each of the identified CSTP elements. For example, for CSTP 2.3, the First TDP stated that respondent would “facilitate positive and productive interactions by creating and maintaining partnership and group roles, structures, procedures and/or norms.” For CSTP 2.5, the First TDP stated that respondent would “create an environment in which students demonstrate positive behavior and consistent participation.”

The First TDP also included strategies and activities to implement the SMART goals for each CSTP element. For example, with regard to CSTP 2.3, the First TDP stated: “1. Assign students a partner (Partner A/B). Practice active listening skills by having partnerships paraphrase and/or repeat partner responses. 2. Establish team roles/responsibilities and teach and practice team roles.” For CSTP 2.5, the strategies and activities included: “1. Implement a system in which students are called on randomly (pose the question first and then call on a student). 2. Provide students think time when they are asked questions. 3. Maintain a 3:1 ratio of positive to negative interactions. 4. Implement a group/table points system and recognize and foster collaboration and participation. 5. Establish classroom norms for independent, partner, and group work.”

The First TDP also identified support structures and resources for respondent. For example, for CSTP 2.5, the First TDP set forth the following support structures and resources:

- 1. Provide [respondent] suggestions such as: Write student names on popsicle sticks, deck of cards, or any system that provides calling on students randomly.



2. Principal provide literature resources about student think time.
3. Provide feedback by tallying positive to negative interactions during formal and informal observations.
4. Provide ideas and suggestions on how to leverage team/group point to foster student collaboration and provide peer observations to observe best practices.
5. Provide CHAMPS strategies.

In addition, the First TDP included a timeline for completion, including benchmark dates to monitor progress.

18. Second Semester Lesson Observations. During the second semester of the 2013/2014 school year, Ms. Aguayo observed respondent's class on February 14, 2014, and April 2, 2014, and wrote up her findings and conclusions on lesson observation forms. After each observation, Ms. Aguayo met with respondent to discuss Ms. Aguayo's lesson observations.

19. For the February 14, 2014 lesson observation, Ms. Aguayo rated respondent as either Meeting Standards – Minimally or Does Not Meet Standards for all the observed CSTP elements, except CSTPs 6.6 (managing professional responsibilities to maintain motivation and commitment to all students) and 6.7 (demonstrating professional responsibility, integrity, and ethical conduct), on which Ms. Aguayo rated respondent as Meets Standards – Proficient. The same was true for Ms. Aguayo's April 2, 2014 lesson observation, except that Ms. Aguayo also rated respondent as Meets Standards – Proficient on CSTP 6.3 (collaborating with colleagues and the broader professional community to support teacher and student learning). Specifically, for the April 2, 2014 lesson observation, Ms. Aguayo rated respondent as not meeting standards on the following CSTP elements:

- 1.2 Connecting learning to students' prior knowledge, backgrounds, life experiences, and interests.
- 1.3 Connecting subject matter to meaningful, real-life contexts.
- 1.5 Promoting critical thinking through inquiry, problem solving, and reflection.
- 1.6 Monitoring student learning and adjusting instruction while teaching.



- 2.4 Creating a rigorous learning environment with high expectations and appropriate support for all students.
- 2.7 Using instructional time to optimize learning.
- 3.4 Utilizing instructional strategies that are appropriate to the subject matter.
- 3.5 Using and adopting resources, technologies, and standards-aligned instructional materials, including adopted materials, to make subject matter accessible to all students.
- 3.6 Addressing the needs of English Learners and students with special needs to provide equitable access to the content.
- 4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students.
- 4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all students.
- 5.4 Using assessment data to establish learning goals and to plan, differentiate, and modify instruction.

20. Summary Evaluation. On May 8, 2014, respondent received her Summary Evaluation for the 2013/2014 school year, dated May 2, 2014. In the Summary Evaluation, respondent was rated as Meets Standards – Minimally on CSTPs 3, 5, and 6. She was rated as Does Not Meet Standards on CSTPs 1, 2, and 4. In the Summary Evaluation, Ms. Aguayo summarized her lesson observations. She set forth her findings and conclusions with regard to each of the CSTPs.

With regard to CSTP 1, Ms. Aguayo found that respondent “rarely provided students opportunities to engage in critical thinking, problem solving, and reflection and rarely made instructional adjustments based on student responses, thinking, or understanding of concepts and skills.” As a result, students “were not immersed in an engaging learning environment with the support of appropriate instructional strategies and/or supports.”

With regard to CSTP 2, Ms. Aguayo found that respondent “rarely provided a rigorous learning environment with high expectations and appropriate support for all students and frequently did not use instructional time to optimize learning.” As a result, “students were not immersed in a learning environment that supported and fostered positive student behavior for all students and productive student interactions.” Ms. Aguayo also found that “instructional time was not used to optimize learning.” As a result, students “spent instructional time waiting for work to be checked or focused on activities not align[ed] to grade level concepts and/or skills.”

With regard to CSTP 3, Ms. Aguayo found that respondent “struggled to organize curriculum to facilitate student understanding of subject matter.” As a result, “all students were minimally provided the necessary opportunities, supports, and instructional strategies to master grade level standards and skills.”

With regard to CSTP 4, Ms. Aguayo found that respondent “did not consistently develop short term instructional plans to support student learning.” As a result, “all students were not provided opportunities to master grade level standards and skills.”

With regard to CSTP 5, Ms. Aguayo found that respondent “has been able to use assessment information to share timely and comprehensible feedback with students and their families, but struggled to use data to plan, differentiate, and modify instruction consistently.” As a result, “students’ assessed and individual needs often did not lead to instructional adjustments for follow up lesson or modifications.”

With regard to CSTP 6, Ms. Aguayo found that respondent “inconsistently reflected on teaching practice in support of student learning and engaging in continuous and purposeful professional growth and development.” As a result, “students have not benefitted from consistent delivery of content and improved instructional practices based on reflections and feedback.”

