

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

**In the Matter of the Dismissal of:**

**IDOLINA RIVAS (EN 689387), Respondent**

**A Permanent Certificated Employee**

**OAH No. 2019100690**

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) on March 2-4 and 9-13, 2020 in Los Angeles, California, and via video conference on August 12-13 and 18-19, and September 15-18, 21, and 28, 2020. The Commission consisted of Lynette Ballas, Luciano Ortiz, and Carmen D. Snuggs, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, who presided.

Susan Hyman, Assistant General Counsel II, Los Angeles Unified School District, Office of the General Counsel, represented complainant Los Angeles Unified School District (LAUSD or District).

Rosty G. Gore, Attorney at Law, Trygstad, Schwab & Trygstad, represented respondent Idolina Rivas (Respondent), who was present throughout the hearing.

Oral and documentary evidence was received. The case was deemed submitted for decision at the conclusion of the hearing on September 28, 2020. The Commission thereafter deliberated in executive session.

### **Protective Order**

The ALJ issued a protective order to protect the names of any students referenced during the hearing and ordered that student names would appear in the hearing transcript as the students' first and last initials only.

### **Motions in Limine**

Prior to presentation of the evidence, the parties filed motions in limine and briefs in opposition. Oral argument on the motions was heard on March 2, 2020, and the motions were ruled upon as stated on the record.

### **Withdrawal of Charges**

During the course of the hearing, Complainant withdrew charges 15 through 19, 21a, 21c, and 98 through 102. The case was deemed submitted for decision at the conclusion of the hearing on September 28, 2020. The Commission thereafter deliberated in executive session. After due consideration of the entire record, herein, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

## **ISSUE**

Whether the District established by a preponderance of the evidence that respondent's dismissal should be sustained.

## **SUMMARY OF DECISION**

Respondent is an elementary school teacher in the District. The District seeks to terminate her employment based on allegations Respondent demonstrated: immoral conduct (Ed. Code, § 44949), unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)), unsatisfactory performance (Ed. Code, § 44932, subd. (a)(5)), evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), persistent violation of, or refusal to, obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her (Ed. Code, § 44932, subd. (a)(8)), and a willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district (Ed. Code, § 44939). The District failed to establish by a preponderance of the evidence cause for dismissal. The Accusation against Respondent is hereby dismissed, and Respondent shall not be terminated as a certificated employee of the Los Angeles Unified School District.

## **FACTUAL FINDINGS**

1. Respondent is a permanent certificated employee of the District, assigned as an elementary teacher at Bushnell Way Elementary School (Bushnell Way).
2. On September 24, 2018, Respondent was issued a Notice of Unsatisfactory Service and Notice of Suspension related to her performance on November 9, 2016, January 31, 2017, April 3, 2017, September 13, 2017, October 20, 2017, November 27, 2017, February 26, 2018, April 11, 2018, May 11, 2018. On November 13, 2018, Respondent was issued a Notice of Unsatisfactory Service and

Notice of Suspension related to her performance on September 13, 2018. On May 8, 2019, Respondent was issued a Notice of Unsatisfactory Service and Notice of Suspension related to her performance on September 13, 2018.

3. Following an administrative review meeting on June 3, 2019, by letter dated June 10, 2019, Respondent was notified that Titus Campos, Director, Local District Central, recommended discipline of dismissal and immediate suspension should be sustained. Respondent was further notified that the recommendation of dismissal was forwarded to the Board of Education for adoption.

4. On October 2, 2019, the District served Respondent with a Notice of Intention to Dismiss and Placement on Immediate Suspension (Notice of Intent), which notified Respondent of the District's intent to dismiss her within 30 days unless she made a written request for a hearing, and notified Respondent of her immediate suspension without pay. The Notice of Intent included a Statement of Charges with exhibits, a Request for Hearing form, and copies of relevant Education Code sections.

5. Respondent filed a motion for immediate reversal of suspension, which was granted. On December 6, 2019, in the matter entitled *In the Matter of the Motion for Immediate Reversal of Suspension Filed by Idolina Rivas, a Certificated Employee*, OAH No. 2019101087, the District was ordered to make Respondent whole for any lost wages, benefits and compensation.

6. On October 9, 2019, Respondent requested a hearing pursuant to Education Code section 44937, in response to the October 2, 2019 Notice of Intent.

7. On November 7, 2019, the District filed and served the Accusation,<sup>1</sup> which is the operative pleading in this case.

8. The Accusation seeks Respondent's dismissal from the District for the following legal causes under Education Code sections 44932 and 44939: (1) immoral conduct; (2) unprofessional conduct; (3) unsatisfactory performance; (4) evident unfitness for service; (5) persistent violation of, or refusal to, obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school employing Respondent; and (6) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district.

9. All jurisdictional requirements have been met.

## **Respondent's Background**

10. Respondent earned her bachelor's degree in child development from California State University, Northridge in 1996. In addition, she earned a multiple subjects teaching credential in 1998 from California State University, Los Angeles, and a Bilingual, Cross-Cultural, Language and Academic Development (BCLAD)-Spanish in either 1999 or 2000, which allows her to teach English learners.

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<sup>1</sup> The charges contained in the Accusation are identical to the written charges contained in the Statement of Charges.

11. Respondent has been employed by the District for 23 years. She has been a teacher at Bushnell Way her entire career where she taught transitional kindergarten (TK), kindergarten, and the first through sixth grades.

12. The charges in this matter relate to Respondent's assignment at Bushnell Way during the 2016-2017, 2017-2018, and 2018-2019 school years.

### **Bushnell Way**

13. Bushnell Way is a small elementary school located in Los Angeles, California. There are 12 teachers employed at the school which now offers an early childhood program with classes ranging from preschool to fifth grade. During the 2015-2016 school year, there were 16 teachers employed at the school and 240 students enrolled in classes from kindergarten through sixth grade. Due to a reduction in enrollment, Bushnell Way eliminated its sixth grade class. During the 2016-2017 school year, there were not enough students enrolled for all classes to be straight grade level classes. Accordingly, some classes had two grade levels per class, e.g., a fourth and fifth grade combination class.

### **California Standards for the Teaching Profession**

14. The District has adopted the California Standards for the Teaching Profession (CSTP or Standards) to measure teacher performance. The CSTP were developed by the Department of Education, the Commission on Teacher Credentialing, and the New Teacher Center, and are composed of six specific standards: Engaging and Supporting all Students in Learning (Standard 1), Creating and Maintaining Effective Environments for Student Learning (Standard 2), Understanding and Organizing Subject Matter for Student Learning (Standard 3), Planning Instruction and

Designing Learning Experiences for All Students (Standard 4), Assessing Students for Learning (Standard 5), and Developing as a Professional Educator (Standard 6), with several elements under each standard.

### **The District's Class Description – Elementary Teacher**

15. According to the District's job description for an Elementary Teacher, effective December 2011, an elementary teacher's essential functions include: 1) teaching self-contained classes in kindergarten through grade six using adopted textbooks and other authorized instructional material; 2) using information about individual students' academic strength, needs, and progress in planning; 3) designing activities to engage students in cognitively challenging work that is aligned to standards; 4) using resources that promote high levels of learning and student engagement in the classroom environment; 5) closely monitoring student learning in order to understand how students are progressing toward the learning objectives, and timely providing students with instructive and timely feedback to move their learning forward; 6) establishing a classroom environment that is safe and supportive where students feel free to contribute their ideas, and student interactions are respectful and polite to promote a positive learning environment for all students; 7) providing clear behavior expectations for students and monitoring student behavior throughout the class; and 8) reflecting on practice and student work to determine what went well and what changes could improve instruction, and using that reflection to inform future instruction. In addition, elementary teachers are to perform other duties in accordance with the District's Agreement with United Teachers Los Angeles (UTLA).

## **District Policies**

16. In September 1998, the District adopted an Employee Code of Ethics (Code of Ethics), which was revised in December 2000 and again in February 2003. To achieve its mission to educate all students to their maximum potential, the District is committed to three core ethical principles: commitment to excellence, district and personal integrity, and responsibility. The District's goal is to foster a culture of trust, avoid conflicts of interest, and avoid appearances of impropriety. Violations of the Code of Ethics may result in administrative or disciplinary action. It is reviewed with teachers annually and they are provided a copy at the beginning of the school year and mid-year at faculty meetings.

17. The District's Code of Conduct with Students (Code of Conduct) prohibits teachers from engaging in any behavior, directly or indirectly with students or in their presence which is unprofessional, unethical, illegal, immoral or exploitative and from touching or having physical contact with students that is not age-appropriate or within the scope of the employee's individual responsibilities or duties.

18. In the Board Resolution for Respectful Treatment of All Persons (Board Resolution), which was adopted on October 10, 1988, the District's Board of Education reaffirmed its policy that students and adults in both schools and offices should treat all persons equally and respectfully and should refrain from the willful or negligent use of slurs against any person on the basis of race, language spoken, color, sex, religion, handicap, national origin, immigration status, age, sexual orientation, or political belief.

19. In a Policy Bulletin dated February 14, 2014, entitled "Discipline Foundation Policy, School-Wide Positive Behavior Support"(Foundation Policy) the District established a framework for developing and implementing a culture of



discipline conducive to learning and teaching by requiring a consistent school-wide positive behavior support and discipline plan. School-wide positive behavior support is based on research that indicates the most effective discipline system uses proactive strategies designed to prevent discipline problems. A school-wide positive behavior intervention and support system includes communicating clear expectations that are positively stated and taught to all students and must include a clear system to correct student behavior and recognize students for meeting the expectations. Appropriate consequences for student misconduct paired with meaningful instruction and guidance offer students an opportunity to connect their misconduct with new learning. The policy contemplates participation by every person in the District.

20. The District's Codes of Ethics and Conduct, Board Resolution, and Discipline Foundation Policy, constitute reasonable regulations prescribed for the governance of the schools of the District by its governing board. As a permanent certificated employee of the District, Respondent was required to abide by these policies or regulations of the District. As established by her testimony and the testimony of school administrators, Respondent has received training in, and was familiar with, these District policies at all times relevant herein.

### **Principal Narvaez's Assignment to Bushnell Way in 2015**

21. Liliana Narvaez is the Principal of Bushnell Way. She earned a bachelor's degree from the University of Redlands and a preliminary credential that allowed her to teach immediately after graduation within the Riverside Unified School District. She began working for the District in 1996 and taught kindergarten and a combination kindergarten and first grade class. As an elementary school teacher for seven years, Principal Narvaez also taught second and third grade students before working as a

district coordinator for one and one-half years. Before starting her assignment at Bushnell Way in 2015, Principal Narvaez was an administrator at a number of school sites. She was the Assistant Principal for four years at Hobart Boulevard Elementary School and then a Principal at Arco Iris Primary School for 2 years where she oversaw 10 teachers. Principal Narvaez was also a Principal for three years at an elementary school in Boyle Heights with 500 students and opened Estrella Elementary School, where she worked from 2010 to 2015.

22. Principal Narvaez's duties as principal include: (a) ensuring effective and equitable instruction and that teachers have an understanding of their role in implementing the CSTP; (b) ensuring that teachers have the materials and resources they need; (c) creating classroom systems, including disciplinary systems; and (d) implementing District policies and procedures.

23. Principal Narvaez stated that a teacher's first priority is to ensure student safety pursuant to District policy. In addition, a teacher should have a system established so that students entering the classroom know what they will be doing next. A teacher should implement learning standards, monitor student progress, communicate with parents and staff, establish social emotional practices, and ensure a safe and pleasing room environment where student work is displayed. Moreover, a teacher should provide clear and specific feedback to students based on learning standards.

24. The CSTP is the foundation for the teaching profession and was applied by the District during all times relevant to the Accusation. Bushnell Way teachers, including Respondent, are trained on the CSTP and are expected to apply it daily, meeting or exceeding its standards.

25. The District modified how teachers are evaluated when it adopted the LAUSD Teaching and Learning Framework (TLF) in 2013. The TLF, which is available to all teachers, describes teaching standards based upon the CSTP, and provides for four different scoring levels: ineffective, developing, effective, and highly effective. Principal Narvaez uses the TLF when she meets with teachers at the beginning of the school year. Three standards are selected by default and the teacher selects three standards of their own. Together, Principal Narvaez and teacher select one standard to work on throughout the year using the TLF's description of what constitutes effective or highly effective practice of the corresponding standard. The District provides opportunities for teachers to participate in professional development to achieve their goal of meeting the standard. Teachers are expected to be familiar with the TLF and refer to it.

26. Principal Narvaez stated that it is her practice to support teachers by providing professional development opportunities, informing them of District policies, and having an open-door policy. She explained that if a teacher experiences challenges in their practice, she helps to resolve them. For example, if a student demonstrates behavioral challenges, Principal Narvaez will assist the teacher with developing strategies to manage the student's behavior and communicate with the student's parents. She will also offer staff support such as an instructional coach or a behaviorist. Principal Narvaez claimed that she supports teachers with any aspect of the TLF that is causing difficulty because she wants teachers to be effective.

27. Principal Narvaez stated that she offers assistance and guidance to teachers who are struggling with the CSTP or the TLF. The assistance and guidance consist of reviewing lesson plans and providing feedback and assistance in the classroom. She also conducts additional observations to capture more information and holds conferences with teachers where she gives feedback and an opportunity to

engage in a dialogue about her observations of the teachers' practice. Principal Narvaez prepares a memorandum for every conference. Neither the conference nor the memoranda are disciplinary.

28. The impact of an ineffective teacher can be lifelong. When a teacher is ineffective, students are disengaged and off-task. If students are not paying attention, they are losing instruction. A loss in instructional time may cause students to fail to rise to expected grade level achievement. It may also result in learning gaps so that students are not prepared for the next grade level.

29. When Principal Narvaez became Bushnell Way's Principal in 2015, she wanted to get to know the other teachers and develop a rapport with them. She explained that teachers, students, and parents were angry about the removal of the previous principal. Principal Narvaez observed and evaluated the teachers but did so "conversationally." Her impression of Respondent's students during the 2015-2016 school year was that they were able to read to content but were struggling.

## **2016-2017 School Year**

30. During the 2016-2017 school year, Respondent was assigned to a fifth-grade class with approximately 24 students.

### **NOVEMBER 9, 2016 OBSERVATION**

31. On November 9, 2016, Principal Narvaez observed Respondent's class during her English Language Development (ELD) lesson. On December 16, 2016, Principal Narvaez held a conference with Respondent and prepared a memorandum memorializing the substance of the conference. In the area of planning and preparation, Principal Narvaez noted that there were no visible standards or criteria

communicated to the students for expected outcomes. Respondent asked the students to engage in a writing activity regarding the conversation skills used during the small group time. Principal Narvaez contends that all students wrote, but none responded successfully. At the hearing, Principal Narvaez stated that she attached the students' responses to the conference memorandum provided to Respondent, but the District did not provide the responses to the Commission.

32. In the area of classroom environment, Principal Narvaez observed that 12 students were doing the following: their heads were down, they were playing with pencils, drawing, or reading library books and concluded that the students were not engaged in the lesson and Respondent did not re-direct their behavior, resulting in a loss of instructional time. At the administrative hearing, Principal Narvaez acknowledged that fifth grade students occasionally engage in off-task behavior but stated that Respondent should have paused, brought the students back into lesson, or sat closer to the students so that she could see the entire classroom and students' activity. However, later in her testimony, Principal Narvaez stated that Respondent called the names of students who were off-task and told them to pay attention, such that Respondent was monitoring student learning and behavior expectations. She did not indicate in the memorandum, nor could she recall at trial, how long they engaged in this behavior. Similarly, Principal Narvaez did not state how many students were engaged in the other described off-task behavior or how long they did so.

33. In the area of delivery of instruction, Principal Narvaez stated that Respondent failed to communicate the purpose of the lesson when she stated "We're going to go onto something different right now [*sic*] let's focus on what we have been working on . . . We have been displaying pictures and talking about why it is important." (Ex. 5, p. 5-1.)

34. According to Principal Narvaez, during the December 16, 2016 conference, Respondent stated that she focused more on the conversation skill of oral language and intended to teach her students how to listen and answer in complete sentences. Respondent also stated that she felt demoralized because she had never previously been required to attend a conference to discuss deficiencies following a classroom observation.

35. Principal Narvaez offered Respondent the following guidance and assistance: (1) submit lesson plans by 8:00 a.m. at the start of each week beginning January 9, 2017; (2) "make visible and communicate standards or criteria communicated to students for expected outcomes" (Ex. 5, p. 5-2.); (3) use instructional time effectively and in a manner that engages all students; and (4) address all-off task behaviors as they occur until they are corrected.

36. At the conclusion of the conference, Principal Narvaez told Respondent that if she were to evaluate Respondent that day, Respondent would receive a "below standards" evaluation. Principal Narvaez also advised Respondent that her failure to follow an administrative directive may result in a Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District.

37. On December 22, 2016, Respondent submitted a written response to the December 16, 2016 conference memorandum. She noted that she had never previously taught fifth grade, and she had not questioned or responded to Principal Narvaez during the conference because she was surprised at how negative Principal Narvaez's comments were. Respondent contended that she stated the purpose and objective of the lesson and wrote it on the board. The main purpose of the lesson was for students to respond orally to visual cues using conversation skills. At the

administrative hearing, Respondent testified that standards were posted in her classroom on the date of the observation in various places, specifically on a poster in front of room, on the writing bulletin board and math bulletin board. In the area of classroom environment, she stated that she monitored the students by walking around the classroom during the lesson and praising students who were focused. In addition, she monitored the students by her proximity to the students.

38. In the area of delivery of instruction, Respondent stated that the students were previously working on a Daily Language Review activity and she stated that the students were going to do something different because they were moving to a different activity. She contended that during the lesson she explained the purpose of the lesson and wrote it on the board. Respondent concluded by stating she used Principal Narvaez's suggestions and comments to prepare for her formal observation, and that she hoped to receive further support and guidance and constructive feedback during her formal observation conference.

39. Principal Narvaez did not respond to Respondent's December 22, 2016 response.

40. The evidence submitted by the District that Respondent did not post a California Common Core State Standard (CCSS) or communicate criteria to the students for the expected outcome did not preponderate over Respondent's testimony that a CCSS was posted and that she did communicate its standards to her students. The Commission found Respondent to be more credible, which is addressed more fully in Factual Finding 402 through 403. Accordingly, the District did not establish that on November 9, 2016, Respondent did not post a CCSS or communicate a criteria to the students for the expected outcome a set forth in paragraph 3 of the Accusation.