21. Second TDP. On June 3, 2014, respondent received a TDP (Second TDP) for the fall semester of the 2014/2015 school year. In the Second TDP, Ms. Aguayo identified CSTPs 1, 2, and 4 as the ones on which respondent required improvement. Specifically, the Second TDP identified the following elements within these three CSTPs:

- 1.1 Using knowledge of students to engage them in learning.
- 1.4 Using a variety of instructional strategies, resources, and technologies to meet students’ diverse learning needs.
- 1.5 Promoting critical thinking through inquiry, problem solving, and reflection.
- 1.6 Monitoring student learning and adjusting instruction while teaching.
- 2.3 Establishing and maintaining learning environments that are physically, intellectually, and emotionally safe.
- 2.6 Employing classroom routines, procedures, norms, and supports for positive behavior to ensure a climate in which all students can learn.
- 2.7 Using instructional time to optimize learning.

4.2 Establishing and articulating goals for student learning.

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

4.5 Adapting instructional plans and curricular materials to meet the assessed learning needs of all students.

The Second TDP included SMART goals for each of the identified CSTP elements. For example, for CSTPs 1.1 and 4.5, the Second TDP stated that respondent “will adapt her teaching to reflect the assessed academic and behavioral needs of her students.” For CSTP 1.4, the Second TDP stated that respondent “will plan lessons that utilize a variety of strategies and resources to meet the students’ diverse learning needs.”

The Second TDP also included strategies and activities to implement the SMART goals for each CSTP element. For example, with regard to CSTPs 1.1 and 4.5, the Second TDP stated:

- Check for student understanding and learning throughout lessons
- Provide opportunities for reteach and challenge depending on student need
- Coach to video lessons for reflection with teacher a minimum of one time per month.

For CSTP 1.4, the strategies and activities stated:

- Lesson plans will designate differentiated instruction opportunities
- Implement a variety of engagement strategies that meet the needs of all students

The Second TDP described support structures and resources for each of the identified CSTPs as follows:

For CSTPs 1.1 and 4.5: “Release time provided for observations of classrooms both on and off site.”

For CSTP 1.4: “Administration to provide resources on a variety of engagement strategies” and “Site coach to model differentiation as coach calendar is available.”

For CSTP 1.5: “Administration & site coach will provide question stems, talk moves resources, and teaching channel videos.”

For CSTP 1.6: “Peer coach to model and co-teach lessons” and “Administration will provide time with coach to support AC in creating common assessments.”<sup>3</sup>

For CSTPs 2.3 and 4.2: “Administration to provide written and/or verbal feedback to all observations.”

For CSTPs 2.6 and 2.7: “Site and veteran support coach for support as available and requested.”

For CSTP 4.4: “Administration will provide resources and suggestions for delivery of Classroom Foundations.”

For CSTP 4.5: “Release time provided for observation of classrooms both on and off site.”

The Second TDP also included a timeline for completion, including benchmark dates to monitor progress.

#### *Lesson Observations and Preliminary Performance Evaluation for the 2014/2015 School Year*

22. First Semester Formal Lesson Observations. During the first semester of the 2014/2015 school year, Ms. Aguayo conducted two formal observations: on September 30 and December 3, 2014. Ms. Aguayo wrote up her findings and conclusions for these lesson observations, and shared them with respondent in debriefings within a few days after the observations.

23. For both the September 30 and December 3, 2014 lesson observations, Ms. Aguayo rated respondent as either Growth Expected or Does Not Meet Standards on all of the CSTP elements that were observed. In the lesson observations, Ms. Aguayo continued to note her concerns with respondent’s providing students with “minimal opportunities” to “engage in the content or processing” of the information respondent provided, to ask or respond to clarifying questions, or to “build on content through collaboration.” Ms. Aguayo also noted her continuing concerns with respondent’s struggle to “create a learning environment that encouraged constructive and productive interactions among students,” and

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<sup>3</sup> “AC” means stands for Accountable Community, and refers to all the Winchell teachers teaching at the same grade level.

respondent's failure to "effectively utilize instructional strategies" to address the needs of English Learners and students not yet reading at grade level.

24. Preliminary Evaluation. Ms. Aguayo gave respondent a Preliminary Evaluation on December 17, 2014. In the Preliminary Evaluation, Ms. Aguayo rated respondent as Growth Expected on CSTPs 3, 5, and 6. She rated respondent as Not Meeting Standards on CSTPs 1, 2, and 4. In the Preliminary Evaluation, Ms. Aguayo summarized the lesson observations she had conducted during the first semester. She set forth her findings and conclusions with regard to each of the CSTPs.

With regard to CSTP 1, Ms. Aguayo found that respondent "did not provide students opportunities to engage in critical thinking, problem solving, and reflection, and rarely made instructional adjustments based on student responses, thinking, or understanding of concepts and skills." As a result "students were not immersed in an engaging learning environment with the support of appropriate instructional strategies."

With regard to CSTP 2, Ms. Aguayo found that respondent "did not provide a rigorous learning environment and struggled to provide opportunities for students to examine and evaluate their own work or learn from the work of their peers." As a result, "students were not immersed in a learning environment that supported and fostered positive student behavior."

With regard to CSTP 3, Ms. Aguayo found that respondent "struggled to organize curriculum to facilitate student understanding of subject matter." As a result, "all students were minimally provided the necessary opportunities, supports, and instructional strategies to master grade level standards and skills."

With regard to CSTP 4, Ms. Aguayo found that respondent "did not consistently develop short and long term instructional plans to support student learning." As a result, "all students were not provided opportunities to master grade level standards and skills."

With regard to CSTP 5, Ms. Aguayo found that respondent "struggled to use data to plan, differentiate, and modify instruction consistently." As a result, "student assessed learning needs were not consistently met."

With regard to CSTP 6, Ms. Aguayo found that respondent "struggled to maintain professional responsibilities in timely ways and maintain required commitments to colleagues and students." As a result, "instructional time and AC collaboration efforts were negatively impacted."

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## *90-Day Notice*

25. Pursuant to Education Code sections 44938 and 44932,<sup>4</sup> on January 29, 2015, the District served respondent with a 90-Day Notice of Unsatisfactory Performance (90-Day Notice). The 90-Day Notice stated that it was “designed to provide [respondent] with sufficient information to understand the nature of [her] unsatisfactory performance and to illustrate specific instances of such behavior with such particularity as to provide [her] with an opportunity to correct these faults and overcome the grounds for potential dismissal charges.” Attached to the 90-Day Notice were all of the Lesson Observations, Preliminary Evaluations and Summary Evaluations noted above. In an effort to assist respondent in overcoming her performance deficiencies, the 90-Day Notice stated that respondent was expected to comply with the following directives:

1. Adapt your teaching to reflect the assessed academic and behavioral needs of all students. Specifically, check for student understanding throughout each lesson.
2. Plan lessons that utilize a variety of strategies and resources to meet students’ diverse learning needs. Each lesson must designate differentiated instruction opportunities and engagement strategies to meet the needs of all students.
3. Use formative assessments to systematically check for student understanding by observing their work to direct and adjust instruction accordingly. In particular, check for student understanding by observing their work to direct and adjust instruction.
4. Facilitate positive and productive interactions by creating and maintaining partnership and group roles, structures, procedures and norms. In particular, assign partner activities and make sure students are actively listening and participating.
5. Create an environment in which students demonstrate positive behavior and consistent participation. For example, maintain a 3:1 ratio of positive to negative interactions and utilize points on a consistent basis to foster collaboration and good behavior.

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<sup>4</sup> The relevant portions of these statutory provisions are quoted in the Legal Conclusions below.

6. Make adjustments to instructional time so that all students remain engaged and challenged. For instance, use whiteboards to monitor student understanding.
7. Use sufficient subject matter knowledge to support student learning. Model the use of content and academic language during instruction and check for understanding questions and tasks. Consistently require students to explain their thinking and/or justify their responses.
8. Implement strategies such as think time, think/pair/share, consensus and presentation procedures to facilitate discussion, and extend students' thinking.
9. Ensure that each instructional strategy is related to learning goals and objectives articulated to students. At the end of each lesson, ask students to articulate the objective. If students are unable to do so, clarify their misunderstandings and explain concepts causing confusion.
10. Include all four elements of Classroom Foundations in each lesson. Include closure that requires students to summarize their learning and reflect on criteria for success. Make sure your actual objective aligns with the objective included in your lesson plans.
11. Develop lesson plans that include various levels of English proficiency and accommodations for students with special needs and EL students. For example, use visuals and/or graphic organizers, sentence frames and sufficient wait time to support EL students and students with special needs.
12. Provide students with language frames to support and engage them in demonstration of their understanding of concepts and skills.

The 90-Day Notice notified respondent that she was expected to correct her unsatisfactory performance within 90 days, and that if her deficiencies were not corrected within this time period, the District may institute disciplinary action against her, up to and including possible dismissal.

#### *Observations and Evaluation During 90-Day Notice Period*

26. Lesson Observations. During the 90-Day Notice period, Ms. Aguayo observed respondent's class 10 times (February 6, 11, and 24, March 5, 13, 19, 20, and 26,



and April 9 and 13, 2015). Ms. Preas observed respondent's class on February 20, 2015. Ms. Aguayo and Ms. Preas described their observations in written lesson observations. They conducted debriefing meetings with respondent within a few days after each observation. At the debriefing meetings, respondent was given a hardcopy of the written lesson observations. She was also given access to the written lesson observations on "I Achieve," an online computerized system. She had the opportunity to respond to the written lesson observations orally at the debriefing meetings, and in writing.<sup>5</sup>

27. In the written lesson observations during the 90-Day Notice period, respondent was rated as either Growth Expected or Not Meeting Standards on all the observed CSTP elements.<sup>6</sup> In these written lesson observations, Ms. Aguayo and Ms. Preas noted most of the same concerns raised in earlier lesson observations: (1) respondent did not effectively engage all students when checking for understanding or in tasks to build student understanding, and consequently, respondent did not adjust her instruction to address students' lack of understanding or misconceptions; (2) there were minimal collaborative structures to support students in explaining their thinking to each other or the whole class; (3) respondent did not model or scaffold instructional strategies to support student understanding; and (4) respondent failed to close lessons to determine student learning or surface misconceptions.

28. Summary Evaluation. On May 4, 2015, Ms. Aguayo completed a Summary Evaluation which rated respondent as Growth Expected on CSTPs 2 and 6, and as Not Meeting Standards on CSTPs 1, 3, 4, and 5. In the Summary Evaluation, Ms. Aguayo summarized the lesson observations on which the evaluation was based and explained the reasons for the ratings for each of the CSTPs.

With regard to CSTP 1, Ms. Aguayo stated that respondent "did not consistently build on student responses, adjust instruction, check for understanding, ask questions to clarify and extend students' thinking and did not engage students in critical thinking, problem solving, and reflection to support student learning." As a result, "students were not immersed in a learning environment that built their understanding of complex subject matter and instructional adjustments were not based on their understanding of content."

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<sup>5</sup> Because of issues with I Achieve, respondent did not initially have access to Ms. Aguayo's written lesson observations online. Because respondent's access to Ms. Aguayo's online written lesson observations was initially delayed, respondent's online responses were delayed as well.

<sup>6</sup> For the March 19, 2015 written lesson observation, respondent was given ratings of either Minimally Meets or Does Not Meet standards. Ms. Aguayo did not know why the system reverted back to the earlier terminology for this lesson observation, but explained that the Minimally Meets standard corresponded to Growth Expected, and the Does Not Meet standard corresponded to Not Meeting Standards.

With regard to CSTP 2, Ms. Aguayo stated that respondent “did not consistently provide a rigorous learning environment and opportunities for students to examine and evaluate their own work or learn from the work of their peers.” As a result, students were “immersed in a learning environment that inconsistently supported and fostered positive student behavior.”

With regard to CSTP 3, Ms. Aguayo stated that respondent “struggled to organize curriculum and deliver instructional strategies to facilitate student understanding of subject matter.” As a result, “all students were not immersed in a learning environment that supported their learning of ELA and mathematics content, standards, and skills.”<sup>7</sup>

With regard to CSTP 4, Ms. Aguayo found that respondent “did not consistently develop short and long term instructional plans to support student learning.” As a result, “students were not provided opportunity to master grade level standards and skills with the support of well-designed and planned instruction.”

With regard to CSTP 5, Ms. Aguayo found that respondent “struggled to use data to plan, differentiate, and modify instruction consistently.” As a result, “all student assessed and differentiated learning needs were not met.”

With regard to CSTP 6, Ms. Aguayo found that respondent “struggled to maintain professional responsibilities in timely ways and maintain required commitments to colleagues and students.” As a result, “all students were not able to benefit from effective instructional strategies to support with content and increase student engagement.”