41. The District did not establish that on November 9, 2016, Respondent failed to monitor student behavior or redirect unengaged or off-task students as set forth in paragraph 4 of the Accusation. As established by Principal Narvaez's testimony, Respondent monitored student behavior, called on the students who were unengaged, and redirected them to the lesson.

42. The District did not establish that on November 9, 2016, Respondent failed to communicate the purpose of the lesson to the students as set forth in paragraph 5, of the Accusation. Though she did not communicate the purpose of the lesson when the lesson began, Respondent established that she explained the purpose of the lesson later in the lesson and wrote it on the board.

### **JANUARY 31, 2017 OBSERVATION**

43. On February 22, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on February 17, 2017, regarding her observation of Respondent's English Language Arts (ELA) lesson on January 31, 2017. Principal Narvaez contends that she entered the classroom at 9:45 a.m. and Respondent was reviewing an Evan-Moor<sup>2</sup> worksheet (a supplemental teaching resource) on Daily Language Review for the 25 students in the class. According to Principal Narvaez, one student stated to Respondent that he did not have a notebook and that Respondent did not provide him with one.

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<sup>2</sup> The memorandum incorrectly refers to the worksheet as an "Evan Moore" worksheet.



44. In the area of planning and preparation Principal Narvaez noted that Respondent did not post standards, nor did she communicate the criteria for expected outcomes to the students. In addition, Respondent's lesson plan indicated that she intended to teach math, not ELA, from 9:00 a.m. to 10:00 a.m.

45. In the area of classroom management, Principal Narvaez asserted that while Respondent was in the front of the classroom, 14 of the students were not engaged in the lesson at any given time. She testified that the students sat for 10 to 15 minutes without doing anything or being called on to do anything, which was a loss of instructional time. Principal Narvaez further asserted that students were playing with items in their desks and water bottles on their desks, flipping book pages, and getting up to throw away trash without any redirection from Respondent.

46. In the area of delivery of instruction, Principal Narvaez was concerned that Respondent reviewed the independent grammar lesson without checking that students had materials or completed work and used the Evan-Moor worksheet. Principal Narvaez contends the worksheet is not aligned to a CCSS and therefore Respondent, by using it, did not provide a standards-based lesson.

47. Principal Narvaez offered Respondent the following guidance and assistance: (1) the opportunity for a second formal observation and a supplemental observation in February 2017; (2) plan lessons for the entire school day and ensure lesson plans are complete with the contents of each lesson included and use District-approved instructional materials and teach standards-based lessons; (3) continue to submit lesson plans by 8:00 a.m. at the start of each week; (4) ensure that the standards being addressed are posted and that criteria is communicated to the students to ensure they understand the expected outcomes; (5) maintain complete

awareness of all of the students' whereabouts and actions as Respondent is responsible for their education and safety, and develop a system so that all students are focused on the task they are working on or the activity being presented; (6) use instructional time effectively in a manner that engages all students; (7) address all-off task behaviors as they occur until they have been corrected; (8) monitor student progress by working with the students as a whole group a model of the assignment that is being taught is provided, and utilize small groups when students are clear of the assignment; (9) enroll in Learning Zone course on classroom management (i.e., Fundamentals of CHAMPs and Discipline Course 1 and 2); (10) review the Common Core Writing Standards for lesson planning; (11) the provision of support staff to assist in the afternoons; and (12) notification that if Principal Narvaez were to evaluate Respondent that day, Respondent would receive a below standard evaluation.

48. Principal Narvaez directed Respondent to: (a) plan and develop criteria that is communicated to students to base their work on; (b) address all off-task behaviors as they occur until they have been corrected; (c) teach standards-based lessons that cognitively engage the students; (d) develop and implement complete lessons for the entire school day and school week; (e) submit lesson plans to Principal Narvaez's office on the first day of the week, every week; (f) actively monitor and supervise the students so she is aware of their actions, safety, and whereabouts and redirect students as needed.

49. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent

to respond to the conference memorandum in writing by March 1, 2017, if she wished to do so.

50. On February 28, 2017, Respondent prepared a written response to the February 22, 2017, conference memorandum. Respondent conceded that there may have been three students who could have been off task on the day of Principal Narvaez's observation. Respondent explained that one of the students was in the process of being evaluated for the need for an Individualized Education Plan (IEP) and had difficulty remaining on task. She therefore sent him to a computer to take a quiz so that he could focus, and he was not disruptive. In addition, Respondent noted that Principal Narvaez was mistaken in stating that another student did not have a notebook. Rather, the student, who regularly had behavior issues, did not have his worksheet. Respondent provided the student with a worksheet when she distributed them to the class but he neglected to bring it with him. She stated that the third student who might have appeared to be off task was an English language learner who did not yet speak English. Respondent provided the student with peer support and the student's peer was helping the English learner with tasks during the lesson. She asserted that she addressed all off-task behavior as it occurred, that it has always been her practice to do so, and she would continue to do so in the future. Respondent explained that her policy is to allow students to get up from their seats to throw things away and that the students were not disruptive when they did so on the date of the observation.

51. Respondent also denied that Principal Narvaez entered the classroom at 9:45 a.m. Rather she recalled that Principal Narvaez began her observation at 10:20 a.m. after the class returned from recess. Respondent further contends that it was her

practice to teach an ELD lesson after recess, and, on the day of Principal Narvaez's observation, Respondent taught math during the time designated in her lesson plan.

52. In the area of planning and preparation, Respondent asserted that she wrote the standards and objectives on the board at the front of room and the students were aware of them. Because the lesson involved the use of a projector, a screen was covering the board and temporarily blocked the standards and objectives.

53. In the area of delivery of instruction, Respondent stated that she previously presented an ELD lesson to her class based upon the District ELD curriculum. She determined that a further grammar review was necessary in order to ensure her students' comprehension and mastery of the ELD skills being taught. Respondent used the Evan-Moor worksheet as a supplement pursuant to District policy and, in her professional opinion, the worksheet reinforced the lesson and aided with retention. In addition, the grammar review was an inherent part of the ELA study.

54. Respondent concluded by inviting Principal Narvaez to model a lesson and demonstrate the practices she advised Respondent to implement.

55. There was no evidence that Principal Narvaez responded to Respondent's February 28, 2017 response or provided Respondent any assistance in addressing the deficiencies she noted in the February 22, 2017 memorandum by modeling a lesson.

56. At the hearing, Respondent stated that her request for modeling was sincere and her goal was to receive a positive evaluation. In her opinion, Principal Narvaez was the only person who could provide guidance and support that would address the deficiencies discussed during the conference. Principal Narvaez, however, asserted her belief that Respondent's request was disingenuous.

57. Respondent's testimony and written response that her projection screen blocked the standards and learning objective that she previously wrote on the board was credited. Accordingly, the District did not establish that Respondent failed to post a CCSS or communicate criteria to the students for the expected outcome on January 31, 2017, as set forth in paragraph 6, of the Accusation.

58. The District established that on January 31, 2017, Respondent did not maximize instructional time by ensuring students had materials or completed the assignment prior to reviewing the independent grammar lesson in that one student did not have the worksheet required for the lesson and Respondent did not provide him a new one as set forth in paragraph 7a, of the Accusation, in that both the District and Respondent agreed that the student did not have the worksheet at the beginning of the lesson.

59. The District, however, did not establish that Respondent failed to maximize instructional time or engage in learning on January 31, 2017, by failing to provide a standards-based lesson, utilizing a worksheet unaligned to a CCSS, or adhere to the lesson plan or daily schedule on January 31, 2017. The only evidence presented to suggest that Respondent did not provide a standards-based lesson on January 31, 2017, was Principal Narvaez's testimony that Respondent utilized an Evan-Moor worksheet which was not aligned to a CCSS. Respondent, however, asserted the lesson Principal Narvaez was standards-based and the Evan-Moor worksheets she used supplemented her lesson. Evan-Moor worksheets are sold by the District, are available in educational stores, and approved as a supplement by District policy. Accordingly, the evidence did not establish that Respondent's use of the Evan-Moor worksheets are not standards-based. Respondent's testimony and written response also established that Principal Narvaez entered her class at 10:20 a.m., after the time

allotted for her math lesson. Accordingly, the District did not establish that Respondent failed to maximize instructional time or engage student in learning by failing to provide a standards-based lesson, using the Evan-Moor worksheet or by failing to adhere to the lesson plan or daily schedule as set forth in paragraph 7b, c and d of the Accusation.

60. Principal Narvaez provided a vague description of student off-task behavior in her memoranda and at the hearing. Her contention that the students sat for 10 to 15 minutes without engaging in any tasks was unpersuasive. Respondent provided a detailed response to Principal Narvaez memorandum and identified the students who were potentially not "on task" and explained the reasons for their behavior. Principal Narvaez did not dispute Respondent's recollection at the time Respondent submitted her written response. Accordingly, the District did not establish that on January 31, 2017, Respondent failed to monitor student behavior or redirect students who were not engaged in learning and were off task without redirection. as set forth in paragraph 8 of the Accusation.

61. As set forth in Factual Findings 43 through 60, the District failed to establish that Respondent willfully refused to comply with the directives provided to her by Principal Narvaez failing to "(1) Plan and develop criteria that is communicated to students to base their work on" and "(2) Address all off-task behaviors as they occur until they have been corrected."

62. A teaching assistant (TA) was subsequently assigned to work in Respondent's classroom for a couple of hours in the afternoon twice per week. The TA was new to the District and did not hold any credentials. According to Respondent, the TA did not provide any assistance that would address the issues raised by Principal

Narvaez because the TA did not have the knowledge or experience to teach Respondent how to improve her practice.

### **APRIL 3, 2017 OBSERVATION**

63. On May 3, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on that same date regarding Principal Narvaez's observation of Respondent's classroom on April 3, 2017 beginning at 10:25 a.m. during her ELA and ELD lessons. Respondent wrote the objective "Listening with purpose and understanding and Listing for main points" on the board. (Ex. 8, p. 8-1.) When Respondent transitioned from the lesson and asked students to put their library books away, Principal Narvaez asserted that five students ignored Respondent and continued reading from library books. During the lesson, Respondent asked the students to take out their journals for ELD journal time. In the area of delivery of instruction, Principal Narvaez noted that Respondent did not post standards or communicate criteria to students for the expected outcomes. Principal Narvaez expressed concern that Respondent did not provide the students with a fifth-grade standard or objective. In addition, Respondent did not provide feedback to the students as she checked off their journals as they turned them in. Principal Narvaez also noted that when Respondent asked questions to determine the level of the students' understanding of the lesson, the students shouted one-word responses which Respondent accepted.

64. In the area of classroom environment, Principal Narvaez asserted that Respondent did not adequately monitor or respond to student behavior and did not maintain adequate supervision of students' actions in order to keep them on task. Specifically, she asserted that approximately 50 percent of the students in

Respondent's class did not work on the assigned task or were not engaged in the lesson; students played with items on and in their desks; various students wrote notes, played with school supplies or personal items and cut paper into pieces; students read chapter books and were not engaged in the lesson; students shouted out incomplete responses and 16 students left the classroom in pairs of two at various times during the 20 minute lesson. Principal Narvaez explained that Respondent tried to re-direct the students but was unsuccessful. Principal Narvaez asserted that an effective teacher would have had a system in place with clear criteria that students can understand so that they know what is expected of them. She further explained that Respondent should have had a signal to get the students' attention. Principal Narvaez believed the students did not respect Respondent's authority.

65. Principal Narvaez offered Respondent the following guidance and assistance:

- A. Plan lessons for the entire school day and ensure your lesson plans are complete with the contents of each lesson included. Use District-approved instructional materials and teach standards-based lessons;
- B. Continue to submit lesson plans by 8:00 a.m. at the start of each week;
- C. Ensure that you post the standards being addressed and that criteria is communicated to the students to ensure they understand the expected outcomes;



- D. Maintain complete awareness of all of the students' whereabouts and actions as you are responsible for their education and safety;
- E. Develop a system in your classroom so that all students are focused on the task they are working on or the activity being presented;
- F. Use instructional time effectively in a manner that engages all students;
- G. Address all-off task behaviors as they occur until they have been corrected;
- H. Develop and communicate a clear classroom management system with clear expectations and that holds students accountable for their behavior;
- I. Develop and communicate a clear system for students to use the restroom, and monitor their timely return;
- J. Monitor student progress by working with the students as a whole group while you provide a model of the assignment you are teaching. Utilize small groups when students are clear of the assignment;

K. Enroll in Learning Zone course on classroom management (i.e., Fundamentals of CHAMPs and Discipline Course 1 and 2);

L. Participate in a demo lesson in which District support staff models an ELA lesson and classroom management routines; and

M. Voluntarily participate in the Peer Assistance and Review Program (PAR)

(Ex. 8, pp. 8-3 through 8-4.)

66. Principal Narvaez directed Respondent to: (a) plan and develop criteria that is communicated to students to base their work on; (b) address all off-task behaviors as they occur until they have been corrected; (c) teach standards-based lessons that cognitively engage the students; (d) develop and implement complete lessons for the entire school day and school week; (e) submit lesson plans to Principal Narvaez's office on the first day of the week, every week; (f) actively monitor and supervise the students so that she is aware of their actions, safety, and whereabouts and redirect them as needed.

67. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent to respond to the conference memorandum in writing by May 11, 2017, if she wished to do so.

68. On May 7, 2017, Respondent prepared a written response to the May 3, 2017 memorandum. Respondent disagreed with every deficiency noted in the memorandum and questioned why Principal Narvaez waited a month to hold the conference if Respondent's classroom management and pedagogical skills were as deficient as Principal Narvaez stated. She asserted that Principal Narvaez violated her duty to provide assistance and guidance to Respondent within a reasonable time of the observation. Respondent noted that no other principal had expressed concern about Respondent's teaching or classroom management skills, nor had any other principal subjected her to discipline or issued conference memoranda to her. Respondent further noted that she has always gotten along well with students, teachers and parents.

69. Respondent's testimony and written response established that her students engaged in journal writing several times per week, if not daily. Because four-fifths of the school year had been completed by the time of the observation, the students were well aware of expectations concerning content, style, length of expected written passages, grammar and syntax. Because Respondent informed the students of the expectations several times during the first semester, there was no need to explain and define the expectations at the time of the observation on April 3, 2017.

70. Respondent contends that she posted the standards in the front of her classroom and always did so. In addition, she stated the criteria, goals, and objectives of the lesson to the students before she began the lesson.

71. Respondent acknowledged that one student in her class was drawing in a sketch book instead of engaging in the reading and that when she re-directed him, he told Respondent he was multi-tasking but complied with her direction. The student

stopped sketching and opened his text. Respondent did not reprimand the student in that moment because she chose not to publicly chastise him. Instead, Respondent spoke to the student privately and reminded him of the expected behavior in her classroom. Respondent believes that her actions with the student reflect best practices supported by the District and utilized by educational professions practicing constructive classroom discipline.

72. It is Respondent's understanding that District policy allows for students to leave the classroom to go to the bathroom when they need to do so. She acknowledged that 8 pairs of students who needed to use the restroom left the classroom on April 3, 2017 pursuant to District policy, and that she allowed them to leave in pairs for safety reasons. Respondent did not allow a pair of students to leave the classroom until the previous pair returned.

73. Respondent stated in her written response that she followed the assistance and guidance recommended by Principal Narvaez including the submission of lesson plans every week, which she had been doing since January 2017. She asserted that she has abided by all of Principal Narvaez's requests. Respondent's lesson plans are all standards-based, the standards that are covered in her lessons are all listed in the lesson plans, and all of the materials she used in her lesson plans are materials that have been approved by the District.

74. Respondent concluded her response by reminding Principal Narvaez of her previous request to model a lesson so that Respondent could use her as a model and learn from her pedagogical and classroom management techniques.

75. Principal Narvaez again did not respond to Respondent's written response or provide Respondent with any assistance in addressing the deficiencies noted in the May 3, 2017 memorandum by modeling a lesson.

76. The District failed to establish that on April 3, 2017, Respondent failed to post a CCSS or communicate criteria to students for the expected outcome as set forth in paragraph 10 of the Accusation, as follows:

A. The District did not establish that Respondent failed to provide students with a criteria chart so that they could assess their own work. As established by Respondent's testimony, Respondent had provided students with the criteria for journal writing several times during the school year.

B. Principal Narvaez's testimony and Respondent's admission in her written response to the conference memorandum established that Respondent did not provide feedback to the students on April 3, 2017, as she checked off their journals. The District, however, failed to present evidence as to how Respondent's failure to provide feedback was a deficiency when Respondent had previously provided students with criteria for their journal writing during the school year. In addition, Respondent's testimony that she reviewed the students' journal entries subsequent to the observation was credited.

C. The District also did not establish that Respondent failed to provide a fifth grade CCSS to ensure that students understood the learning objective. According to Respondent, she always posts a standard in the front of her classroom and communicates the criteria, goals, and objectives of the lesson to the students before she began the lesson. Respondent communicated to Principal Narvaez that this was her practice in her written responses to Principal Narvaez's memorandum.

Principal Narvaez's memorandum and testimony did not explain why Principal Narvaez found Respondent's posted standard to be deficient.

D. The District established through Principal Narvaez's testimony that on April 3, 2017, Respondent did not ensure that students answered in complete sentences, and when students shouted out one-word answers, she accepted them. The District, however, did not establish that how this behavior was deficient or how it was related to the allegation that Respondent did not post a CCSS or communicate criteria to students for the expected outcome.

77. The District did not establish that on April 3, 2017, Respondent failed to monitor student behavior or redirect students who were not engaged in learning and were off-task, as set forth in paragraphs 11a, b, c, and e of the Accusation, as follows:

A. Principal Narvaez's memorandum and testimony at the hearing were vague regarding students who were described as being off-task and not engaged in the lesson and was insufficient to establish that approximately 50 percent of the students in Respondent's class did not work on the assigned task or were not engaged in the lesson.

B. Though Principal Narvaez asserted that various students played with items on and in their desks, writing notes, playing with school supplies or personal items, and cutting paper into pieces. The District failed to present evidence of how long the behavior took place, whether it disrupted the class, or whether the behavior rose to a level necessitating re-direction from Respondent. Respondent contended that she was aware of everything that occurred in the class and denied that the behavior described by Principal Narvaez occurred.