#### *Veteran Support Provided to Respondent During the 2013/2014 and 2014/2015 School Years*

29. During the 2013/2014 and 2014/2015 school years, respondent received veteran support coaching from Instructional Coaches Janelle Solorio, Deanna Buchanan, and Lisa Thompkins. These coaches testified at the hearing.

30. Janelle Solorio. Ms. Solorio was an elementary school teacher for about 18 years, teaching in the fifth and second grades. During the 2012/2013 and 2013/2014 school years, she was a veteran support coach, helping struggling teachers implement the CSTPs. From January through June 2014, she provided 34.25 hours of veteran support coaching to respondent. This support included: (1) meeting with respondent to discuss her “needs, wants [and] concerns”; (2) meeting with respondent and Ms. Aguayo to discuss the First TDP and its implementation; (3) observing respondent’s classroom twice; (4) observing another teacher’s classroom with respondent; (5) meeting with respondent to provide lesson support and review information from observations; (6) email correspondence to provide feedback on lesson plans and to plan support and help; and (7) meeting with respondent and Ms. Aguayo to discuss the Second TDP.

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<sup>7</sup> “ELA” stands for English Language Arts.

31. Ms. Solorio testified that when she observed respondent's class, it seemed "unorganized" and some students were "not engaged."

32. With regard to the meetings Ms. Solorio attended with respondent and Ms. Aguayo, Ms. Solorio conceded that she once described them as "rough" and "not sunshine and rainbows." But she described Ms. Aguayo's conduct during these meetings as "business-like" and "professional." She did not observe that Ms. Aguayo had any bias against respondent. Based upon her observations of respondent's teaching, Ms. Solorio agreed with the feedback Ms. Aguayo provided to respondent during the meetings. Ms. Solorio described respondent's demeanor at the meetings as "defensive" at times.

33. Deanna Buchanan. Ms. Buchanan has worked for the District since 2006. She has taught both second and fourth grade. She was an instructional coach for about two years. She provided veteran support to respondent from September through December 2014. During this period, she spent 19.25 hours working with respondent. During this time, she: (1) met with respondent to go over the Second TDP; (2) met with respondent and Ms. Aguayo twice to go over the Second TDP; (3) observed a math lesson respondent taught and debriefed with respondent; (4) observed three language arts lessons respondent taught and emailed notes with suggestions, opportunities for growth and reflective questions; (5) visited other classrooms and watched videos with respondent; and (6) reviewed lesson plans with respondent to help her increase "student voice and engagement."

34. Ms. Buchanan testified that she provided support to respondent in implementing the Second TDP. She offered respondent strategies to increase student voice in her classroom and put more cognitive demand on the students, instead of respondent doing so much of the talking. Ms. Buchanan believed that, based upon her observations in respondent's class, respondent needed support in helping students become more critical thinkers and problem solvers. Ms. Buchanan, while she was in respondent's class, observed that students were not engaged a "lot" of the time. She believed that the lessons she observed were not rigorous enough for third graders. She provided respondent with reflective questions to ask students.

35. Ms. Buchanan described her purpose as a veteran support coach as helping to support a teacher, not to evaluate or criticize her. She conceded that the meetings she attended with respondent and Ms. Aguayo were not "pleasant" because respondent was being told she needed to improve. But Ms. Buchanan testified that Ms. Aguayo treated respondent professionally, and did not exhibit any bias. Ms. Buchanan believed that respondent worked hard to try to improve her teaching.

36. Lisa Thompkins. Ms. Thompkins has been employed by the District since 1999. For the past one and one-half years, she has worked as a special assistant in the Teacher Development Office. She was previously an Instructional Coach for one and one-half years. Before that, she was a teacher at the high school level.

37. From February through May 2015, Ms. Thompkins provided 15.5 hours of veteran coaching support to respondent. This coaching included: (1) meeting with respondent to discuss her evaluations and her needs regarding coaching; (2) observing respondent and discussing teaching strategies; (3) meeting with Ms. Aguayo and respondent to go over the TDP and discuss observations; (4) sitting in debriefing meetings with respondent and Ms. Aguayo; (5) visiting respondent's classroom; and (6) discussing evaluations and next steps with respondent.

38. Ms. Thompkins observed respondent in her classroom four times, and discussed classroom management and student engagement strategies with her. Ms. Thompkins testified that, during these classroom visits she observed that some students were on target, but a "lot" of students seemed "off track." These students were "messing" in their desks, not following respondent's instruction, and not doing what was being asked. Ms. Thompkins stated that the students were not out of control; instead, there was just a "lot of non-engagement" with what was going on in class. Ms. Thompkins spoke to respondent about student engagement and checking for understanding strategies.

39. Ms. Thompkins observed a lesson that respondent taught in which respondent intended to use a video she had gotten on YouTube. Ms. Thompkins believed that respondent had not fully planned that lesson, and that the video she had chosen was not a good one for the lesson. Ms. Thompkins commented upon a math lesson that respondent taught that also appeared to lack adequate planning. Ms. Thompkins observed some of the same deficiencies in respondent's teaching that were noted in the TDP.

40. Respondent told Ms. Thompkins that she could support respondent most by attending the meetings with Ms. Aguayo so respondent would not be alone. Ms. Thompkins recognized that respondent's meeting with Ms. Aguayo were "stressful" for respondent because it was difficult to be told that she was not meeting standards, and the evaluation process was "exhausting." Although respondent expressed frustration with all the questions Ms. Aguayo asked her during the meetings, Ms. Thompkins believed that Ms. Aguayo's questions were appropriate, and she understood Ms. Aguayo's objective in asking them.

41. Janet Morello. Since August 2015, Ms. Morello has been employed by the District as an Instructional Coach in the Early Learning Department. For two years before that, she was a site-based coach at Winchell. Ms. Morello has been an instructional coach for about 10 to 15 years. She has been employed by the District since 1984 and has worked as an elementary school teacher.

42. When Ms. Morello was a site-based coach at Winchell, she assisted grade levels and teachers with lesson planning, resources and support as requested. While she was located at Winchell, Ms. Morello's room was next door to respondent's. Ms. Morello taught respondent's class "several times" when respondent met with Ms. Aguayo. In the 2013/2014 school year, respondent asked Ms. Morello for assistance teaching EL students. Respondent, on occasion, also asked Ms. Morello for assistance with lesson planning. In March 2015, Ms. Morello was asked to work with respondent on a five-day coaching cycle. Ms. Morello

modeled new techniques for teaching writing on the first two days of the cycle. Ms. Morello was not available to complete the cycle on the remaining days, and those days were not rescheduled.

43. Ms. Morello was “thrilled” that the District decided not to evaluate teachers who were rated as proficient when the District first implemented Common Core during the 2013/2014 school year. According to Ms. Morello, this “empowered” teachers to “try new things” that “might flop” when teaching their students.

#### *Respondent’s Responses to Evaluations and Lesson Observations*

44. Respondent was given the opportunity to respond in writing to her preliminary and summary evaluations during the 2013/2014 and 2014/2015 school years. Respondent provided written responses to these evaluations.

45. 2013/2014 Preliminary Evaluation. In respondent’s response to her 2013/2014 Preliminary Evaluation, respondent stated that the following factors were not taken into consideration: (1) 2013/2014 was the first year she taught the third grade; (2) she had not been trained to teach the Common Core standards; (3) the conclusions were “based on observations of 1% of” respondent’s instructional time; (4) students had “no foundational support for Common Core standards”; (5) 30 percent of her class did not read at grade level; (6) 30 percent of her class were EL students; and (7) the District had “not trained teachers in the strategies to provide the necessary opportunities, supports, and instructional strategies to master Common Core standards and skills to grade-level students let alone low readers and ELD students.” Respondent also gave a point-by-point response to the observations set forth in the 2013/2014 Summary Evaluation. Respondent stated that because she was “uncomfortable” with the “professional style of Ms. Aguayo’s debriefings,” she asked that Gloria Ruiz, an FTA representative, be present at all her meetings and debriefings with Ms. Aguayo.

46. 2013/2104 Summary Evaluation. Respondent prepared a written response to her 2013/2104 Summary Evaluation. In her response, respondent asked: “In a year that most teachers were not evaluated because of the new Common Core Standard-based curriculum, and considerations were made so that teachers could learn and adapt to the new standards, I would like to know why I was selected to be evaluated from all of the teachers at Winchell who also had similar evaluations last year.” She raised the same concerns that she raised in her response to the 2013/2104 Preliminary Evaluation. She asserted that she was a “highly qualified teacher” with a master’s degree in Education and a Reading Specialist credential, she had taught evening classes in Developmental English at Fresno City College for 11 years, and she had published a children’s book that was sold in online bookstores.

47. 2014/2015 Preliminary Evaluation. In her response to the 2014/2015 Preliminary Evaluation, respondent criticized Ms. Aguayo for not reviewing her students’ work and test scores when conducting the evaluations. As respondent stated, “Ms. Aguayo, at no time during the evaluation process, has requested any student work or outcomes....”



As a result, “Ms. Aguayo has no concept of what my students have learned or are learning.” According to respondent, “Since student learning is the most important component of the evaluation process, it has become clear to me that her continued rating of my performance of CSTP Standards 1, 2, and 4 at DMS [*sic*] may be based not on my professional performance but on her bias against me personally.”

Respondent asserted further that Ms. Aguayo “claims to give support, but my experience with her ‘support’ over the past year and a half has yielded such negative feedback that I now have chosen to work only with my FUSD veteran coach.”

Respondent concluded with, “It is my opinion that Ms. Aguayo is determined not to pass me on these standards no matter what I do.”

48. 2014/2015 Summary Evaluation. In her response to the 2014/2015 Summary Evaluation, respondent stated, in relevant part,

... Most of Ms. Aguayo’s assumptions are from the random informal observations that she evaluated. Many of those observations took place when I was not direct teaching. Ms. Aguayo has evaluated my performance while students were taking tests, when I was BAS testing and students were doing independent work or after my direct teaching. She has evaluated my performance based on the standards that don’t apply while I’m not teaching. It is unreasonable to expect teachers to be direct teaching 100% of the day. Students in my class were always given the opportunity, when applicable to the lesson being taught, to explain and justify their responses or to share their previous knowledge and understanding with partners. Students have dramatically improved in engaging in discussions about the text or responding upon being asked. Last year was the first year of Common Core and teachers as well as FUSD coaches struggled to figure out how to teach to the new standards, so students are still learning the skills needed to be successful under this program. My grade level team and I have dedicated our own time as well as our paid time to come up with the strategies to facilitate group sharing and critical thinking.

Respondent questioned Ms. Aguayo’s experience, asserting that Ms. Aguayo “had no experience in teaching primary grades and has shown no interest in trying to understand the strategies needed to teach primary grades.” Respondent stated that she teaches to the “Zone of Proximal Development,” and that her “lessons are meant to make sure [her students] master the foundational skills of an objective or standard and then gradually introduce rigor.” She asserted that she “rarely struggle[d] to do anything” in her classroom, and that “[o]ne of [her] strong points is to organize curriculum.” She noted that she had created PowerPoint presentations and worksheets that she sold to other teachers through the website

teacherspayteachers.com. She asserted further that, “I absolutely DO provide my students with modeling or instruction of effective instructional strategies that align to a learning goal, objective, purpose, or outcome.” (Capitalization in original.) According to respondent, “Since Ms. Aguayo chose not to look at the resulting work of my students, I find her conclusion flawed.” Respondent also stated that she “hesitated to be candid with [Ms. Aguayo] since [respondent’s] first debriefing with her in 2013 when she misquoted and misinterpreted comments [respondent] made.” Respondent felt that “it was deliberate to put [respondent] in a bad light.”

Respondent “strongly disagree[d]” with Ms. Aguayo’s opinion that respondent had “not developed as a professional educator.” Respondent asserted that she had worked collaboratively with Ms. Morello and her colleagues and coaches.