C. The District also failed to establish that the students who were reading chapter books were not engaged in the lesson.

D. Though the evidence established that 16 students left the classroom in pairs of two at various times during the 20-minute lesson, the District failed to present evidence as to how this was related to Respondent's failure to monitor student behavior and redirect students who were off-task. The evidence established that Respondent followed District policy by permitting students to leave the classroom in pairs to use the restroom.

78. The District, however, did not establish that on April 3, 2017, Respondent did not monitor student behavior or redirect students who were not engaged in learning, and were off-task with redirection from Respondent, as set forth in paragraph 11d of the Accusation. While Respondent allowed the students to shout their answers, their conduct is affirmative evidence that they were engaged in learning and on-task.

79. The District failed to establish that on April 3, 2017, Respondent willfully refused to comply with the following directives provided to her orally on December 16, 2016 and February 17, 2017, when she attended conferences with Principal Narvaez, and memorialized in writing in conference memoranda dated on December 16, 2016 and February 22, 2017, on April 3, 2017: (1) "Plan and develop criteria that is communicated to students to base their work on," (2) "Teach standards-based lessons that cognitively engage the students," (3) "Actively monitor and supervise" students and "redirect them as needed" and "Address all off-task behaviors as they occur until they have been corrected" when Respondent permitted students to shout out answers without redirection.

80. On April 24, 2017, Respondent successfully completed the Fundamentals of CHAMPS<sup>3</sup> and Discipline in the Secondary Classroom professional development course recommended by Principal Narvaez. On May 7, 2017, she successfully completed the CHAMPS Course 2: Vision, Organization and Expectations.

## **2016-2017 STULL EVALUATION**

81. On April 27, 2017, Principal Narvaez prepared a Stull evaluation of Respondent's performance for the 2016-2017 school year based on her formal and informal observations. She held a Final Evaluation conference meeting with Respondent on May 8, 2017 and issued the Final Evaluation on that date.

82. Principal Narvaez rated Respondent as demonstrating an ineffective practice in management of routines, procedures and transitions, discussion techniques and student participation, standards-based projects, activities, and assignments, and purposeful and productive instructional groups. In the area of formal, supplemental, and growth plan observations, Principal Narvaez noted that Respondent demonstrated consistently ineffective practice with minimal growth throughout the year. She noted that Respondent's data-based objective was to increase the reading fluency of 55 percent of students needing intensive assistance<sup>4</sup> by five words, and that 60 percent of

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<sup>3</sup> CHAMPS is the acronym for a classroom management strategy (conversation, help, activity, movement, participation and success).

<sup>4</sup> The students are rated in three categories: benchmark, strategic, and intensive. Students in the benchmark group are reading at grade level, while those in the



her students would be in the strategic category by the end of the year assessment. Principal Narvaez commented that Respondent did not meet her fluency goal as only one student moved to benchmark from the beginning of the year. However, Principal Narvaez acknowledged that she did not have the end of year results at the time of Stull evaluation.

83. The evidence established that at the beginning of the year, 38 percent of Respondent's students were at the bench level, 8 percent at the strategic level and 54 percent were at the intensive level. By the middle of the year, Respondent's students showed the following progress: 44 percent of the students were at benchmark level, 26 percent were at strategic level, and 30 percent were at the intensive level. Principal Narvaez did not see these results as commendable.

84. In the area of Respondent's progress toward meeting initial planning sheet objectives, Principal Narvaez commented that Respondent's communication of the purpose of the lesson at times had been unclear to students as evidenced by minimal levels of conceptual understanding by students. She further commented that students' level of work was not at grade level, and when asked the purpose of the lesson, the students' responses were task completion-driven as opposed to explaining the purpose of the lesson.

85. Principal Narvaez provided an attachment to the Evaluation that contained nine specific deficiencies consistent with the deficiencies noted during the conference meetings. The attachment also contained five recommendations consistent

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strategic and intensive groups are one grade level and two or more grade levels behind, respectively.

with the assistance, guidance, and directives contained in the conference memoranda provided to Respondent during the school year. Principal Narvaez offered to continue to provide Respondent with the following assistance: (1) substitute coverage so that Respondent could meet with a Multi-Tiered System of Supports (MTSS) support coach; (2) a demonstration lesson in ELA by the MTSS support coach; (3) assistance in the development of effective classroom control and student discipline procedures and encouragement for Respondent to participate in staff development on behavior modification; and (4) assistance in lesson planning and differentiation of instruction.

86. On May 8, 2017, Respondent notified Principal Narvaez that she disagreed with her 2016-2017 Stull evaluation and was invoking her right to file a grievance. She also requested an informal conference with Principal Narvaez to discuss the matter. The informal conference occurred on May 15, 2017. There was no evidence regarding the results of the informal conference. On May 31, 2017, Respondent submitted a grievance form to Principal Narvaez and others. The grievance has not been resolved.

### **INCIDENT INVOLVING STUDENT D.M.**

87. Respondent was D.M.'s teacher for kindergarten and fifth grade. D.M. is currently 13 years old and in the eighth grade. The District alleges that on April 17, 2017, Respondent made D.M. run during physical education despite having been given a note excusing her from running. The District also alleges that on the same date, Respondent told D.M. she would send her to another school if she did not run.

88. D.M. testified that she gave Respondent a note from her doctor excusing her from participating in running activities in physical education (PE). According to D.M., Respondent told her she still had to run because other students were running, so

she did as she was told because she was taught she has to listen to her teachers. She does not recall the date of the incident, but she told her mother what happened and believes her mother called Bushnell Way to complain.

89. According to D.M., the incident was the first time she provided Respondent with information about her health condition. She does not know if Respondent looked at the note, nor does she remember Respondent telling her that she could walk instead of run. D.M. began jogging but became tired and dizzy. She drank water and calmed down. D.M. was able to sit and rest after running once around the track.

90. On April 18, 2017, D.M.'s mother reported to Principal Narvaez that Respondent made D.M. run after D.M. told Respondent she was not able to run due to a medical condition.

91. On May 24, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on May 19, 2017, regarding the reports made by D.M. and her mother. She indicated that during the conference Respondent stated "I told her to just walk," "I don't recall that conversation," "[t]hat never happened," and "I'll respond in writing." (Ex. 10, p. 10-2.)

92. Respondent was required to teach PE almost every day. In fact, Bushnell Way teachers were instructed at staff meetings that they were required to submit logs every month to demonstrate the students were participating in PE. According to Respondent, D.M. had participated in PE throughout the year, and because she was athletic, she performed better than other students. Respondent's procedure when a student requests to be excused is to ask for specifics. Respondent then sends students to the school nurse if she determines the students' condition is serious and the

request to opt out of participation is legitimate. Respondent believes students would continually attempt to be excused from PE, especially running, if she accepted the students' word alone. She therefore attempts to determine if the student has a fever or is visibly ill and then makes a judgment call.

93. Respondent stated that D.M. was fine and acted as she normally did on the date in question. She further stated that if D.M. presented her with a doctor's note she would have excused her from the running activity, but that D.M. did not present her with a note. D.M. told Respondent that she could not run because she was not feeling well but did not inform Respondent that she was suffering from a medical condition. Respondent told D.M. that she could walk instead of run and that D.M. needed to have a doctor's note if she wanted to be excused. According to Respondent, D.M. became upset, rolled her eyes, ran at full speed, and did not lodge any complaints afterward. Respondent stated D.M. continued with her day with her friends and appeared to act as she normally did.

94. No one mentioned any concerns regarding D.M. that day or the next. From April 18, 2017, to May 2, 2017, D.M. ran in PE class and did not complain. It was not until May 2, 2017, that Principal Narvaez informed Respondent via email that D.M. had a medical condition that limited her participation in PE. Accordingly, starting May 2, 2017, Respondent excluded D.M. from the running portion of PE.

95. Respondent prepared a written response to the May 24, 2017 conference memorandum consistent with her testimony that she was not aware of D.M.'s medical condition until Principal Narvaez notified Respondent of D.M.'s condition on May 2, 2017.

96. D.M.'s testimony that she provided Respondent a note excusing her from PE because of a medical condition is not credited. There is no mention of a doctor's note in Principal Narvaez's May 24, 2017 memorandum describing the reports made by D.M. and her mother. To the contrary, the memorandum states that D.M.'s request to be excused from P.E. was based on her contention that she suffered from a medical condition. The evidence established that Respondent instructed D.M. to walk if she could not run and the Commission finds that Respondent acted reasonably under the circumstances, especially in light of the fact that D.M. continued to fully participate in PE between April 17, 2017 and May 2, 2017. Accordingly, D.M.'s testimony was deemed to be unreliable. Based on the forgoing, the District did not establish that Respondent made D.M. run or told D.M. she would send her to another school if she did not run as set forth in paragraphs 13 and 14 of the Accusation.

97. On May 19, 2017, Principal Narvaez offered the following assistance and guidance to Respondent:

A. The safety and wellbeing of employees, students, and parents is always of utmost importance. It is important that Respondent feel safe in her teaching environment. It is also equally important that Respondent's students feel safe and cared for while under her supervision. It is also important that parents feel that their children are well cared for while under her supervision and that they can communicate with her about their concerns;

B. When the student informed Respondent that she had a medical condition preventing her from participating in PE, Respondent should have checked with the health office before making her run;

C. Principal Narvaez and Respondent reviewed the contents of the Code of Conduct with Students and drew her attention to the section that tells employees to avoid situations that include: (i) engaging in any behaviors, either directly or indirectly with a student or in the presence of a student, that are unprofessional, unethical, illegal, immoral, or exploitative;

D. Principal Narvaez and Respondent reviewed the District's Employee Code of Ethics and drew her attention to the sections that state: (i) set the example. We are committed to providing the best example we can, striving to demonstrate excellence, integrity and responsibility in our work and (ii) create an environment of trust, respect and non-discrimination. We are committed to creating an environment of trust, care and respect. We will not tolerate discriminatory or harassing behavior of students or colleagues;

E. Principal Narvaez and Respondent reviewed the Board Resolution on the Respectful Treatment of All Persons;

F. Principal Narvaez and Respondent reviewed the LAUSD TLF and drew her attention to Standard 2, Classroom Environment and elements 2a1 and 2a3 which state the following: (i) 2a1-teacher interacts with students in a way that projects respect and creates a safe and supportive learning environment and (ii) 2a3-the classroom environment is safe and supportive; risk-taking is encouraged, students freely contribute their ideas; and student mistakes are treated as learning opportunities, never with ridicule;

G. Principal and Respondent reviewed the LAUSD Discipline Foundation Policy, Section III, B-1-Teacher Responsibilities;

H. Principal Narvaez reminded Respondent of and reviewed the CSTP, Standard Two: Creating and Maintaining Effective Environments for Student Learning;

I. Principal Narvaez reminded Respondent that all of these policies were discussed at the opening faculty meeting on August 1, 2016, which Respondent attended;

J. Principal Narvaez reminded Respondent of the importance of setting a safe, respectful classroom environment and that they serve as models for student behavior;

K. Principal Narvaez advised Respondent to treat students with respect, courtesy, and sensitivity and to refrain from yelling or physically handling students as a disciplinary technique;

L. Respondent is to seek the assistance of an administrator when she has concerns regarding student behaviors or classroom management strategies;

M. Respondent is to refrain from making physical contact with students, unless it is needed for their safety or safety of others;

N. If a student reports that they are not feeling well or have a health issue, Respondent is to send them with referral to the office; and

O. If a student reports that they are not feeling well or have health issues, Respondent is to contact their parent for further information.

98. Principal Narvaez directed Respondent to adhere at all times to the District's Codes of Conduct and Ethics and the Board Resolution.

99. On June 5, 2017, Principal Narvaez issued a letter of reprimand to Respondent involving the incident with D.M. In the letter she advised Respondent that should a similar incident occur or if Respondent violates the District's Codes of Conduct and Ethics, the District may impose discipline in the form of a Notice of Unsatisfactory Act and/or Suspension.

## **2017-2018 School Year**

100. During the 2017-2018 school year, Principal Narvaez assigned Respondent to a combination fourth and fifth grade class despite the fact that there was a fifth grade class at Bushnell Way. The assignment was made more challenging because its students had wildly varying needs, with one student identified as gifted and talented and was in the GATE program,<sup>5</sup> a student with an IEP, and English learner (EL) students.

101. Kevin McClay, a former Certificated Performance Evaluation Support (CPES) Coordinator with the District's Division of Human Resources, co-observed Respondent's teaching during the 2017-2018 and 2018-2019 school years. Principal Narvaez explained the purpose of co-observation is for the CPES Coordinator to provide support to the principal for the observation. Principal Narvaez stated that she and Mr. McClay calibrated their observations to see if they observed similar areas of deficiency and to ensure conference memoranda or concise and specific. However, Mr. McClay testified that he and Principal Narvaez do not have to both observe the deficiencies. If only one of them observed a particular deficiency, it is included in the

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<sup>5</sup> The purpose of the GATE program is to meet the academic and social needs of highly gifted learners.



conference memorandum. The September 13, 2017 observation described below was the first time Principal Narvaez and Mr. Clay co-observed Respondent in the classroom.

### **SEPTEMBER 13, 2017 OBSERVATION**

102. On September 22, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on September 19, 2017 regarding the observation conducted of Respondent's classroom on September 13, 2017 beginning at 3:30 p.m. while her math lesson was in progress. Principal Narvaez expressed in the conference memoranda and in her testimony that Respondent did not provide differentiation in instruction. During the lesson, Respondent called students to a kidney-shaped table (kidney table) to review an assignment that had been done on a worksheet and to review a lesson that Respondent previously taught. Other students were in table groups and Respondent provided them with a list of tasks so that the students could engage in independent work. Principal Narvaez saw the instructions, but she contends that not all students were following them.

103. In the area of planning and preparation, Principal Narvaez further contends that Respondent failed to plan a mathematics activity that was differentiated within each grade to cognitively engage the diverse student groups in the class. Specifically, she observed that the gifted student was given the same level of instruction as the other students. Principal Narvaez also stated that the math problem of the day was the same for all students and they were all instructed to prepare the same artifact. With respect to the English Language learners, Principal Narvaez contends that Respondent should have reviewed the mathematical vocabulary with

them and provided them with a resource with the vocabulary defined by pictures. She did not see Respondent do that.

104. Principal Narvaez's assertion that the student with the IEP should have been provided with a visual or template was not credited in that Principal Narvaez was not familiar with what the student's IEP required. Students with an IEP do not all require the same accommodations. Similarly, her assertion regarding the actions Respondent should have taken with regard to the English Language learners are also not credited in that Principal Narvaez acknowledged that she was not aware of the level of proficiency of the English learners in the class.

105. In the area of delivery of instruction, Principal Narvaez did not see Respondent walk around the classroom and monitor student work. Instead she posted the following math activities on the board:

Must Do's:

- i. Number of the Day
- ii. 4th grade students complete pages 89 - 90 (These are homework pages from MyMath.)
- iii. 5th grade students complete pages 95 - 96 (These are homework pages from MyMath.)

May Do's:

- i. Read
- ii. Math Games

(Ex. 12, p. 12-2.)

106. Also in the area of delivery of instruction, Principal Narvaez noted that Respondent asked questions in rapid succession and did not provide students with an opportunity to answer. She asked "Did you figure it out? You have to explain. Why? Tell me how you did that?" Principal Narvaez expressed concern that Respondent did not ask questions that were relevant to the lesson and she did not use Depth of Knowledge (DOK) questions that challenged the students to use high-level thinking.

107. According to Principal Narvaez, Respondent did not provide opportunities for students to comprehend and utilize academic language when she did not review or display the academic language associated with the mathematics lesson, specifically the terms product, exponent, and addend.

108. Principal Narvaez recounted that two different student groups approached Respondent for assistance while she was working with a small group at the kidney table. Each indicated that they did not understand something on the homework page. Respondent responded with additional questions and did not provide the students with guidance. Specifically, she responded to the students by asking, "What does it mean?" In response a student's question, Respondent repeated her question four times, but she did not answer the student's question. The student walked away, still not knowing the answer to his original question. Moreover, a student asked for help and showed Respondent a math problem. Respondent asked, "Do you understand what an addend is?" When the student answered no, Respondent stated, "This is not a four-digit addend. Do you understand?" The student did not respond and walked away.

109. In the area of classroom management, Principal Narvaez saw some students go and sit on the floor in the back of the classroom behind the desks and chairs when they finished their assignments. She contended that the students were out of Respondent's line of sight.

110. In the area of classroom environment, Principal Narvaez observed during the "Must Do" time, without redirection from Respondent, two students talked to each other at one of the back tables; two students played with folded paper, passing it back and forth; one student walked around with a shirt in his hand. During the "May Do" time, without redirection from Respondent, a triad of students, who had a math game in front of them, discussed a man who was selling dogs on the prior day and their favorite breed of dogs; two students played the game "Hangman," which was not one of the "May Do" options; one student took another student's "Number of the Day" worksheet and copied the answers; and one student knelt at her desk coloring the front cover of her "My Data Binder." Respondent denied that any of this off-task behavior occurred and that she corrected students' behavior as it occurred. Respondent's testimony was not persuasive.

111. Principal Narvaez noted that during the conference, Respondent indicated that she would respond in writing. She also asked to observe another classroom that had the ideal environment.

112. On September 19, 2017, Principal Narvaez offered the following assistance and guidance to Respondent:

- A. Plan and deliver differentiated lessons and activities to meet the needs of all the students, including the students identified as gifted, students with an IEP and

English Learners. Plan activities and provide sufficient scaffolds and address a variety of learning modalities and language needs.

B. Use instructional time effectively by walking around the classroom and monitoring student progress on assignments. This will also give you an opportunity to assess student understanding of the math instructional objective.

C. Increase the level of thinking during class discussions by using all four levels of DOK questions. You can do this by utilizing the DOK Question stems to develop questions that will be addressed during the lesson. Principal Narvaez provided the DOK Question Stem sheet to Respondent.

D. Introduce and utilize academic language to deepen student understanding of the mathematic content being taught. You can do this by developing a list of academic vocabulary related to the content prior to the lesson, post and review the vocabulary and provide students with an opportunity to utilize the words.

E. Provide specific feedback aligned to the instructional objective, to students to advance their learning. You can do this by asking questions, having students reiterate and model the instructions or monitoring students as they work on an assignment. When students come to you for help or

with a specific question why they do not understand something, ask questions that lead to his/her understanding. Check for comprehension before allowing the student to walk away from you.

F. Plan your lessons and activities to ensure that you allow enough time for all students to have an opportunity to participate in class activities, such as small group assignment review with you.

G. Establish in a classroom environment and age-appropriate students that are conducive to student learning. Fourth and fifth grade students can work directly from their desks and should not sit directly on the floor. For student safety, ensure that you have a clear view of all the students in the classroom at all times.

H. Establish your expectations early and review as necessary. Then monitor student behavior during the lesson and redirect students who display off-task behavior, such as walking around the classroom, having off-topic conversations with other students, or lack of engagement in the activity.

(Exhibit 12, pp. 12-4 through 12-5.)

113. Principal Narvaez indicated that she would provide Respondent with release time to observe another classroom at the same grade level. The focus of the

observation would be in the areas of planning and preparation, classroom environment and delivery of instruction.

114. Principal Narvaez advised Respondent that her failure to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent to respond to the conference memorandum in writing by September 29, 2017, if she wished to do so.

115. On September 27, 2017, Respondent prepared a written response to the September 22, 2017, memorandum. She acknowledged that she did not walk around the class to monitor student work. Respondent explained that she worked with fourth grade students at the kidney table so that she could use the whiteboard located behind her to write examples of math problems to help the students. She contends she monitored the class by using her attention signal, which is a hand drum, and reminded the students to use appropriate voice levels and ensure they completed the "Must Do" activities before engaging in "May Do" activities. Respondent produced the hand drum for the Commission to view. Principal Narvaez asserted that she did not observe Respondent use the hand drum during the observation or any other time. Respondent stated that she stopped the lesson at 9:35 a.m. and asked the students to reflect on the lesson and to self assess their understanding of the material by holding up one to four fingers, with four fingers demonstrating the highest level of understanding. She posted a self-assessment rubric for reference.

116. Respondent stated that the students were engaged in the appropriate activities and she used reminders and signals to redirect students. She noted that she had been teaching for 20 years at that point and had never received such negative

feedback. Respondent contends that she collected the students' work and every student completed their assignment.

117. Respondent testified that she differentiated the math lesson by assigning different work for the fourth and fifth graders. In addition, the fourth graders were allowed to take on the work assigned to the fifth graders. The gifted student was assigned different math games and explained things to other students. Respondent grouped her English learners with English speaking peers. She also grouped the student with an IEP with peer models and his RSP teacher pulled the student out of class and worked with him separately. Respondent also accommodated the student by working with him outside of class. Respondent testified that Principal Narvaez never formally informed Respondent that the student's needs were not met.

118. Respondent disagreed with Principal Narvaez's comments regarding her level of questioning. She asserts that she used questioning techniques to help the students understand how to solve the math problem and to have them recall previously learned information. Respondent also stated that she regularly provides feedback to her students, both verbally and in writing, which she returns to students on a regular basis. She contends that she provided feedback to the students she worked with during the lesson observed on September 13, 2017.

119. Respondent explained in her written response to the memorandum and testified at the hearing that she was aware of where every student was located because she could see every student from her vantage point. The students were on the floor in the back of the room because the "May Do" math game activities require dice. Because the dice distract students who are still working when the dice are used on the



desks, students are allowed to go to the back of the classroom and play math games on the rug.

120. Principal Narvaez did not respond to Respondent's written response.

121. In light of the fact that Principal Narvaez was not aware of the needs of the IEP student, the level of proficiency of the English learners, or if Respondent accommodated the needs of the gifted student in assigning homework, etc., the District did not establish that on September 13, 2017, Respondent failed to address specific student needs as set forth in paragraph 22 of the Accusation.

122. Though the District presented evidence that Respondent did not review or display the academic language associated with the mathematics lesson with the grade specific group in the class during the observation on September 13, 2017, as set forth in Factual Finding 25, the District failed to establish that such language was required to be reviewed or displayed prior to every class.

123. The District established that on or about September 13, 2017, Respondent did not provide adequate feedback to the students or her feedback was non-existent, when students asked for assistance as set forth in paragraph 26 of the Accusation.

124. The District failed to establish that Respondent did not call on seven students to work with her during the math activity, such that they worked independently for the entire period, depriving them of the opportunity to participate in small group homework review, as set forth in paragraph 27 of the Accusation. Respondent explained in her written response to the conference memorandum that the students were working on independent practice pages and not homework pages.

In addition, she only called students up to work with her who might need help and provided intervention to students who she previously identified from test results or from working with them previously in small groups.

125. The District failed to establish that on September 13, 2017, Respondent did not provide a safe and productive classroom environment, when some students, who finished their assigned assignments, went to the back of the classroom during the “May Do” activities out of Respondent’s line of sight, as set forth in paragraph 28 of the Accusation. As Respondent explained, she was aware of where every student was located because she could see every student from her vantage point.

126. The District established that on September 13, 2017, Respondent did not monitor student behavior or redirect students who were not engaged in learning as set forth in paragraph 29 of the Accusation.

127. Based upon Factual Findings 104 through 128, the District did not establish that on September 13, 2017, Respondent willfully refused to comply with the directives provided to her orally on December 16, 2016, February 17, 2017, and May 3, 2017 when she attended conferences with Principal Narvaez and memorialized in writing in conference memoranda provided to RIVAS on December 16, 2016, February 22, 2017, and May 3, 2017. Though the District established that there were some deficiencies in Respondent’s performance of her duties during the observation on September 13, 2017, the District failed to establish that any of the noted deficiencies were due to willful refusal to comply with directives.

## **OCTOBER 20, 2017 OBSERVATION**

128. On November 3, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on November 2, 2017 regarding the observation of Respondent's classroom that was conducted on October 20, 2017, from 10:25 a.m. to 11:20 a.m., during her ELD and ELA lessons. Students had just returned from recess and were reading books at their desks independently. Respondent gave them paper and directed the students to number their paper for a spelling test.

129. Principal Narvaez did not see standards posted in the classroom for either the ELD or ELA activities. She clarified that she would have indicated in her memorandum that they were posted if had seen them. Principal Narvaez did not see Respondent deliver differentiated curriculum and instruction for the fourth and fifth grade students, the two English learners who were at the intermediate, and advanced levels of acquiring the English language, or a student who utilized an IEP program. In addition, Respondent did not incorporate technology instruction and digital resources to supplement her instructional program and address 21st century skills.

130. Respondent's lesson plans for that day indicated that she would teach ELD from 10:20 a.m. to 11:05 a.m., and ELA from 11:05 a.m. to 12:15 p.m. According to Principal Narvaez Respondent taught ELD for 15 minutes, which is not sufficient time to teach the subject matter. Principal Narvaez expressed concern that Respondent's pacing was not according to schedule, and she explained that spelling tests are not normally part of ELD. ELD lessons are required to be 45 minutes per day.

131. In the area of delivery of instruction, Respondent taught an English Language Development lesson from 10:35 a.m. to 10:50 a.m. She posted and reviewed a poster entitled Conversation Norms that listed the following five components: think

time, language of the skills, use conversation voice, listen respectfully, and build on others' ideas. Respondent stated that the students were going to use their conversation skills, she paired the students to respond to the statement "My character is important to the story because \_\_\_\_\_," and asked the students why it is important to maintain their reading logs. She then provided the students time to update their reading logs. Principal Narvaez described the activities as being disjointed.

132. During the ELA activity, Respondent passed out a textbook entitled Character Relationships, a fifth-grade book, to all of the students and asked the students to browse the book. She wrote the objective "comparing and contrasting characters" and requested individual students to read a paragraph at a time. She then asked the students to name a character from the story "Becky Returns," an excerpt from Tom Sawyer. Principal Narvaez described the activities as being disjointed.

133. Respondent asked the students "Why do we practice our conversation skills? Can you tell me a character that was introduced? What can we use to find out the meaning of a word?" (Ex. 13, p. 13-3.) In response to Respondent's last question, a student responded that a dictionary can be used. Respondent replied, "That is a great resource, but we need to use context clues." She did not explain what context clues were, and then asked the students to continue to read. Principal Narvaez described Respondent's questions as DOK 1 recall questions. She also criticized Respondent for agreeing that a dictionary is a good resource to determine the meaning of a word because according to Principal Narvaez, students have not used dictionaries in 10 years.

134. Principal Narvaez also criticized Respondent for not using a graphic organizer such as a Thinking Map to record the students' responses during the classroom discussion on the characters in the Becky Returns story. Principal Narvaez stated that Respondent did not ensure that the students fully participated in the Think, Pair Share activity. Respondent also mispronounced the word "excerpt" multiple times and the students used the same mispronunciation.

135. Principal Narvaez further criticized Respondent for displaying a writing assignment that was more than four weeks old and that did not include Respondent's comments or a rubric, as well as an undated math assignment titled "Math About Me" that did not include a standard, rubric, or teacher's comments. Principal Narvaez stated that a teacher's duty to display current work that included teacher comments, the associated standard, and a rubric was not a District policy but a policy specific to Bushnell Way. The District did not provide the Commission with a copy of the Bushnell Way policy.

136. Principal Narvaez observed that during the ELD activity, four students put their heads down on their desk, and during the ELA activity, five students looked around the classroom, two students played with pencils, one student played with a watch, and one student played with the sleeves of her jacket.

137. On November 2, 2017, Principal Narvaez offered the following assistance and guidance to Respondent:

- A. Develop thorough plans for each subject that you teach with details regarding what and how you plan to teach the students. Differentiate the lessons for the fourth and fifth grade students. Submit them to me weekly.

- B. Introduce the CCSS for each lesson at the beginning, ask for questions, and pause in order to check for understanding. Ensure that you review the CCSS at the end of the lesson.
- C. Adhere to the established daily classroom schedule and ensure that you pace each lesson to provide adequate time to teach all core curricular areas.
- D. Plan and deliver standard-based, teacher directed lessons that establish academically rigorous delivery, include adequate time, structure, and pacing for teacher modeling, guided practice and independent practice to engage and support student learning needs. Differentiate the activities as necessary to meet the learning needs of the student subgroups.
- E. Increase the level of thinking demanded during class discussions by using all four levels of DOK questions. Respondent was advised to plan and develop DOK questions from all four levels prior to the lesson and introduce the questions to the students during the lesson.
- F. Increase instructional strategies to support student learning and promote student participation in the classroom discussion. Incorporate the components of constructive conversations as demonstrated in the Constructive Conversations handout provided to

Respondent, utilize graphic organizers, and ensure that the students fully participate in Think, Pair, Share activities as described in the Think, Pair, Share attachment provided to Respondent.

G. Principal Narvaez advised Respondent that she is a model to her students and she must communicate clearly to them utilizing proper pronunciation of Standard English words.

H. Display current updated student work in the classroom, along with the standard, rubric, and teacher comments. This will show that you value student work, allow the students to learn from each other, and provide opportunities for the students to review and reflect upon their own work.

I. Monitor off-task behavior during the lesson and redirect the students who have their heads down, are looking around the classroom, and who are playing with objects at their desks.

(Ex. 13, pp. 13-4 through 13-5.)

138. Principal Narvaez directed Respondent to: a) submit her weekly lesson plans no later than 8:00 a.m. on the first day of the workweek beginning Monday, November 6, 2017; b) teach a directed, standards-based lesson each day; c) implement

the DOK questions and use them on a daily basis; and d) monitor student behavior and redirect any of the students who are off-task.

139. On November 13, 2017, Respondent prepared a written response to the November 3, 2017 conference memorandum. She asserted that she gave a spelling test every Friday in her classroom and that she wrote out the lesson objective and explained it to the students before starting the lesson.

140. Respondent admitted that she did not post the standard for the lesson that day but stated that she would start doing so. She explained that she used the CCSS to plan and guide her instruction and used District approved materials, which are standard based.

141. Respondent contended that she differentiated her lessons by grouping students according to skill level. For example, she paired more advanced students with low and medium skilled students; planned her questions and sentence frames for her English learner students; and grouped her IEP students with a peer model. With respect to Principal Narvaez's criticism that Respondent used the same textbook for both grades, Respondent noted that the teacher she observed used the same material for both grades as well. She asked whether Principal Narvaez had a different expectation of Respondent with respect to use of the text.

142. Respondent admitted that she did not use technology during the lesson observed by Principal Narvaez, but she used digital resources to display material on a projector and utilized the videos that correspond with the materials at the beginning and other times in the unit. She explained that the pace of her lessons varies on Fridays since she gives a spelling test on that day and she realized that the ELA lessons take longer than she originally planned. In addition, her classroom schedule would



vary due to unexpected changes such as in changes in the library schedule, computer lab, and Friday morning assemblies, among other things, Respondent stated that she provided Principal Narvaez with an updated classroom schedule as necessary.

143. Respondent denied that her pacing did not allow for an introduction, direct teaching, guided practice, and independent practice. She maintains she provided all these elements during the ELD and ELA lesson observed by Principal Narvaez. The ELD lesson built on the students' previous understanding of conversation skills.

144. Respondent had a poster in the front of her classroom of the DOK Question Stems previously provided to her by Principal Narvaez and used it to guide her questions. She contended that she always plans out her questions so that they are open-ended, and she consciously prods her students to provide more detail in their answers to explain their thinking. Respondent noted that certain lessons lead to higher level questioning than others.

145. Respondent acknowledged that she did not incorporate the four components of Constructive Conversation Skills into the classroom discussion because the purpose of the lesson was to have the students practice one of the skills. She contends that she used a graphic organizer and poster in her classroom after Principal Narvaez left. Respondent ensured that the students participated in the Think, Pair, Share activity by circulating around the room.

146. During the conference, Respondent asked Principal Narvaez to clarify how many students she observed engaging in off-task activity, what time during the lesson, and for how long so that she can address it during future lessons. Principal Narvaez stated that varies; students were off-task at various times. Respondent

disagreed that various students were off-task and stated that when she walked around the classroom she observed that students were engaged, quiet, and focused. Respondent informed Principal Narvaez that in the future she would appreciate detailed notes about student engagement. Respondent also noted that when she observed a “model” fourth and fifth grade combination class on November 2, 2017, students in that class also engaged in behavior that Principal Narvaez described as off-task. Principal Narvaez attended the observation with Respondent on November 2, 2017 but did not see the students engage in the behavior described by Respondent. However, she did not stay for the entire observation.

147. Principal Narvaez did not respond to Respondent’s written response.

148. The District established that on October 20, 2017, Respondent did not post a CCSS for either the ELD or ELA activities to guide her in teaching and explaining to the students the purpose of the activities as set forth in paragraph 31 of the Accusation. The District, however, failed to establish that Respondent had previously been instructed to post a CCSS for either her ELD or ELA lessons and or that posting such standards is standard and accepted practice.

149. The District failed to establish that on October 20, 2017, Respondent did not display knowledge or awareness of the individual students' strengths, academic needs, and learning modalities, or that she planned the same undifferentiated activities for all the students as set forth in paragraph 32 of the Accusation, as follows:

A. The District failed to establish that on October 20, 2017, Respondent did not plan differentiated curriculums and provide adequate instruction for the students in her class as set out in paragraphs 32a-32c – of the Accusation. Respondent’s testimony and written response regarding how she differentiated

instruction for the fourth and fifth grade students assigned to her class was credited and persuasive.

B. Though the District did establish that Respondent did not incorporate technology instruction and digital resources to supplement the ELD and ELA lesson observed by Principal Narvaez on October 20, 2017, the District failed to present evidence that addition of those resources would have appropriate accompaniment to the lessons that were being given by Respondent at that time.

150. The District established that on October 20, 2017, Respondent did not follow her posted daily schedule or pace her activities and ensure that she taught all subject areas each day, as set forth in paragraph 33 of the Accusation, in that Respondent did not allow sufficient time to teach the intended subject matter when her ELD activity lasted only 15 minutes, from approximately 10:35 a.m. to 10:50 a.m.

151. The District failed to establish that on October 20, 2017, Respondent did not deliver a structured ELD and ELA activities as set forth in paragraph 34 of the Accusation. Though District also established that Respondent's ELD lesson that day did not have adequate pacing in that it was completed in 15 minutes but did not present evidence other than a vague allegation by Principal Narvaez that the ELA activities were "disjointed" to establish that there were any deficiencies in Respondent's ELA lesson. Accordingly, the District established that Respondent failed to deliver a structured ELD lesson but did not establish that Respondent failed to deliver a structured ELA lesson.

152. The evidence established that Principal Narvaez was present when Respondent asked at least one DOK 1 question as well as higher level DOK questions. Moreover, Principal Narvaez did not stay for the entire ELA lesson and acknowledged

that she could not have heard all of the questions Respondent asked. Further Respondent explained what context clues were to the class during an earlier session and reasonably did not explain that term to the class on the date of observation. Accordingly, the District did not establish that on October 20, 2017, Respondent failed to utilize DOK questions to challenge the students or engage them in high-level thinking.

153. The evidence also established that during Principal Narvaez's observation, Respondent incorporated one of the Constructive Conversation Skills into the classroom discussion; she used a graphic organizer after Principal Narvaez left the classroom, and that she circulated the classroom and observed that the students to ensure students fully participated in the Think, Pair Share activity. Based upon the totality of the evidence, the District did not establish that on October 20, 2017, Respondent failed to incorporate instructional strategies to support student learning and promote student participation in the classroom discussion as set forth in paragraph 36 of the Accusation.

154. Principal Narvaez's testimony regarding Respondent's and her students' mispronunciation of the word "excerpt" is credited. Accordingly, the District established that on October 20, 2017, Respondent did not model Standard English or use language that was easily understood as set forth in paragraph 37 of the Accusation.

155. The evidence established that on October 20, 2017, Respondent did not display current student work samples in the classroom. The District, however, failed to present any evidence to indicate that Respondent displaying current student work

created a positive classroom environment, as set forth in paragraph 38 of the Accusation, or that Respondent's failure to display current work was a deficiency.

156. Principal Narvaez's conference memoranda and testimony about student off-task behavior was vague and did not establish that students were not engaged in the lesson. In addition, Respondent's testimony and written response regarding students being engaged and on-task and that she re-directed off-task students was credited. The District did not establish that on October 20, 2017, Respondent failed to monitor student behavior or redirect unengaged or off-task students as set forth in paragraph 39 of the Accusation.

157. The evidence further failed to establish that Respondent willfully refused to comply with directives provided to her orally on December 16, 2017, February 17, 2017, and May 3, 2017, and memorialized in writing in conference memoranda provided to Respondent on December 16, 2017, February 22, 2017, and May 3, 2017, as set forth in paragraph 40 of the Accusation.