49. Responses to Written Lesson Observations. Respondent was also given an opportunity to respond in writing to the comments Ms. Aguayo and Ms. Preas made in their written lesson observations. Respondent submitted written responses to these observations. For example, in her response to the February 14, 2014 lesson observation, respondent stated that Ms. Aguayo “seemed supportive” during the formal debriefing, but her supportive comments during the debriefing were not reflected in her written lesson observations. Respondent stated further that, “it seems there is no pleasing Ms. Aguayo on paper, as her DNMs seem to increase with each observation.” According to respondent, “Ms. Aguayo, by the nature of her observations, has discouraged rather than supported” respondent. Respondent provided detailed responses to Ms. Aguayo’s observations. She attached samples of her students’ work from the lesson. Respondent “strongly disagree[d]” with Ms. Aguayo’s statement that respondent’s negative comments to students outweighed her positive comments. She asserted that Ms. Aguayo’s comments were “subjective.” She concluded by saying, “it is my opinion that the reasons for the DNM ratings have little or no merit and I am concerned that Ms. Aguayo’s intent is not to pass me on these standards no matter how well I perform, as this seems to be a pattern in her past evaluations.”

50. Respondent included similar comments in her other responses to written lesson observations. In addition, she raised concerns about Ms. Aguayo’s insistence that respondent read the written lesson observations during the debriefings, and provide immediate oral responses. As respondent stated in her response to the February 6, 2015 observation:

What Ms. Aguayo doesn’t state is that I prefer to take the document home and read it as they are lengthy and skewed to the negative. Her comments have not changed as she continues to not pass me on CSTP 1 and others. Nothing has changed in her observations in the last year and a half. My experience with Ms. Aguayo is that she continually makes me repeat answers and clarify and it is time-consuming and frustrating because she simply doesn’t understand my explanations. Conversations with her usually do not have a positive outcome.



Respondent stated further that, “Generally, I don’t agree with the evaluator’s conclusions because my students are thriving in my classroom. All one has to do is look at my classroom environment and work with my students to see that they are engaged and learning.” Respondent also commented that Ms. Aguayo’s presence in the classroom made her students “nervous.”

*Testimony from Respondent and Respondent’s Witnesses at Hearing*

51. Respondent’s testimony. At the hearing, respondent testified that after respondent obtained her Multiple Subject teaching credential in 2001, she began working as a substitute teacher. In 2003, she became a certificated tutor for the District. In the 2012/2013 school year, she taught fourth grade at Winchell. She began teaching third grade in the 2013/2014 school year. Ms. Aguayo told her that she would be evaluated at the end of the first or the beginning of the second week of that school year. Ms. Aguayo conducted four formal evaluations during the school year. Ms. Aguayo also randomly visited respondent’s class every week. Respondent complained that Ms. Aguayo would interrupt respondent’s lessons to correct her, instead of waiting until afterwards at the debriefings. Respondent also complained that the number of observations and debriefings were “excessive,” and that the debriefings were “not productive.” According to respondent, at times, Ms. Aguayo was supportive during the debriefings, but her written comments in her lesson observations were “99 percent negative.” Respondent described these negative comments as “discouraging.” She believed that she worked “as hard as” she could, but there was no way that she could please Ms. Aguayo.

52. Respondent raised concerns about the ratings Ms. Aguayo gave her. Respondent was particularly concerned that Ms. Aguayo did not look at her students’ work product in reaching her ratings. Respondent asserted that she worked with her students to check for understanding and to clarify any misconceptions. Respondent included examples of her students’ work in her exhibits. Respondent also offered charts showing her students’ scores on the DRP reading assessments during the 2014/2015 school year.<sup>8</sup> The charts show that the performance of respondent’s students on these assessments was consistent with the averages achieved by students in the same grade at Winchell and in the District.

53. Respondent asserted that she was not adequately trained in Common Core standards. She admitted that she attended Common Core training for six hours on September 19, 2013, for seven hours on December 5, 2013, for seven hours on November 3, 2014, and for six and one-half hours on January 28, 2015. She testified that she worked with her AC to plan curriculum that met the Common Core standards, and that Ms. Morello helped her. But she asserted that all the teachers in her AC were “struggling” to find resources to meet these standards, and the training offered by the District was not sufficient.

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<sup>8</sup> “DRP” stands for Degrees of Reading Power.

54. During her testimony, respondent showed a PowerPoint presentation she gave to her students during one of the lessons Ms. Aguayo observed. She submitted a book she had written, which was illustrated by her sister and sold through online book stores. She also offered a listing of her work product she sells or gives away on the website called teacherspayteachers.com. Her work product includes documents entitled, “Common Core Third Grade Up Mighty Metaphors, Super Similes Interactive PPT,” “Common Core Third – Featured,” “Common Core Third Grade Homograph (Multiple Meaning Words) Practice,” “Common Core Third Grade Prefix (un-) Practice Packet,” and “Common Core Third Grade Verb Riddles – Featured.” She showed videos of her classroom, including students’ work posted on her walls. She asserted that her classroom was “very active” and that her students were “engaged.” She believed that her teaching met the District’s standards during both the 2013/2014 and 2014/2015 school years.

55. Gloria Ruiz. Gloria Ruiz has been a teacher at Winchell for 24 years. She currently teaches transitional kindergarten. In the 2013/2014 and 2014/2015 school years, she taught kindergarten. Ms. Ruiz noted that the Houghton-Mifflin school books that Winchell had during the 2013/2014 school year were not rigorous enough to meet the Common Core standards. Teachers had to find their own resources and develop their own curriculum to comply with the Common Core standards that school year.

56. Ms. Ruiz went into respondent’s classroom about five to six times during the 2013/2014 school year, and a “lot” more during the 2014/2015 school year to drop off books or ask questions. During these times, respondent’s students appeared to be engaged and on task. Ms. Ruiz estimated that she stayed about two to three minutes in respondent’s classroom when she visited while students were in attendance. Ms. Ruiz did not observe respondent teaching during these visits.

57. Ms. Ruiz has been the FTA site representative for four to five years. In this position, she accompanied respondent to debriefing meetings with Ms. Aguayo and, sometimes, Ms. Preas. Ms. Ruiz was not aware that respondent had any problems regarding her teaching before Ms. Aguayo became Winchell’s principal. During the debriefings, Ms. Ruiz believed that Ms. Aguayo asked the same questions of respondent “over and over again,” and that respondent would answer to the “best of her ability.” Although Ms. Aguayo was “very polite” and professional, Ms. Ruiz believed that some of her questions were “very petty.” Ms. Ruiz believed that Ms. Aguayo did not convey “anything positive” during the debriefings.