### **NOVEMBER 27, 2017 OBSERVATION**

158. On December 14, 2017, Principal Narvaez memorialized the substance of a conference she held with Respondent on December 12, 2017 regarding the observation conducted of Respondent's classroom on November 27, 2017 from 9:05 a.m. to 10:00 a.m., during her math lesson.

159. Respondent posted a CCSS for math for both fourth and fifth grades. However, Principal Narvaez did not hear Respondent review the standards with the class although she had been previously advised to do so. She stated that Respondent failed to differentiate math lesson for the gifted student, the student with an IEP

program, and two English learners who were at the intermediate and early advanced levels of acquiring the English language. Principal Narvaez explained that she expected to see distinct lessons for students for varying needs. For example, she expected to see Respondent provide vocabulary words for the English learners and a writing template for the gifted student.

160. Respondent asked the following questions of her students: a) "Who can tell me what compatible numbers are?" b) "What strategy did you use?"; c) "What are circle things called?"; and d) "Is this more complicated?" in reference to the fraction three over thirty-nine. (Ex. 14, p. 14-2.) Principal Narvaez described these questions as DOK 1 recall questions, to which the students gave single-word or short answers.

161. According to Principal Narvaez, although Respondent indicated that fifth-grade students would preview and review the lesson of the day, the students worked on the problem of the day for 45 minutes. She observed that Respondent did not walk around the classroom to monitor student work or post a list of independent activities to complete. Principal Narvaez also observed that students who finished early did not have any other work to complete. She did not hear Respondent review or refer to academic language associated with the lesson such as product, power of ten, factor, and exponent.

162. Respondent displayed a student math assigned dated November 1, 2017, a writing assignment titled "Haunted House for Sale, dated October 18, 2017, that included a rubric but no teacher comments or the associated CCSS, and three student artifacts on the science bulletin board that were dated August 17, 2017.

163. Principal Narvaez observed student A.G. walk to the front of the classroom, speak with students M.M. and S.M., and then walk to the back of the

classroom where he talked and laughed with two students. Student M.M. slid down in her chair while seated at the kidney table where Respondent worked with fourth graders. According to Principal Narvaez, four of eight students assigned to work independently on the math problem talked to each other and did not complete the work assignment. Student J.C. and three other students discussed \$5 and a school challenge while E.M. spoke to A.G. across the classroom.

164. During the conference, Respondent refused to take the DOK Question Stem handout that Principal Narvaez attempted to give to her and stated that she did not need it since she had the four copies that Principal Narvaez previously gave her. She also stated that she was using the DOK Question Stem handout in planning her lessons.

165. Principal Narvaez offered Respondent the following assistance and guidance:

- A. Introduce the CCSS for each lesson at the beginning, ask for questions, and pause in order to check for understanding. Ensure that you review the CCSS at the end of the lesson.
- B. Plan and deliver differentiated lessons and activities to meet the needs of all the students, including the students identified as gifted, students with IEP plans, and English learners. Plan activities and provide sufficient scaffolds as necessary to address a variety of learning modalities and language needs.

C. Increase the level of thinking demanded during class discussions by using all four levels of DOK questions.

Respondent was advised to plan and develop DOK questions from all four levels prior to the lesson and introduce the questions to the students during the lesson.

D. Introduce and utilize academic language to deepen the students understanding of the mathematic content taught. Review the academic vocabulary associated with the lesson and provide opportunities for the students to utilize the words.

E. Maximize the use of instructional time in order to provide instruction that is well-planned, sequenced, and engages students in active and meaningful learning. When students work independently, make sure they know what assignments to complete in the event they finish the assigned task early.

F. Display current updated student work in the classroom, along with the standard, rubric, and teacher comments. This will show that you value student work, allow the students to learn from each other, and provide opportunities for the students to review and reflect upon their own work.



G. Monitor off-task behavior during the lesson and redirect the students who have their heads down, are wandering around the classroom, and who are off task.

H. Principal Narvaez arranged for Crystal Epps, Title II Coach, to meet with Respondent by January 31, 2018, to plan and model a lesson incorporating the DOK questions into the instructional program.

(Ex. 14, pp. 14-3 through 14-4.)

166. Principal Narvaez directed Respondent to a) continue submitting weekly lesson plans no later than 8:00 a.m. on the first day of the workweek effective January 8, 2018; b) implement the DOK questions and use them on a daily basis, effective immediately; and c) monitor student behavior and redirect any of the students who are off-task, effective immediately.

167. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent to respond to the conference memorandum in writing by May 11, 2017, if she wished to do so. She advised Respondent that if she were to evaluate her that day, she would issue a Below Standard Evaluation to Respondent, which could lead to similar discipline. Principal Narvaez directed Respondent to respond to the memorandum January 11, 2018.

168. On January 11, 2018, Respondent submitted a written response to the December 14, 2017 conference memoranda. She stated that she reviewed the lesson objective with the students at the start of the lesson with both grades, and she reviewed the standards with the students throughout the unit, but mostly in the beginning of the unit. Respondent stated that she would make it a point to review the standards with her students for every lesson.

169. Respondent demonstrated in her written response and her testimony that she was aware of her students' distinct needs, strengths and learning modalities. She noted that Principal Narvaez only observed five minutes of her lesson with the fifth graders. Respondent challenged her gifted student with opportunities to solve math problems and explain his thinking during the lessons. Respondent strategically chose the questions she asked of him knowing that he was capable of completing more challenging work. She provided her two English learners with opportunities to communicate their thinking throughout the lesson. The student with an IEP program was pulled out of Respondent's class for math and ELA instruction from his Resource Specialist Program (RSP) teacher pursuant to his IEP.

170. Respondent assessed her students regularly using chapter tests and tests that she created to ensure they understood the material. She used that information to work with students individually based upon their needs. Principal Narvaez has observed Respondent work with students one-on-one after a math lesson based upon the assessments. Respondent contends that she always checked the students' work for understanding and she works with the students that need additional support.

171. Respondent asserts that she asked questions in addition to the questions noted by Principal Narvaez. She asked "Which strategy can you use to solve? Is there

another strategy you can try? Why do we use one strategy over another? How can you prove if your answer is correct?" (Ex. 14, p. 14-7.)

172. Respondent denied that the fifth-grade students worked on the problem of the day for 45 minutes. They were able to work on ST math, District approved computerized math games designed to teach math, when students completed their work.

173. Respondent asserted that she reviewed the vocabulary with the students prior to the lesson and wrote the words on the board. It is her practice to write new vocabulary on the board and review them with the students during the lesson.

174. The day of the observation was the first day back from a week-long break for Thanksgiving. Respondent did not consider the displayed work to be outdated. It is Respondent's practice to display student work as it is completed, and she has had the opportunity to provide feedback. She noted that certain assignments take longer to complete, and she preferred to change her bulletin boards as soon as she had new student work to display as opposed to leaving them bare. Respondent denied that she was provided with, or notified of, a policy regarding displaying work in her classroom. The only policy Respondent was aware of related to displaying student work on the bulletin boards in the school's hallways.

175. Respondent asserted that she was always aware of student engagement and that she redirects students who are off-task when she sees them. She periodically reviewed classroom expectations for independent work. Respondent testified that it was possible that A.G. walked around the room on his way to engage in an appropriate task and it is possible that he stopped to talk to someone along the way. She denied his behavior was disruptive and stated that she would have re-directed him

if it was. Respondent described M.M. as “wiggly” but she was paying attention, engaged, and did her work while at the kidney table. Respondent contends that it is not true that four students did not complete their independent work because she collected it and saw that it was done. According to Respondent, J.C.’s off-topic conversation with E.A. and A.G. was not disruptive and that J.C. completed his work. The students were talking on low voices and she did not hear any loud talking.

176. With respect to DOK questions, Respondent refreshed her understanding of DOK questioning, read articles on the subject, utilized My Professional Learning Network (MyPLN), the District’s virtual program that provides teachers with learning opportunities and professional development, to deepen her understanding of the subject and reached out to Ms. Epps for resources in that area.

177. Respondent asserted that different people walked into her classroom and complimented her on her teaching and classroom environment, including Mr. Campos, who complimented Respondent on November 16, 2017.

178. Principal Narvaez’s testimony and conference memoranda established that she was present at the beginning of Respondent’s math lesson and witnessed that Respondent did not review the CCSS posted for the fourth and fifth grades with the students. Accordingly, the District established that on November 27, 2017, Respondent did not review the CCSS that she posted for math for both fourth and fifth grade as set forth in paragraph 41 of the Accusation.

179. Respondent’s written response and testimony regarding her practice of differentiating her math lesson for her students was persuasive and credited. Accordingly, the District did not establish that on November 27, 2017, did not display knowledge or awareness of the individual students’ strengths, academic needs, and

learning modalities when she planned the same undifferentiated activities as described in paragraph 42 of the Accusation.

180. The evidence established that Respondent asked a combination of DOK 1 and higher level questions. Accordingly, the District did not establish that on November 27, 2017, Respondent did not utilize DOK questions to challenge the students or engage them in high-level thinking as set forth in paragraph 43 of the Accusation.

181. Principal Narvaez's testimony established that on November 27, 2017, Respondent posted a grade specific Common Core Math Standard and assigned the fifth grade students to "preview and review" the lesson, and then had the students work on the problem of the day for approximately 45 minutes. Principal Narvaez's testimony also established that Respondent did not walk around the classroom to monitor student work or post a list of independent activities for the students to complete, resulting in students who finished their work being without any other work to complete. Based on the forgoing, the District established that Respondent failed to maximize the use of instructional time as set forth in paragraph 44 of the Accusation.

182. The District also presented evidence establishing that Respondent did not review or refer to the academic language associated with the mathematics lesson with the grade specific group in the class or review the academic language that was relevant to the lesson that was posted on the pocket chart, which included the terms product, power of ten, factor, and exponent. Based on the forgoing the District established that on November 27, 2017, Respondent did not provide opportunities for the students to comprehend and utilize academic language, as set forth in paragraph 45 of the Accusation.

183. The evidence established that Respondent displayed a student math assignment dated November 1, 2017, as set forth in paragraph 46a. However, given that the school observed a week-long Thanksgiving break from November 20, 2017, through November 24, 2017, the work was current. There was no evidence that the assignment did not include teacher comments, the associated standard, and the rubric for assessing the work. Further the December 14, 2017 conference memorandum did not describe the student math assignment and no other evidence was presented to indicate that the student math assignment did not include teacher comments, the associated standard, and the rubric for assessing the work.

184. On November 27, 2017, Respondent displayed a student writing assignment titled "Haunted House for Sale," dated October 18, 2017 that did not include a CCSS or teacher feedback aligned to the standard, and three student artifacts dated August 17, 2017 on the science bulletin board, as set forth in paragraph 46b and c. Though the District did not present evidence to establish that the display of current student work samples create "a positive classroom environment, culture of high expectations and support student learning," Respondent had been directed in the November 3, 2017 memorandum to display current work.

185. Principal Narvaez's conference memoranda and testimony regarding students' off-task behavior was vague in that it did not include any evidence of how long the students engaged in the behavior or how long the students were not otherwise engaged in learning. Accordingly, the District did not establish that on November 27, 2017, Respondent did not monitor student behavior or redirect students who were not engaged in learning and were off-task, as set forth in paragraph 47 of the Accusation.

186. As set forth in Factual Findings 168 through 185, the District failed to establish that Respondent willfully complied with the directives previously provided to her orally by Principal Narvaez and memorialized in in writing in conference memoranda.

### **FEBRUARY 26, 2018 OBSERVATION**

187. On March 8, 2018, Principal Narvaez memorialized the substance of a conference she held with Respondent on March 7, 2018 regarding the observation of Respondent's classroom conducted on February 26, 2018, from 8:53 a.m. to 9:53 a.m. during her Second Step and math lessons. Second Step is a social program that teaches student how to have positive interactions with others. This particular lesson was on how to disagree respectfully. The students were working in pairs and two students went to the front of the classroom and shared their views on the subject. Principal Narvaez observed Respondent lead the fifth grade students through a math activity using the District-adopted MyMath program while the fourth grade students worked independently.

188. In the area of planning and preparation, Principal Narvaez noted that Respondent did not list a CCSS for PE. Respondent also did not list any concepts or standards for her social studies and science class.

189. Principal Narvaez contends that Respondent did not deliver a structured and engaging standards-based teacher directed fifth grade math lesson because she reviewed a portion of the MyMath Chapter 8 Review for an upcoming test. She further contended that not all of the fifth grade students actively participated in a question and answer session when Respondent reviewed the math vocabulary words with them. According to Principal Narvaez, Respondent failed to use a variety of DOK questions to

challenge or engage students when she asked "When a numerator and a denominator have no more Greatest Common Factors (GCF), then it is written in? The bottom number of a fraction is called a what? How did I tell you to remember that?" (Ex. 15, p. 15-2.) Respondent pointed to a fraction on the white board and asked student J "that is an equivalent fraction right?" (Ex. 15, p. 15-3.) When student J did not respond, Respondent told him equal means equivalent in Spanish. Principal Narvaez stated that the questions might have been appropriate if Respondent included math vocabulary on the test. Principal Narvaez never saw the test that Respondent gave the students.

190. Principal Narvaez asserts that Respondent did not incorporate or discuss the DOK 2 Essential Question from MyMath Chapter 8 for the fifth grade focusing on math skills and concepts. Respondent recorded the factors of 18 and 24 on the whiteboard and incorrectly wrote them for the number 24 when she failed to include the number 8. Respondent reminded the students that she taught them where the numerator and denominator are placed in a fraction, she stated that since the letter "d" comes first in the alphabet it goes on the bottom but did not demonstrate the concept.

191. Principal Narvaez stated that during Respondent's whole group lesson on the difference of multiples versus factors, there was minimal student participation. She observed that student A.G. participated twelve times in the question and answer sequence while the remaining seven fifth grade students had one or two opportunities to participate.

192. Principal Narvaez contends that Respondent did not allow enough time for the students to review problems for the MyMath topic on GCF, least common multiple (LCM), and converting a fraction to a decimal, and that as a result, only one



student was able to correctly answer the first problem for finding the GCF for 11 and 44. However, she was not aware of what was on the test and acknowledged that Respondent may have reviewed only the material that was going to be include on the examination.

193. Also in the area of delivery of instruction, Principal Narvaez contends that Respondent did not display knowledge or awareness of the students' individual strengths, academic needs, or learning modalities because she did not see different activities or lessons for the three English learners who were at different levels of acquiring the English language, one student who had an IEP program, and one student who was in the GATE program. Principal Narvaez did not state what the students' needs were, the ways in which the students' needs were not met, or how Respondent could have met their needs.

194. Respondent asked the students to engage in the Think, Pair, Share activity and explain to their partner when to use factors versus multiples without modeling the activity. According to Principal Narvaez, only one pair of students discussed the activity and the remaining three pairs did not.

195. In the area of classroom environment, Respondent displayed rough drafts from a writing assignment dated February 7, 2018, and her science bulletin board entitled Designing Snowflakes contained student work from November 18, 2017. Principal Narvaez contends that none of the displayed work contained a CCSS, rubric, or teacher feedback. The math bulletin board contained no student work. Instead an "Under Construction" sign was posted.

196. At various times while the fourth grade students were working independently, three students talked about the library, two students talked about what

the school's Plant Manager found on the yard, student O.Y. walked to each of the tables and held a conversation with the students, student E.V. walked around the classroom, and students E.V. and O.Y. talked about exiting the classroom to exchange a Chrome Book, but sat down and engaged in a conversation that Principal Narvaez stated was off-task.

197. Principal Narvaez offered Respondent the following assistance and guidance:

- A. Clearly describe an instructional sequence in your lesson plans that shows how you will teach specific concepts or skills in Physical Education, Social Studies, and Science. Use a format where you clearly identify the standards, objective and sequence of activities for each content area.
- B. Deliver the instructional content in a format that is clear, accurate, and appropriate to meet the academic needs of the students, as detailed in the MyMath Teacher's Edition. Your explanation of the math content should correlate with the math instruction provided from the daily math lessons.
- C. Maximize the use of instructional time in order to provide instruction that is well-planned, sequenced, and engages students in active and meaningful learning. When you plan a review of math vocabulary, adhere to a short time frame of approximately ten minutes in order to allow

enough time to review the key concepts of the chapter and reteach as necessary. Doing this will allow enough time for students to engage in dependent practice.

D. Utilize a variety of differentiated instructional categories to support student learning for all students identified as English learners, gifted and students who have an IEP plan, while fostering student-to-student interaction and increase student participation in intellectually challenging discussions during math activities. Examples are:

- i. Model the Think, Pair, Share student discussion to ensure the students actively participate;
- ii. Ensure that all students have an opportunity to participate in class activities by utilizing a consistent method, such as the equity sticks that you have, or a class roster with fidelity to call on students.
- iii. Adjust the lesson in response to the learning needs of the students, and reteach the subject matter, as necessary to correct students' misunderstanding and misconceptions of the instructional content prior to releasing them or independent practice;
- iv. Incorporate the four components of Constructive Conversation Skills-Create, Clarify, Negotiate,

and Fortify into the classroom discussions to build on the students' ideas and support student interaction in a meaningful way. Principal Narvaez provided Respondent with a document entitled Constructive Conversation Skills Placement.

E. Display current updated student work in the classroom, along with the standard, rubric, and teacher comments. This will show that you value student work, allow the students to learn from each other, and provide opportunities for the students to review and reflect upon their own work.

F. Your PAR consulting teacher continues to be available to assist you with developing and implementing rigorous lesson plans, using a variety of instructional strategies and resources to respond to students' diverse needs, including effective lesson pacing, using rich academic language, developing a behavior management tool, monitoring student behavior, and creating a classroom environment that engages all students.

G. Consider attending the PAR professional development classes offered during the 2017-2018 school year, such as the ABC's of Student Engagement and Designing Lessons for the 21st Century Learner.

(Ex. 15, pp. 15-5 through 15-6.)

198. Principal Narvaez directed Respondent to a) implement the DOK questions beyond level 1 recall questions and use them on a daily basis, effective immediately; b) monitor student behavior and redirect any of the students who are off-task, effective immediately; and c) teach a directed-standards-based lesson for each curricular area.

199. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent that if were to evaluate her that day, she would issue a Below Standard Evaluation to Respondent, which could lead to similar discipline. She advised Respondent to respond to the conference memorandum in writing by March 15, 2018, if she wished to do so.

200. On March 14, 2018, Respondent prepared and submitted to Principal Narvaez a written response to the March 18, 2018 conference memorandum. She asserted that she began her math lesson at 9:05 a.m. and reviewed with the students where they were supposed to be and what they were supposed to do. Posters with Must Do and May Do activities were displayed. The fifth-grade students worked with her at the kidney table and the fourth graders worked independently on their number and problem of the day. The fourth graders repeated the expectations to Respondent.

201. Respondent asserts that she reviewed vocabulary words and how to solve certain problems with the fifth graders and instructed them that she would work with them the next day to reteach how to simplify and find common factors and multiples.

She contends that she began working with the fourth-grade students at 9:40 a.m. and continued working with them after recess.

202. Respondent noted that during her conference with Principal Narvaez, Respondent clarified that she had been preparing her fifth-grade students for the fifth grade Fitness Gram and that on Tuesday another PE teacher leads the lesson. Accordingly, she only included time blocks for PE without listing any standards. With respect to social studies, she included minimal information because she had a shorter block of time for the subject as school was dismissed at 2:00 p.m. for parent conferences. Respondent was unaware of how much of the social studies subject she would be able to teach. Respondent noted that pursuant to paragraph 4.1 of her contract with the District, no special format for a lesson plan shall be required. In addition, she had been submitting lesson plans to Principal Narvaez every week since November 6, 2017 and her lesson plans for PE have been written in the same format. This was the first time Principal Narvaez had provided any feedback or made any comments regarding anything included in her lesson plans.

203. Respondent explained that she differentiated her lesson by spending more time with her English Learner students reviewing the math vocabulary. In addition, her fourth-grade gifted student is aware that he is able to work on a fifth-grade problem or complete a challenge task when he is engaged in independent work.

204. Respondent disagreed that she did not deliver a structured, engaging, standards-based and teacher directed fifth grade lesson since she had determined that her students needed additional review of the math vocabulary using District material that is standards-based, which she continued the next day. She also disagreed that not

all fifth-grade students participated in the whole group question and answer period because the students participated when asked to do so.

205. With respect to Principal Narvaez's contention that Respondent only asked closed end DOK 1 recall questions, Respondent clarified that she asked the questions needed to review the material for the test and that it was her practice to ask varied DOK level questions during a typical class.

206. Respondent acknowledged that she made a mistake in not including the number 8 when listing the factors for the number 24. Respondent also explained that she did not feel the need to demonstrate where a numerator or denominator were located since because she believed the students had a good grasp of that. Respondent explained that from her interaction with her students on how to use multiples versus factors, she determined that she need to review factors and simplifying fractions. She told her students that she would review those concepts with them the next day.

207. Respondent disagreed that her pacing was too slow, and expressed her belief that she utilized the time to reteach concepts and vocabulary because she felt that is what her students needed as they displayed confusion about the terms. She worked with students during Breakfast in the Classroom and reviewed additional concepts and vocabulary with them.

208. Respondent contends that she correctly implemented the Think, Pair Share strategy correctly and that students answered questions with their partners and then with the whole group. She did not model the Think, Pair, Share strategy on the day of the observation because the students had engaged in the activity numerous times and they knew very well how to do it. Respondent explained that some the students did not participate in the activity not because they did not know how, but

because they were still having trouble understanding when to use factors and multiples to solve a problem.

209. Respondent does not use equity sticks in small group lessons because she did not feel it was needed to make sure that students are participating. She calls on students who volunteer, and she randomly calls on others to gauge their understanding.

210. Respondent disagreed that she did not display current work samples because she always displays work as current as reasonably possible. She contends that she displayed student work as it was completed, and graded. Respondent did not consider the student samples cited by Principal Narvaez to be outdated and stated that she preferred to display student work when she had something new to add rather than leave her bulletin boards bare.

211. The students standing up and walking around the classroom were technology helpers whose duties are to charge the iPads and Chromebooks as needed. She directed them to return to their seats and charge the electronics at a different time. Respondent denies that students were off-task to the extent described by Principal Narvaez. She explained that she could see every student and, if they were off-task, it was only for brief moments of time and it did not impede their work. Respondent contends that she redirected any off-task behavior and discussed off-task behavior with the students at the end of the math lesson.

212. Respondent asserts that during the conference she asked Principal Narvaez for an example of different DOK questions that should be asked during a math lesson, and Principal Narvaez directed her to put her request in writing. She noted that since Principal Narvaez first advised her to develop DOK questions, she



spent time refreshing her understanding of DOK questioning, read articles on the subject, utilized MyPLN to deepen her understanding of the subject, and asked Ms. Epps for resources in that area. Ms. Epps modeled a lesson in the classroom and Respondent has implemented her strategies. Respondent also focused on DOK questions with her PAR consulting teacher, who wrote down all the questions asked by Respondent during a lesson and notes the time and sequences of the questions. They reviewed the questions and identified which ones are open and closed-ended and Respondent expressed belief that she was asking a variety of higher level questions. She has also focused on classroom engagement with the PAR teacher and she is confident that the students are engaged the majority of the time and if they are off-task, it is for short periods of time and their work is not impeded.

213. Respondent concluded by stating she has spent a lot of time reviewing the TLF and did not agree that Principal Narvaez's rating matches the ratings described in the TLF. She expressed belief that she had followed all directives, collaborated with colleagues, and spent hours developing material to address each issue raised by Principal Narvaez without Principal Narvaez acknowledging the changes Respondent made in her practice.

214. Principal Narvaez did not respond to Respondent's written response.

215. Principal Narvaez's testimony and Respondent's admission established that on February 26, 2018, Respondent did not describe a clear instructional sequence or detailed activities that promoted standards-based learning in the areas of physical education and social studies science, in her weekly lesson plan for the week of February 26, 2018, through March 2, 2018, as set forth in paragraph 49 of the Accusation. Respondent had prepared her lesson plans in the same manner on weekly

basis since November 2017 and Principal Narvaez had never provided her with any feedback or criticized them before. In addition, there was no evidence that Respondent did not teach standard-based lessons in those subjects during the dates at issue.

216. The testimony of Principal Narvaez and Respondent established that Respondent's math lesson consisted of a math review using the District's standards-based material, and that she used academic language. Accordingly, the District did not establish that on February 26, 2018, Respondent failed to deliver a structured and engaging standards-based, teacher directed fifth grade math lesson, as set forth in paragraph 50 of the Accusation.

217. The District established that on February 26, 2018, Respondent did not utilize a variety of DOK questions when she taught a review of MyMath Chapter 8 to her fifth-grade class as set forth in paragraph 51 of the Accusation, and she did not incorporate or discuss the DOK 2 Essential Question from MyMath Chapter 8, as set forth in paragraph 52 of the Accusation. Respondent's testimony, however, established that the recall questions she asked were appropriate because she was re-teaching and reviewing vocabulary and concepts that the students were struggling with. Her testimony also established that in her professional opinion, the not ready for the DOK 2 Essential Question.

218. Principal Narvaez's testimony and Respondent's admission established that on February 26, 2018, Respondent did not deliver the fifth grade math instructional content accurately, as set forth in paragraph 53a of the Accusation.

219. The District did not provide any evidence, with the exception of the testimony of Principal Narvaez, that the students did not understand Respondent's

explanation of why the denominator is the bottom number of a fraction. Accordingly, the District did not establish that on February 26, 2018, Respondent did not deliver the fifth grade math instructional content accurately to be easily understood by all the students as set forth in paragraph 53b of the Accusation.

220. Principal Narvaez's testimony that there was minimal student participation in the whole group question and answer session was explained by Respondent's testimony that the students were still struggling with the MyMath Chapter 8 concepts and vocabulary. Accordingly, the District did not establish that on February 26, 2018, Respondent failed to deliver the fifth grade math instructional content accurately to be easily understood by all the students as set forth in paragraph 53c of the Accusation.

221. Paragraph 53d of the Accusation is merely a statement that Respondent dismissed fifth-grade students back to their desks at 9:40 a.m. and does not constitute a charge requiring a Factual Finding.

222. Respondent's testimony that, in her professional opinion, students required review of math vocabulary, her pacing was adequate and her detailed response describing the actions she took to prepare the students for a math test was persuasive and credited in light of the fact that Principal Narvaez was unaware of what was on the test. Accordingly, the District did not establish that on February 26, 2018, Respondent failed to effectively pace the math activity, as set forth in paragraph 54 of the Accusation.

223. Respondent's evidence of how she differentiated her lesson and activities to meet her students' needs was credited. Accordingly, the District did not establish that on February 26, 2018, Respondent failed to display knowledge or awareness of

the individual students' strengths, academic needs, and learning modalities, when she planned and delivered the same undifferentiated activities as set forth in paragraph 56 of the Accusation.

224. The testimony of Principal Narvaez and Respondent's written response established that on February 26, 2018, Respondent did not effectively implement the Think, Pair, Share strategy as set forth in paragraph 56 of the Accusation.

225. The undisputed testimony of Principal Narvaez established that on February 26, 2018, Respondent did not use a system to promote equitable participation when she asked the fifth grade students questions and student A.G. participated 12 times while the remaining seven students only had approximately one or two opportunities to participate, as set forth in paragraph 57 of the Accusation. The District, however, failed to establish that equitable participation is appropriate for all lessons and that it was appropriate for the lesson Respondent was giving at the time of the observation.

226. The undisputed testimony of Principal Narvaez established that on February 26, 2018, Respondent did not display current student work as set forth in paragraph 58 of the Accusation. The District, however, failed to establish that the display of current student work samples creates "a positive classroom environment, culture of high expectations and support student learning," Respondent, however, had previously been directed in the memoranda to display current student work.

227. While the District provided evidence that some students engaged in off-task behavior, it did not provide evidence of how long the students engaged in the behavior. In addition, the students Principal Narvaez described as being off-task were actually performing their duties as technology monitors. In addition, the Commission

acknowledges that it is typical for students to engage in off-task discussion. Further the District's evidence that Respondent did not redirect off-task behavior did not preponderate over Respondent's evidence that she did in light of Respondent's clear, detailed written response and Principal Narvaez's failure to address it. Accordingly, the District did not establish that on February 26, 2018, Respondent did not monitor student off-task behavior or redirect students who were not engaged in learning during the independent portion of her math activities as set forth in paragraph 59 of the Accusation

228. Based upon Factual Findings 200 through 227, the District failed to establish that Respondent willfully complied with the directives previously provided to her orally by Principal Narvaez and memorialized in the conference memoranda.

#### **APRIL 11, 2018 OBSERVATION**

229. On April 24, 2018, Principal Narvaez memorialized the substance of a conference she held with Respondent on April 20, 2018 regarding the observation of Respondent's classroom on April 11, 2018, from 1:10 p.m. to 1:57 p.m. during a writing activity on Earth Day. When Principal Narvaez left the classroom, Respondent had begun a science activity.

230. Respondent did not include a CCSS for her ELA Academy lesson. Respondent included 11 CCSS for her 45-minute ELA/ELD lesson and 14 CCSS for the 40-minute writing activity. Principal Narvaez opined that it was unclear how Respondent would be able to cover all of the standards in the time allotted for the lesson. Principal Narvaez acknowledged that lesson plans are for a teacher's own benefit and not a script that the teacher needs to strictly adhere to.

231. According to Principal Narvaez, Respondent posted the CCSS number 4-8.W.4 associated with a writing prompt—"Produce clear and coherent writing (including multi-paragraph texts), in which the development and organization are appropriate to task, purpose, and audience" but did not review it. (Ex. 16, p. 16-3.) She also did not write out an objective, essential question, or big idea for the students to review.

232. Principal Narvaez criticized Respondent for not allowing time for the students to engage in writing. Rather, Respondent told the students that they would be writing an essay on Earth Day and how to improve the environment. She also told the students that Earth Day was April 12th, when Earth Day is April 22nd. Respondent provided a writing prompt for the students, which the students read chorally. Over the next 13 minutes, she provided the students with a one-page document entitled Earth Day and asked the students to read and annotate it. When the students finished doing those tasks, Respondent did not review with the students what they had annotated but asked them to find a partner and share one new thing they learned about Earth Day.

233. Respondent asked "What does the word immediate mean?" and answered her own question. She then asked the students "What are you being asked to do in the prompt, and What does it mean if you are making an impact?" (Ex. 16, p. 16-4.) Principal Narvaez contends that Respondent only asked one DOK 2 question and when the student did not answer the question correctly, she followed up with a DOK 1 question that required a yes or no response.

234. Principal Narvaez contends that when Respondent asked how many students understood the writing prompt, only six of the 15 students raised their hands. Respondent then asked the students to write three ideas from their reading of the one-page Earth Day document in their writing journals. Approximately nine minutes

later, Respondent told the class that the writing activity was over and would continue the following day. She did not review with students what they wrote in their journals.

235. Principal Narvaez did not see differentiated instruction during the writing activity for the gifted and English Learner students, or the student who had an IEP.

236. Respondent used equity sticks three times but returned to asking questions to the whole class.

237. Respondent displayed an undated math assignment entitled "Think Like a Mathematician" and a writing assignment entitled "Presidents of the United States" dated February 9, 2018. Principal Narvaez contended that neither of the assignments contained teacher feedback aligned to an objective. A writing assignment dated February 9, 2018 entitled "What Will People Say About You When You are 100?" was displayed with Respondent's comments praising the ideas contained in the writing. Principal Narvaez asserts that the assignment did not include a rubric. Respondent's science bulletin board titled "Designing Snowflakes" displayed student projects dated November 18, 2017, that did not include a CCSS or teacher feedback aligned to the instructional objective.

238. Principal Narvaez contends that while students were supposed to be writing in their journals, she observed that three students did not immediately take out their journals; one student could not locate his journal; three students drew a circle map; two students were laughing; one student wrote the words Earth Day in a large print in her journal; and one student did not record any ideas in his journal.

239. Principal Narvaez offered Respondent the following assistance and guidance:

A. Develop thorough lesson plans for each subject taught:

i. Include one or two CCSS that you plan to develop during each lesson, the learning objective, teaching strategies and how you will differentiate in order to meet the instructional needs of all the students in the classroom. Include both short and long term plans to ensure that all grade level standards are introduced and taught.

ii. Review your lesson plans daily, before the beginning of each school day to prepare for each day's instruction. Revise your daily agenda as needed, based on the prior day's instructional activities.

iii. Continue to submit complete weekly lesson plans by 8:00 a.m. on the first workday of each week.

B. Plan and deliver a standard-based, teacher directed lesson focused on each day's topic. In order to establish an academic, rigorous lesson, include the following elements of a teacher directed lesson: i) introduce the instructional objective; ii) check for understanding by asking probing questions; iii) include time for both guided and independent practice; and iv) review the instructional objective at the end of the lesson to determine whether it was met.



C. Utilize differentiated instructional strategies to support student learning and promote student participation in the classroom activities and discussion.

i. Know who your students are and then utilize developmentally appropriate strategies and activities to meet the needs of the diverse learners assigned to your class roster, which includes three students identified as English learners, one student in the GATE program, and one student that has an IEP plan.

ii. Ensure that all students have an opportunity to participate in class activities by utilizing a consistent method, such as the “equity sticks” that you have, or a class roster with fidelity to call on students.

iii. Adjust the lesson in response to the learning needs of the students, and reteach the subject matter as necessary to correct students’ misunderstanding. In this case, to ensure that the whole class understood the writing prompt, you could have utilized a graphic organizer to model the directions and provide examples of the writing task.

iv. Incorporate the four components of Constructive Conversation Skills-Create, Clarify, Negotiate, and Fortify into the classroom discussions to build on the students' ideas and support student interaction in a

meaningful way. Principal Narvaez again provided Respondent with a document entitled Constructive Conversation Skills Placement.

D. Principal Narvaez advised Respondent that her PAR consulting teacher continued to be available to assist her with developing and implementing rigorous lesson plans, using a variety of instructional strategies and resources to respond to students' diverse needs, including effective lesson pacing, using rich academic language, developing a behavior management tool, monitoring student behavior, and creating a classroom environment that engages all students.

E. Consider attending the PAR professional development classes offered during the 2017-2018 school year, such as the ABC's of Student Engagement and Designing Lessons for the 21st Century Learner.

(Ex. 16, pp. 16-5 through 16-6.)

240. Principal Narvaez directed Respondent to a) implement the DOK questions beyond level 1 recall questions and use them on a daily basis, effective immediately; b) monitor student behavior and redirect any of the students who are off-task, effective immediately; c) teach a directed-standards-based lesson for each curricular area; and d) display current up to date student work with written feedback aligned to the instructional objective.

241. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. Principal Narvaez advised Respondent that if she were to evaluate Respondent that day, she would issue a Below Standard Evaluation to Respondent, which could lead to similar discipline. She advised Respondent to respond to the conference memorandum in writing by May 1, 2018, if she wished to do so.

242. On May 2, 2018, Respondent prepared a written response to the April 24, 2018 conference memorandum. She contends that she delivered the writing activity lesson based upon the model lesson given by Ms. Epps the previous day. She wrote the writing objective, which was to read and analyze a writing prompt, and she reminded the students of the lesson given by Ms. Epps about the environment. Respondent asked the students to engage in a Think, Pair, Share activity regarding their previous lesson, which they did.

243. Respondent acknowledged that she did not post a standard but contends that she taught it. She reminded Principal Narvaez that pursuant to paragraph 4.1 of her contract with the District, no special format for a lesson plan shall be required. Respondent noted that during her last conference with Principal Narvaez she was criticized for not including standards, so she made sure to include them. She explained that the standards included were for both the fourth and fifth grades, which are essentially the same. Respondent asserted that she made changes to her lesson plans since her April 20, 2018, conference with Principal Narvaez to clarify which standards she would focus on and which standards were secondary. She also noted that a teacher's lesson plan is for them to reference during a lesson and is subject to

change. Moreover, Respondent noted that she had been submitting lesson plans to Principal Narvaez since November 2017 that did not include standards for ELA Academy but Principal Narvaez did not criticize her for doing so.

244. Respondent asserts that she wrote the writing prompt on the board and reviewed the standard with the students the next day. In response to Principal Narvaez contention that Respondent did not write out an objective, essential question, or big idea for the students to review, Respondent contends that she wrote out the writing prompt on the board and the projection screen might have blocked it from Principal Narvaez's view.