58. Teresa Taylor. Teresa Taylor has been a teacher at Winchell for 20 years. For the past 14 to 15 years, she has taught second grade. Ms. Taylor’s classroom was across the hall from respondent’s. Ms. Taylor would visit respondent’s classroom in the morning before school, at recess, during lunch, and after school. She “admired” the neatness of respondent’s room. When Ms. Taylor would “stick” her head in briefly during the day, she never saw respondent’s students not paying attention. Ms. Taylor estimated that she would be in respondent’s classroom about one to two minutes on these occasions.

59. Ms. Taylor testified that, before Common Core was implemented, the teaching model was more “teacher-driven,” with direct instruction implemented through the “I do, we do, you do” format, with the teacher: (1) stating the objective; (2) modeling a problem; (3) doing a problem together with the students; (4) releasing the students to work on problems independently in groups or in pairs; (5) checking for understanding during the “we do” and “you do” stages; and (5) closing the lesson. Ms. Taylor believed that Common Core has changed the way teachers are supposed to check for understanding by incorporating deeper depths of knowledge, but Ms. Taylor stated that it was “cloudy” and “vague,” and teachers were “muddling through” it. Ms. Taylor also stated that she had to search for resources to teach her students, because the District’s existing Houghton-Mifflin curriculum did not meet the rigor required by Common Core. According to Ms. Taylor, the District had not provided adequate training to teachers to teach to the Common Core standards. Ms. Taylor agreed that the “I do, we do, you do” format was still being used in teaching to the Common Core standards.

60. Ms. Taylor met with Ms. Aguayo, Ms. Preas and respondent during one of their three-way conferences during the 2014/2015 school year when respondent’s evaluation was discussed. According to Ms. Taylor, the “tone” during this meeting was “professional,” but Ms. Aguayo seemed to ask the same questions rephrased many times. Respondent stated that she preferred to take the evaluation home with her and read it before getting back to Ms. Aguayo.

### *Discussion*

61. Evaluating Respondent during the First Year of Common Core. Respondent raised a number of defenses to her dismissal. Her primary defense was that it was not appropriate for the District to evaluate her during the 2013/2014 school year because it was the first year of Common Core implementation, when no teachers who had previously been rated as meeting standards proficiently were evaluated. According to respondent, during the 2013/2014 school year, the District did not provide math or ELA curriculum to its teachers that was rigorous enough to meet the Common Core standards. Consequently, teachers were struggling to develop their own more rigorous curriculum. Respondent argued that under these circumstances, it was not appropriate for the District to evaluate her during the 2013/2014 school year.

62. Respondent’s arguments were not persuasive. While the implementation of Common Core may have made the jobs of the District’s teachers more challenging, principals were required to evaluate teachers who had received Does Not Meet ratings and temporary and probationary teachers. It was within the discretion of principals to evaluate teachers who had received Meets Standards - Minimally ratings the prior year. Four of the approximately 30 teachers at Winchell were evaluated in the 2013/2014 school year, including two veteran teachers who had previously received ratings of Meets Standards – Minimally in one or two areas.

63. Although Common Core may have required changes in the curriculum that was taught, the CSTPs were not changed and the four Classroom Foundations that were required to be present in every lesson remained the same. The concerns that Ms. Aguayo raised in her lesson observations and evaluations did not criticize respondent for how she implemented the Common Core standards. Instead, Ms. Aguayo observed and evaluated respondent on the CSTP standards and Classroom Foundations that were put in place well before Common Core was implemented.

64. The concerns Ms. Aguayo raised related to basic, fundamental teaching principles that transcended the implementation of Common Core. Throughout the lesson observations and evaluations, Ms. Aguayo focused on respondent's classroom management and delivery of instruction. Ms. Aguayo repeatedly noted respondent's failures to thoroughly prepare her lessons, to state clear objectives, to align her teaching to stated objectives, to model the lesson content during direct instruction, to check for student understanding, to adjust her teaching to address students' difficulties, to ask probing questions to engage students in critical thinking, to provide a range of difficulty and depth of knowledge instead of remaining at an introductory level, to differentiate instruction for students who were at varying levels of learning to ensure that all students were challenged, to invite all students to participate and become fully involved in the learning process, and to plan structured learning opportunities for students who finished assigned tasks early. Ms. Aguayo's efforts were concentrated on encouraging respondent to create a rigorous learning environment in which all students were expected to think critically and independently. Given the focus of Ms. Aguayo's observations and evaluations, respondent did not establish that the District abused its discretion by choosing to evaluate her in the 2013/2014 school year when Common Core standards were first being implemented.

65. Lack of Assessment Data. Respondent argued that the District improperly failed to consider in its evaluations of her the results of standardized tests given to her students. According to respondent's evidence, respondent's students performed as well on standardized tests as other District students at their grade level. Respondent argued that the District's failure to support her dismissal with standardized test results demonstrates that her negative evaluations were based on the subjective judgment of Ms. Aguayo and not supported by objective student assessment data.

66. Respondent's argument in this regard was not persuasive. Although no statewide student assessments were conducted during 2013/2014 school year in light of implementation of Common Core, Ms. Aguayo, during her observations, assessed student understanding of the lessons respondent delivered. Ms. Aguayo included in her written observations the data she collected from students about their understanding of respondent's instruction. Ms. Aguayo's assessments of student understanding were consistent with the assessments made by Ms. Preas and the veteran support teachers. The lack of standardized student test results in the District's evaluations of respondent does not undermine the validity of those evaluations and the concerns raised by the District about respondent's teaching.

67. Winchell Students. Respondent argued that the District's evaluations of her teaching did not take into adequate account the facts that Winchell was in program improvement, and many of her students were English learners and/or not reading at grade level.

68. This argument was also not persuasive. There was no evidence that the mix of students in respondent's class was different from the mix in other classes. While teaching to students who were not fluent in English or could not read at grade level might make a teacher's job more challenging, these factors do not undermine the District's evaluations of respondent. The District repeatedly raised concerns with respondent's failure to differentiate among her students and provide instruction at varying levels to ensure that all students were challenged and engaged. Respondent's arguments regarding the learning levels of certain of her students do not address the District's concern with the lack of rigor in respondent's instruction to ensure that all students were adequately encouraged to think critically to reach their maximum potential.