245. Respondent explained that the students did not write about Earth Day because she spent time on the introduction of the subject and guided practice, which was necessary to begin the writing. The purpose of the lesson on the day of the observation was to have the students analyze the writing prompt and use text evidence to support their ideas.

246. Respondent contends that she reviewed what the students annotated when she walked around during the students' sharing time and heard their responses. She explained that she used DOK level 1 questions as that is what was needed to confirm that the students understood the writing assignment. Respondent expressed belief that evaluating DOK questioning is subjective, that she asked Principal Narvaez to provide her with examples of different DOK level questions but she never did. She asserts that following the writing lesson, she had students work on a DOK 4 level question when she asked the students how they could apply their knowledge in the real world and asked them how they could make a positive change in the environment. The students came up with different ways they could repurpose used materials.

Respondent included pictures of some of the students' work and their writing with her response.

247. Because she was going to continue the writing activity the next day, Respondent was not concerned that only six of 15 students raised their hands to show they understood the prompt. She also intended to work with students individually to clarify any confusion they had. Respondent explained that she did not provide students time for independent practice of writing because she allowed them time to begin the process of writing. She did this on purpose because she had to complete the science lesson as she was scheduled to be observed by her PAR consulting teacher during the science portion of her lesson the following Friday.

248. Respondent disagreed with Principal Narvaez's contention that she did not differentiate her lessons. Respondent asserts that she differentiated the level of questions she asked her English Learner students. Respondent asked higher level questions of her one GATE student and planned to spend more individualized time with her student with an IEP program during the next part of the writing process. Respondent testified at the hearing that she grouped the IEP student with a peer model during the Think, Pair Share activity.

249. Respondent explained that as the classroom teacher she can use her professional judgment about how to call on students. She uses equity sticks at certain times at others she calls on students for specific reasons, such as to differentiate or to make sure particular students are focused.

250. Respondent disagreed that current student work samples were not displayed as she did not consider the work that was displayed to be outdated. She contends that she displayed student work as it was completed and she has the

opportunity to provide feedback and that she preferred to display student work when she had something new to add rather than leave her bulletin boards bare. Respondent also contended that she was in the process of updating the science bulletin board.

251. Respondent disagreed that students engaged in off-task behavior during the independent writing portion of the lesson, which Respondent said was five minutes. She contends that students were engaged during the entire whole group lesson and the Think, Pair, Share activity. Respondent informed the students that she would be checking students' progress the following day.

252. Principal Narvaez did not respond to Respondent's written response.

253. Principal Narvaez's testimony and Respondent's admission established that Respondent did not list a CCSS for ELA Academy. Accordingly, the District established that on April 11, 2018, Respondent did not describe a clear instructional sequence or detailed activities that promoted standards-based learning in her lesson plan for Wednesday, April 11, 2018, as set forth in paragraph 61a of the Accusation. But, the District did not establish that Respondent did not teach a standards-based lesson for ELA Academy and she had not been instructed to include standards for ELA Academy prior to that date.

254. Respondent's testimony regarding why she listed the number of standards for ELA/ELD integrated time and the writing activity was credited and afforded weight. Accordingly, the District did not establish that on April 11, 2018, Respondent failed to describe a clear instructional sequence or detailed activities that promoted standards-based learning in her lesson plan for Wednesday, April 11, 2018, as set forth in paragraphs 61b and 61c of the Accusation.

255. Principal Narvaez's testimony and Respondent's written response established that Respondent did not identify the expected instructional outcomes of the writing activity as set forth in paragraph 62 of the Accusation.

256. Respondent's testimony regarding guiding the students through the pre-writing process using District approved material was credible and afforded weight. Accordingly, the District did not establish that on April 11, 2018, Respondent failed to deliver a structured and engaging standards-based, teacher directed fourth and fifth grade writing lesson, as set forth in paragraph 63 of the Accusation.

257. Principal Narvaez's testimony and Respondent's admission established that on April 11, 2018, Respondent did not challenge the students to engage in high-level thinking when she asked a majority of Depth of Knowledge (DOK) level 1 questions, as set forth in paragraph 64. Respondent, however, established that the level of DOK questions asked were appropriate given the circumstances and that she asked her students DOK level 4 questions and provided Principal Narvaez with student exemplars demonstrating their responses to those questions as well as their written work.

258. On the same grounds, the District established that on April 11, 2018, Respondent did not ask multiple questions above the DOK 1 level and she only asked one DOK 2 question, as set forth in paragraph 65 of the Accusation. Respondent presented evidence that explains her actions as set forth in Factual Finding 267.

259. While the District established that only six of 15 students raised their hands to demonstrate they understood the writing prompt, the District did not establish that this was due to Respondent's failure to explain it clearly. The evidence established that the writing activity Respondent delivered on April 11, 2018 was meant

to be, and was, the pre-writing process and a means for the students to organize their ideas before writing on Earth Day and that Respondent planned on continuing the writing activity the next day and that further, the assignment for that day was to write regarding the one-page article on Earth Day, not the subject of the writing prompt. Accordingly, the District did not establish that on April 11, 2018, Respondent failed to clearly explain the writing prompt for the students or that Respondent failed to structure the writing activity to ensure that the students had time for independent practice, as set forth in paragraphs 66 and 67 of the Accusation. Respondent's testimony and written response regarding how she differentiated her lessons and her knowledge of her students' specific needs was persuasive and afforded weight. Accordingly, the District did not establish that on April 11, 2018, Respondent failed to differentiate her instruction by utilizing a variety of strategies to support student learning and promote student participation in the classroom discussion during the writing activity, as set forth in paragraph 68 and 69 of the Accusation.

260. The District did not provide evidence that student participation on the date of the observation was inequitable when Respondent used equity sticks on three occasions and then selected students to answer questions. Accordingly, the District did not establish that on April 11, 2018, Respondent did not use a consistent system to promote equitable participation when she asked the whole class questions, as set forth in paragraph 70 of the Accusation.

261. Respondent's testimony regarding her display of student work was unpersuasive and not credited. The District established that on April 11, 2018, Respondent did not display current student work. Though the District did not present evidence to establish that the display of current student work samples create "a positive classroom environment, culture of high expectations and support student



learning" as set forth in paragraph 71 of the Accusation. Respondent had been directed in prior memoranda of prior conferences to display current student work.

262. The off-task behavior described by Principal Narvaez did not rise to level of behavior that needed redirection. In addition, there was no evidence of how long the students engaged in the behavior, i.e., three students did not immediately take out their journals. Accordingly, the District did not establish that on April 11, 2018, Respondent failed to monitor student off-task behavior or redirect students who were not engaged when she asked the students to record ideas in their Writing Journals, as set forth in paragraph 72 of the Accusation.

263. Based upon Factual Findings 242 through 262, the District failed to establish that Respondent willfully complied with the directives previously provided to her orally by Principal Narvaez and memorialized it in writing in conference memoranda.

### **2017-2018 STULL EVALUATION**

264. Principal Narvaez conducted a formal observation of Respondent's teaching January 26, 2018. On April 20, 2018, Principal Narvaez prepared a Stull evaluation of Respondent's performance for the 2017-2018 school year based on her formal and informal observations. She held a Final Evaluation conference meeting with Respondent on April 30, 2018 and issued the Final Evaluation on that date.

265. Principal Narvaez assessed Respondent as developing her practice in all areas except for the quality and purpose of her questions. Principal Narvaez commented that Respondent's questions were low level and her practices had not improved despite having been given assistance and guidance in that area. She also

commented that Respondent's students' ability to learn was impaired due to Respondent's practice. However, Principal Narvaez did not provide independent evidence to support her assertion regarding the students' performance. In addition, Principal Narvaez acknowledged that Respondent showed significant improvement in her practice from her formal observation during the prior school year where she was rated ineffective in four areas.

266. Respondent's data-based objective was to move students who struggled with reading comprehension up by one reading level or more by modeling strategies and skills, using vocabulary journals, incentives to promote independent reading practice, and daily reading journals, and providing vocabulary instruction on a regular basis. Principal Narvaez noted in the evaluation that there was little evidence that Respondent used those strategies. However, the evidence established that Respondents' students engaged in journal writing and read out loud and Respondent provided the students with vocabulary lists and academic vocabulary charts.

267. Principal Narvaez assessed Respondent as ineffective in communicating and interacting professionally with students, parents, colleagues, administrators and staff because she had only 26 percent parent/student participation in an Open House event that school year. Principal Narvaez described the level participation as outlying because she did not have 90 to 100% participation, however only two teachers had 100 percent participation for that particular Open House. Other teachers had participation ranging from 30 percent to 86 percent.

268. Principal Narvaez assessed Respondent as ineffective in the area of collaborating with colleagues to improve student teaching and learning. She contends that although she provided assistance and guidance, there was no evidence of

Respondent's collaboration with other teachers regarding DOK questions and designing standard-based lessons. Principal Narvaez also contends that she continued to see Respondent implement the same practice skills, and as a result, student engagement did not increase as they were still off-task. However, Principal Narvaez did not note a lack of collaboration as a deficiency during the school year. In addition, Respondent met with Ms. Epps, the Title II Coach, took online classes with MyPLN to improve her practice, and observed another teacher's fourth and fifth grade combination class. Moreover, Respondent's student with an IEP program worked with an RSP teacher and there was no evidence of complaints about Respondent's collaboration.

269. Principal Narvaez rated Respondent ineffective in the area of engaging in ethical conduct and compliance with school, District, and State rules, policies, and standards because she did not meet expectations for teaching standard-based lessons as required by District. Principal Narvaez acknowledged, however, that she did not issue any conference memoranda for the school year alleging that Respondent engaged in unethical behavior or that she violated any District policies besides her failure to post current work pursuant to the alleged bulletin board policy.

270. Principal Narvaez assessed Respondent as being ineffective at reviewing and evaluating students' work. Principal Narvaez contends that it was not evident that Respondent monitored student learning and that she did not post clear rubrics for the students to assess their progress. However, Respondent collected and graded the students' homework and provided feedback on it. She also assessed the students' work.

271. Principal Narvaez assessed Respondent's practice of regularly preparing appropriate lesson plans as ineffective based upon Respondent's inclusion of 11 and sometimes 14 standards in her lesson plans. However, Respondent never missed turning in weekly lesson plans for the entire school year, and Principal Narvaez, except for the November 3, 2017 conference memorandum and her observation that Respondent cut her ELD lesson short on October 20, 2017, did not provide any criticism and feedback on them.

272. Principal Narvaez commented that Respondent exhibited ineffective practices in several instructional elements, and she had received multiple forms of feedback but only showed minimal growth. She gave Respondent a Final Evaluation Rating of "Below Standard Performance" based upon the observations she conducted.

273. Principal Narvaez provided an attachment to the Evaluation that contained 20 specific deficiencies consistent with the deficiencies noted during the conference meetings. The attachment also contained 19 recommendations consistent with the assistance, guidance, and directives contained in the conference memoranda provided to Respondent during the school year. Principal Narvaez offered to continue to provide Respondent with the following assistance in the following areas: (1) assistance with lesson planning and implementing instructional strategies; (2) opportunities for professional development, including both on and off-site opportunities; (3) opportunities to observe other teachers to view the implementation of instructional strategies and classroom management systems; (4) review of relevant District policies on interactions with students; (5) continue all assistance previously provided.

274. On May 4, 2018, Respondent requested an informal conference with Principal Narvaez to discuss her evaluation. The informal conference occurred on May 8, 2018. There was no evidence regarding the results of the informal conference. On June 4, 2018, Respondent submitted a Grievance form to Principal Narvaez and others seeking declaratory relief, a modification of the evaluation to "Meets Standard Performance." The grievance has not been resolved.

### **OBSERVATION OF MAY 11, 2018**

275. On September June 4, 2018, Principal Narvaez memorialized the substance of a conference she held with Respondent on June 1, 2018 regarding Principal Narvaez's observation of Respondent's classroom from 11:00 a.m. to 12:00 p.m. on May 11, 2018, during her ELA activity.

276. Principal Narvaez expressed concern that Respondent did not describe a clear instructional sequence in her lesson plan because she listed six CCSS for the 40-minute small group ELA time, and 10 CCSS during the 45-minute whole group ELA/ELD integrated lesson.

277. In the area of planning and preparation, Principal Narvaez observed that Respondent posted the standards for the ELA small group activity but did not communicate them to the students. Respondent stated that students would be working on reading fluency. Respondent assessed students individually using the Dynamic Indicator Basic Early Literacy Skills (DIBELS) assessor while the other students were separated in four small groups. The groups were supposed to either a) read to themselves; b) read to someone; c) read on an iPad; or d) work with the TA in their grammar books. However, Respondent placed task cards on the tables that instructed the students to engage in other activities. One student questioned what he was

supposed to be doing. Students in the iPad group were listening to digital stories instead of reading. Principal Narvaez observed and testified that some students sat at their desks for 10 minutes without instructional materials or guidance from Respondent.

278. Respondent asked the following questions regarding the Oregon Trail: "How does the past affect you?" "Anything else you can share about what we are reading?" "Any new information?" And "What was the Oregon Trail about?" Respondent did not ask questions provided in the teacher's edition of the text, which would expose to students to DOK 2 level questions, such as "What type of insights might we gain from combining what we know about Route 66 with what we know about the Oregon Trail?" And "What social and technological factors led to the rise and fall of The Oregon Trail and Route 66?" (Ex. 18, p. 18-4.)

279. Principal Narvaez contends that Respondent attempted to implement the instructional strategy Think, Pair, Share, but she failed to monitor the students' conversations. According to Principal Narvaez, three of seven partner groups did not participate in the activity.

280. In the area of classroom environment, Principal Narvaez observed that Respondent instructed five students to retrieve books from the classroom library at the same time. She testified that the students should have been allowed to retrieve the books one at a time and that as an experienced teacher, Respondent should have known that. She contends that while Respondent was assessing students, six students were not participating in small group tasks. Instead, the students played with items on or in their desks, organized papers, talked, or stared into space. Principal Narvaez did not indicate in the memorandum how long the students engaged in these activities or

describe with any specificity what the students were doing. She was unable to provide testimony about the students at the hearing.

281. Principal Narvaez offered Respondent the following assistance and guidance:

A. Develop thorough lesson plans for each subject taught:

i. Include one or two CCSS that you plan to develop during each lesson, the learning objective, teaching strategies and how you will differentiate in order to meet the instructional needs of all the students in the classroom.

ii. Review your lesson plans daily.

iii. Continue to submit complete weekly lesson plans by 8:00 a.m. on the first workday of each week.

B. Develop purposeful small groups with structures, including tasks and products that cognitively engage and support students in achieving instructional outcomes.

C. Maintain complete awareness of all of the students' during the instructional groups to ensure they are cognitively engaged and completing the tasks.

D. Although you are no longer receiving direct support from the PAR consulting teacher, reflect on that support and implement what you have learned. Consider attending

the PAR professional development classes during the 2017-2018 school year.

(Ex. 18, pp. 18-4 through 18-5.)

282. Principal Narvaez directed Respondent to a) implement the DOK questions beyond level 1 recall questions and use them on a daily basis, effective immediately; and b) monitor student behavior and redirect any of the students who are off-task, effective immediately.

283. Principal Narvaez advised Respondent that her failure to follow an administrative directive, or to make immediate and sustained improvement in her performance may result in a Below Standard Evaluation, Notice of Unsatisfactory Service, Notice of Suspension, and dismissal from the District. She advised Respondent that if were to evaluate her that day, she would issue a Below Standard Evaluation to Respondent, which could lead to similar discipline. She advised Respondent to respond to the conference memorandum in writing by August 31, 2018, if she wished to do so.

284. On June 15, 2018, Respondent prepared a written response to the June 4, 2018, memorandum. She explained that she and her students had just returned to her classroom from the library at the time of Principal Narvaez's observation. Respondent further explained that her students' time to go the library had been rescheduled, and she explained to the class what they were supposed to do before they broke into small groups. Some students did not have books since they had just turned them in the library and could not check out new books because it was her class's final library visit for the year.



285. Respondent noted that pursuant to paragraph 4.1 of her contract with the District, no special format for a lesson plan shall be required. Although she had submitted to Principal Narvaez lesson plans every Monday since November 6, 2017 using the same format, Principal Narvaez's did not provide any feedback or comments to Respondent about them until March 7, 2018 during a conference. Respondent changed her lesson plan format to ensure she included the standards she would be teaching. She clarified that the six ELA and 10 CCSS writing standards included both fourth and fifth grade standards, some of which were the primary standards to be covered and the others are secondary. Respondent did not intend to cover all the standards listed; rather she used her lesson plan as a guide for her teaching.

286. Respondent asserted that she went over expectations and rules for working independently before releasing the students to work independently. The fifth graders were working on grammar with the TA, and 3 groups were working Daily 5 choices which included listening to reading, reading to self, and reading to others. Respondent followed the Daily 5 model of instruction provided by Principal Narvaez and covered in staff professional development. She placed instructions on two of the small group tables but did provide the third table with instructions, so she told them what to do.

287. According to Respondent, every student worked independently at their seats for 15 minutes. She redirected "a couple" of students during the second rotation and checked on another student when she noticed he needed assistance. Respondent stated that she told the students that the purpose of working in small groups was to improve their fluency and comprehension and that it helped their DIBELS scores, which she shared with them individually when she assessed them. When she asked them to take out their reading textbooks, she explained that they would be re-reading an

assignment to help answer the lesson's essential questions. While the students engaged in the Think, Pair, Share activity, she walked around the classroom and listened to student discussions. Respondent stated every student discussed the reading and when the students stopped the Think, Pair, Share activity, students shared what they learned in their pairs when asked. She then explained the objective of the lesson, which was to analyze two texts on the same topic. Respondent continued with lesson after Principal Narvaez left the classroom.

288. Respondent contends that she posted and communicated the instructional outcomes of the ELA/small group lesson at the beginning and the end of the lesson. She disagreed with Principal Narvaez's comment that Respondent's small group structures did not support student learning because she followed the Daily 5 model of instruction. Respondent stated that she clearly explained what the class was supposed to do from the time her class returned from the library and she allowed the students time to get their materials ready for the ELA lesson. She used open ended questions and referred back to the essential question from the reading. Respondent testified that she did not ask the questions from the teacher's edition because it would not have been meaningful to ask the students the questions at that time and she was building to that level of questioning.