69. Ms. Aguayo's Experience and Negative Tone. Respondent questioned both Ms. Aguayo's experience in conducting the lesson observations and evaluations, and the negativity of her observations and evaluations.

70. At the hearing, Ms. Aguayo demonstrated her knowledge and understanding of the third-grade curriculum, the hallmarks of good teaching, and the evaluation process. It was evident from her testimony and the written documentation she prepared that she was well-trained and skillful in her position as a principal. Any arguments regarding her experience and competence to conduct the observations and evaluations were without merit.

71. Respondent's arguments about the negative tone of Ms. Aguayo's observations, evaluations and debriefings raise some concerns. As respondent correctly asserted, the purpose of the evaluation process is to offer teachers guidance and support to help them improve their teaching. Respondent felt frustrated by Ms. Aguayo's criticism. Ms. Aguayo may have been more effective in getting respondent to better understand and address Ms. Aguayo's concerns if they had been presented in a less critical, more constructive and empathetic fashion.

72. But while Ms. Aguayo's concerns may have been better received and more effective if she had presented them in a more compassionate, engaging tone, there was no evidence to establish that Ms. Aguayo harbored any bias against respondent. There was no reason or motive offered or proven to support that Ms. Aguayo negatively evaluated respondent due to any prejudice or preconceived notions about her. Instead, the evidence showed that Ms. Aguayo's purpose in criticizing respondent was to bring to respondent's attention the District's teaching standards to ensure that respondent taught her students in a manner that would allow them to reach their highest potential.

73. Number of Observations. Respondent complained that the number of observations conducted by Ms. Aguayo was excessive and violated the terms of the CBA.



Issues relating to CBA compliance are beyond the scope of this proceeding and are better addressed through the grievance process.

74. There was not sufficient evidence to establish that the number of observations adversely affected the students in respondent's class, or resulted in skewed or inaccurate observations by Ms. Aguayo. Consequently, this argument must be rejected.

75. Testimony of Coaches. Respondent raised concerns about veteran support coaches testifying in this proceeding and questioned the truthfulness of some of their testimony. The coaches presented as dedicated teachers who were trying to help respondent improve her teaching skills. Although that help may not have been consistently effective, respondent's criticisms of the veteran support coaches were not persuasive.

76. When all the evidence is considered, the District established that respondent's performance was unsatisfactory. The District provided respondent with adequate guidance, support and assistance to meet the District's standards. She was given a sufficient opportunity both before and during the 90-Day Notice period to correct her deficiencies. She had support from three veteran support coaches (Ms. Solorio, Ms. Buchanan and Ms. Thompkins) and a site-based coach (Ms. Morello). Ms. Aguayo and Ms. Preas observed her classroom on numerous occasions, and gave her detailed and specific feedback and guidance. Notwithstanding all this feedback and assistance, respondent did not demonstrate sufficient improvement to bring her performance up to a satisfactory level.

77. In her responses to the written lesson observations and evaluations, and during her testimony, respondent did not demonstrate insight into the concerns the District repeatedly raised about her teaching. She was not sufficiently receptive to the feedback she received from her principal, vice principal, or instructional coaches, and did not take adequate steps to implement the strategies she was shown, make the adjustments that were suggested, or address the District's concerns, despite the numerous opportunities she was offered. Given respondent's lack of improvement and insight, it would be contrary to the best interests of the District's students to return respondent to her teaching position. The District established, by a preponderance of the evidence, that respondent's performance was unsatisfactory. Its dismissal of respondent must therefore be sustained.

## LEGAL CONCLUSIONS

1. Pursuant to Education Code section 44932, subdivision (a)(5), a school district may dismiss a permanent certificated employee for unsatisfactory performance. When reviewing a school district's dismissal action against a certificated employee based solely upon unsatisfactory performance under Education Code section 44932, subdivision (a)(5), there is no need to apply the standards of fitness to teach set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1175-1176.)

2. Education Code sections 44660 through 44665 set forth the requirements with which a school district must comply when evaluating certificated employees. Education Code section 44662, in relevant part provides:

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

3. Education Code section 44664, in relevant part, provides:

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

4. Before a school district may dismiss a permanent certificated employee for unsatisfactory performance, it must comply with Education Code section 44938, subdivision (b), which, in relevant part, provides:

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the



unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

5. The District evaluated respondent in accordance with Education Code sections 44660 through 44665. Its evaluations included recommendations as to areas of improvement in respondent's performance. It notified respondent that she was not performing her teaching duties in a satisfactory manner according to the District's standards and described her unsatisfactory performance. The District thereafter conferred with respondent and made specific recommendations as to areas of improvement in her performance. It endeavored to assist respondent in her performance. (Ed. Code, § 44664, subd. (b). Findings 9 through 43.)

6. At least 90 days before it served a notice of intent to dismiss, the District gave respondent written notice of her unsatisfactory performance, specifying its nature with specific instances of behavior and particularity as to furnish her with an adequate opportunity to correct her faults and overcome the grounds for the charges. (Findings 25 through 28.)

7. When all the evidence is considered, the District established by a preponderance of the evidence that, notwithstanding the assistance and opportunity it provided to respondent to correct her faults and address the grounds for the unsatisfactory performance charges against her, respondent did not improve her performance to a satisfactory level. Respondent did not demonstrate at the hearing that she had adequate insight into the District's concerns about the quality of her teaching to provide sufficient assurances that, if she were returned to the classroom, her teaching would improve to a satisfactory level. As a result, the District established that respondent should be dismissed from her employment as a teacher with the District for unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(5).

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## ORDER

Respondent Olivia Echeverria-Bis is DISMISSED as a permanent certificated employee of the Fresno Unified School District.

DATED: February 19, 2016 \_\_\_\_\_

DocuSigned by:  
*Jacqueline Tuttle*  
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JACQUELINE S. TUTTLE, Member  
Commission on Professional Competence

DocuSigned by:  
*Andrew L Bolts*  
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ANDREW BOLLS, Member  
Commission on Professional Competence

DocuSigned by:  
*Karen Brandt*  
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KAREN J. BRANDT, Chairperson  
Commission on Professional Competence