289. When the five students chose books, Respondent was very close to them and it took the students less than two minutes to choose them. She denied that students were off-task as Principal Narvaez reported, and asserted that students were always on task, quiet and in their seats during the lesson pursuant to her classroom rules.

290. Principal Narvaez did not respond to Respondent's written response.

291. The District did not establish that Respondent did not describe a clear instructional sequence or detailed activities that promoted standards-based learning in her lesson for May 11, 2018, as set forth in paragraph 74 of the Accusation, by not indicating how she would teach six CCSS during the 40-minute small group ELA time. The evidence established that the District cannot require Respondent to use a special format for her lesson plan, Respondent included both fourth and fifth grade standards, and that some of the standards were primary while the other secondary. For the same reasons, the District did not establish that Respondent failed to describe a clear instructional sequence or detailed activities that promoted standards-based learning in her lesson for May 11, 2018, by not indicating how she would teach the 10 CCSS during the 45-minute small whole group ELA/ELD integrated time.

292. The District's evidence regarding whether Respondent communicated the instructional outcome of the ELA/Small group activity or the ELA/ELD Integrated activity to her students did not preponderate over Respondent's evidence. Accordingly, the District did not establish that Respondent did not identify the instructional outcome of the ELA/Small Group activity or the ELA/ELD Integrated activity when she posted the standards for the ELA Small Group activity, as set forth in paragraph 75 of the Accusation, but she did not communicate them to students, and only stated that the class would be working on their fluency.

293. Respondent's testimony and written response to the June 4, 2018 memoranda regarding her delivery of instruction were persuasive and credited. Accordingly, the District did not establish that on May 11, 2018, Respondent did not form Purposeful and Productive Instructional Groups when her group structures did not support student learning toward her stated instructional outcome of the activities, as set forth in paragraph 76 of the Accusation.

294. Principal Narvaez's testimony that students sat with 10 minutes without instructional materials or guidance when weighed against Respondent's testimony and written response to the June 4, 2018 memorandum to which Principal Narvaez did not respond did not preponderate. Accordingly, the District did not establish that on May 11, 2018, Respondent failed to maximize the use of instructional time as set forth in paragraph 77 of the Accusation

295. The evidence established that the questions Respondent posted to students were not only recall questions. Accordingly, the District did not establish that on May 11, 2018, Respondent failed to challenge the students or encourage higher-level thinking during the discussion of The Oregon Trail as set forth in paragraph 78 of the Accusation.

296. In light of Respondent's testimony that she did not ask students the questions listed in the teacher's edition of the textbook used by the class, the District established that on May 11, 2018, Respondent did not ask any of the guiding questions provided in the Benchmark Advance T.E., to expose the students to higher level DOK 2 question, focusing on skills and concepts, and support the students' understanding of the instructional objective of Integrate information from two texts on the same topic , as set forth in paragraph 79 of the Accusation. The District, however, did not establish that, in light of the abilities of the students in Respondent's class, the DOK 2 questions would have been appropriate at that stage of learning

297. Principal Narvaez's conference memoranda and her testimony regarding student off-task behavior during the Think, Pair, Share activity were vague as to how long the students were off-task and what they were doing instead. This evidence did not preponderate over the evidence presented by Respondent. Accordingly, the

District did not establish that on May 11, 2018, Respondent failed to effectively implement the instructional strategy Think, Pair, Share, when she failed to monitor the students' talk, as set forth in paragraph 80 of the Accusation.

298. Similarly, Principal Narvaez's conference memoranda and her testimony regarding student off-task behavior of six students during the small group activities were vague as to how long the students were off-task and what they were doing instead. In addition, while the five students crowded each other as they retrieved books from the classroom library at the same time and Respondent merely told them to be quick about it, there was no evidence that the students actions resulted in a loss of instructional time or was otherwise disruptive to the class. Rather, the students were retrieving books in order to engage in the independent work activities. Accordingly, the District did not establish that on May 11, 2018, Respondent failed to monitor student off-task behavior or redirect students who were not engaged in the classroom activity, as set forth in paragraph 81 of the Accusation.

299. Based upon Factual Findings 275 through 298, the District failed to establish that Respondent willfully complied with the directives previously provided to her orally by Principal Narvaez and memorialized it in writing in conference memoranda.

### **SEPTEMBER 13, 2018 OBSERVATION**

300. Principal Narvaez co-observed Respondent's first grade classroom with Mr. Clay on September 13, 2018. Respondent had requested to teach a kindergarten class, but because of the seniority of other teachers and their preferences, the closest assignment Principal Narvaez could make was for the first grade.

301. Respondent was seated in the front of the class teaching a whole group lesson. She read from a big book on an easel next to her and also called students up to read. Principal Narvaez started her observation from the back of the classroom but moved closer to so that she could see Respondent's interactions with the students. She recalled that Respondent spoke to C.L. by getting six inches from his face in an attempt to redirect him. Respondent asked student C.L., "Do you need a moment? Sit in your seat." She also said the following to C.L.: "You have a time-out in your seat, or do you need other consequences?" Principal Narvaez stated that Respondent was very upset during her interaction with C.L. and from her tone it appeared that she was angry. Respondent had C.L. sit in a chair away from the group on a time out. Principal Narvaez did not know whether C.L. had an IEP program.

302. A.P. was sitting on the rug directly in front of Respondent during the observation. According to Principal Narvaez, A.P. was inattentive and not following along with the story Respondent was reading. Respondent pulled A.P. up by the arm and stated "Stand up. You are going to help me read." When A.P. was standing up and facing the class, Respondent took his arm and turn him around to face the book on the easel. Respondent put the pointer stick in A.P.'s hand and guided his hand to point the words as she read them.

303. Respondent tapped an 18-inch blue pointer stick with a white glove on the end of it to get the students' attention. According to Principal Narvaez, Respondent tapped C.L.'s knee with the pointer, and C.L. became upset and pushed the pointer stick away.

304. While it's appropriate for a teacher to put their hands on a student for safety reasons, Principal Narvaez expressed concern that Respondent tapped C.L. with

the pointer because it was an extension of her hand. She was also concerned that Respondent did not implement behavior modification and her classroom management skills had not improved. Principal Narvaez contends that Respondent violated the District's Code of Conduct, Foundation and Board Resolution by tapping although she had been previously counseled on those policies, by tapping C.L. with the pointer stick and grabbing A.P. by the arm. However, she did not intervene during the observation. Principal Narvaez also contends that she filed a report of the abuse but did not provide the Commission with a copy of the report or any independent evidence of its existence.

305. Principal Narvaez described Respondent's teaching as attempts at whole group reading of the text, where Respondent pointed at words and students tried to read. Some were able to accomplish the task while others were not. With respect to the quality of the lesson, students were unable to read with the intended pacing.

306. Principal Narvaez criticized Respondent for failing to submit lesson plans to her. She expected that Respondent would continue to submit lesson plans weekly as she had done for the previous school year until Principal Narvaez determined that Respondent had shown improvement. However, Principal Narvaez did not instruct Respondent to do so over the summer or at the beginning of the school year.

307. Principal Narvaez contended that Respondent's lesson was not rigorous enough for the first grade despite not knowing the students' reading levels and that multiple students were having difficulty reading. Although she stated that Respondent did not differentiate the lesson to meet the students' various needs, she was not aware of what students had an IEP and if they did, who the students were. Principal Narvaez also could not recall if there were English learners in Respondent's classroom.

308. In the area of classroom environment, Principal Narvaez recalled that various students were inattentive and engaged in off-task behavior. When Respondent called on A.P., he was laying on the rug. Principal Narvaez observed four girls congregating at the sink at the beginning of lesson. Students G.C. and C.L. were distracting each other. According to Principal Narvaez, Respondent was unaware that G.C. went to the door. When he returned, he sat at a desk and made knocking sounds. C.L., who was the door monitor went to the door twice before realizing that no one was at the door. Principal Narvaez contends that Respondent did not redirect their behavior.

309. Respondent testified that she did not physically mistreat C.L. or A.P. She attended professional development focused on how a teacher's limitations on being physical with student and she believes she did not do anything contradicting what she learned. Respondent has never physically harmed students entrusted to her care. She asserted that Principal Narvaez was not telling the truth about what occurred in her classroom that day.

310. Respondent recalls speaking with C.L. because he was trying to distract other students by talking to them and poking them. Respondent called his name and asked him to stop and pay attention. She was in close proximity to C.L. so that he could hear her and because she learned from colleagues that she should lower herself to her students' level so that that they can hear and understand. Respondent did not yell at C.L. or say anything inappropriate to him, but she did speak to him in a stern manner. She did not receive any complaints from C.L.'s parents based upon her actions during the lesson. Respondent put C.L. on time out for less than five minutes by having him sit at the kidney table. C.L. was still able to access the lesson as he was looking at the front of the class, participating in the lesson and listen. C.L. was on the



list to be assessed for eligibility for IEP program and had a special day class teacher. His previous teacher provided Respondent with strategies to deal with C.L.'s off-task behavior. That teacher recommended that Respondent separate him from the group and allow him to rejoin when he was able to focus.

311. Respondent denied grabbing students A.P. and C.L. by their arms at any time or pulling them. She asserts that she asked them for their hands and held A.P.'s hand to guide him to the front of the classroom as well as to turn when he was facing the wrong way. Respondent also asserted that she held C.L.'s hand to guide him to the kidney table for his time out. She explained that they were going to the back table and asked him to hold her hand. Respondent stated it is typical for teachers to hold the hands of first grade students, and that students A.P. and C.L. willingly held her hand when she asked them to do so. She has observed other teachers and Principal Narvaez hold students' hands to guide or re-direct them.

312. Respondent asked C.L. if he needed any other consequences as a part of her classroom management strategy. He continued to try to distract students but also began to focus on the lesson.

313. A.P. had either an IEP or behavior modification plan and was starting to receive services. His schedule was not yet in place because it was early in the school year at the time of the observation. A.P.'s RSP teacher had not yet begun providing him with independent instruction.

314. Respondent has no knowledge of a report being made by anyone regarding Respondent's conduct with A.P. or C.L. She did not take part in any investigation nor was she notified that the students' parents were informed of Principal Narvaez's allegations of physical contact.

315. Respondent's pointer stick, which she presented to the Commission, is 12 to 13 inches with a white Mickey Mouse type glove on the end. She denied tapping C.L.'s knee, leg or any other part of his body with it. Rather she contends that he was sitting with his legs crossed and she tapped the rug next to his foot near his toe because he was not paying attention. A.P. also used it to read out of the big book. Because he was not following directions or following along with text, Respondent directed him to return to the rug.

316. Respondent asserts that she differentiated the reading lesson that day. For example, she asked A.P. to be a helper so that he was engaged.

317. Respondent assigned students to jobs in the classroom. One of those jobs is the door monitor. She made C.L. the door monitor because he was having issues focusing.

318. Respondent denied being angry or frustrated with the students that day. She believes she was the stern with the students on the day of the observation but did not display anger.

319. Respondent took issue with Principal Narvaez's criticism that the students displayed inconsistent reading and were unable to read at the intended pacing. Since it was the beginning of the school year, some of the students were not able to read independently at that point. During the first four weeks of school, Respondent and the entire school taught lessons using the District's Benchmark materials on being a leader.

320. A substitute teacher taught Respondent's class the day prior to the observation. She reviewed a story entitled Katie's Crop, reviewed the CCSS and then

read the story chorally two times with the students. Respondent taught the lesson instead of following the lesson delivery sequence presented in the teacher's edition including Read Aloud and Shared Reading.

321. G.C. and C.L. both went to the door because there was a mix-up regarding who was assigned to be the door monitor. She reminded them that C.L. was the door monitor and G.C. returned to his seat. The four students were at the sink because they had permission to get a drink of water pursuant to her classroom rules. When Respondent realized that they were taking too long, she redirected them.

322. Respondent acknowledged that the classroom schedule she submitted to Principal Narvaez did not match the daily schedule posted in her classroom. She explained that the Being a Leader program provided a different schedule and that she was "tweaking" her schedule at this point in the school year.

323. While Respondent turned in lesson plans for the first two weeks of the 2018-2019 school year, she was not directed by Principal Narvaez to continue to do so.

324. Respondent disagreed with Principal Narvaez's assertion that she did not teach a structured, standards-based lesson. She used the District's material for the lesson, which is Standards based. Respondent explained to the objective to the students using age appropriate language, and that she would have explained the standards to them if were further along in the school year.

325. Respondent asserts that she reviewed the classroom rules with the students, stressing the rules requiring students to listen, face forward and sit with their legs crossed.

326. With respect to the allegations in the Accusation that Respondent's attempt to have the students engage in a Think, Pair, Share activity was unsuccessful, Respondent testified that the activity is "not pretty" at the beginning of the school year with first graders. The activity was new to a lot of the students and she was teaching them to sit on the rug knee-to-knee with their partner looking at them while one of the students shares. Respondent did not use a visual aide to teach the students how to Think, Pair Share on that date; instead she had them practice the activity.

327. Respondent disagreed with the allegation in the Accusation that her ELA lesson was not rigorous for the grade level. She contends that she taught the lesson straight from the text. Respondent acknowledged that she used DOK 1 recall questions and that they were considered higher level for the beginning of the year for the first grade.

328. Although Principal Narvaez criticized Respondent for not differentiating the lesson for the student, Respondent contends that she met the needs of her English learner students by pairing them with native speakers, to work on conversation skills. She was also working independently with some students, others were not identified as needing an IEP program, and others were still being assessed.

329. Respondent acknowledged that she did not display current student work as alleged in the Accusation because the students did not engage in writing projects during the first four weeks of school. She explained that there was not as much student work to be displayed at this point in the school year.

330. Respondent posted the objective of the lesson but was not in the habit of posting a daily agenda. She verbally explained to the students what they were going to do for the day.

331. Respondent's testimony regarding her interaction with C.L. was persuasive and afforded weight, especially in light of the fact that Mr. McClay did not see Respondent engage in physical contact with C.L. Accordingly, the District did not establish that on September 13, 2018, Respondent grabbed C.L. by the arm in the presence of students, as set forth in paragraph 83a of the Accusation.

332. Respondent's testimony established that on September 13, 2018, she stated "Do you need a moment? Sit in your seat, and You have a time-out in your seat, do you need other consequences?" to C.L. with her face in close proximity to his as set forth in paragraph 83b of the Accusation. However, Respondent's actions were not abusive; rather, they were appropriate given C.L.'s age and behavior issues.

333. Respondent's testimony regarding her interaction with A.P. was persuasive and afforded weight, especially in light of the fact that Mr. McClay did not see Respondent engage in physical contact with him. Accordingly, the District did not establish that on September 13, 2018, Respondent acted inappropriately by grabbing A.P. by the arm and pulling him up stating, "Stand up, You are going to help me read," in the presence of students as set forth in paragraph 85 of the Accusation. For the same reasons, the District did not establish that on September 13, 2018, Respondent inappropriately led A.P. to the rug by the arm and turned him in a full circle to face his classmates as set forth in paragraph 85 of the Accusation. Rather, the evidence established that Respondent led him by the hand to the rug, an appropriate interaction for a first grade student.

334. The District did not establish that Respondent stated to A.P. in a raised voice "Sit down," or "You can't be my helper" in the presence of students, as set forth

in paragraph 86 of the Accusation, in that neither Principal Narvaez nor Mr. Clay provided any testimony on this allegation.

335. The District's evidence in support of its allegation that on September 13, 2018, Respondent tapped C.L. on the knee with the pointer stick, and stated to C.L. "We are waiting," resulting in him pushing the pointer stick off did not preponderate over Respondent's evidence that she did not engage in the conduct. Accordingly, the District did not establish the allegations contained in paragraph 87 of the Accusation. Moreover, the District did not establish that Respondent willfully refused to perform her regular assignments without reasonable cause as alleged in paragraph 88 of the Accusation.

336. Principal Narvaez's testimony and Respondent's admission established that on September 13, 2018, Respondent did not submit weekly lesson plans to Principal Narvaez as set forth in paragraph 89 of the Accusation. The District, however, failed to establish that Respondent was required to do so. Principal Narvaez did not instruct Respondent to continue to submit lesson plans after the first two weeks of school. It was unreasonable for Principal Narvaez to expect Respondent to submit weekly lesson plans without direction to do so for the 2018-2019 school year.

337. The District established that on September 13, 2018, Respondent did not provide consistent Daily Schedule information. She posted a Daily Schedule in the classroom and submitted a Daily Schedule to Principal Narvaez, but the two schedules did not match as set forth in paragraph 90 of the Accusation.

338. The District established that on September 13, 2018, Respondent did not post a Daily Agenda in the classroom for the students to know what they would be learning during the current instructional day as set forth in paragraph 91 of the

Accusation. The District, however, failed to present any evidence that would indicate Respondent was required to post a Daily Agenda, especially in light of the fact Respondent had never received direction from Principal Narvaez to do so.

339. The District established that on September 13, 2018, Respondent did not deliver the teacher directed ELA lesson utilizing Benchmark Advance Unit 1 entitled Being a Good Community Member as set forth in paragraph 92 of the Accusation. The District, however, failed to establish that it would have been reasonable for Respondent to deliver that lesson in light of the fact that a substitute teacher had taught the class the previous day.

340. In light of Respondent's testimony describing how she met the needs of her various students and Principal Narvaez's testimony that she was not aware of the students' various needs, the District did not establish that on September 13, 2018, Respondent failed to implement differentiated strategies to support student learning and promote their participation in the classroom discussion as set forth in paragraph 93a of the Accusation.

341. The District did not present evidence concerning Respondent's use of equity sticks or a class roster during the September 13, 2018 observation. Accordingly, the District did not establish that Respondent did not incorporate a strategy to ensure that all students had an opportunity to share their thinking around challenging questions, such as utilizing a class roster or equity sticks.

342. The District established that Respondent did not utilize the instructional strategy of Think, Pair, Share effectively as set forth in paragraph 93c of the Accusation, in light of Principal Narvaez's testimony and Respondent's

acknowledgement that she was still teaching the students how to engage in the process.

343. Based upon Respondent's testimony that she asked DOK 1 questions because they were appropriate for her students given the time of the year, the District established that on September 13, 2018, Respondent did not utilize DOK questions to challenge students or engage them in higher level thinking as set forth in paragraph 94 of the Accusation. However, Respondent's testimony established that the questions she asked were appropriate given her students' skill level and the time of the year.

344. The District established that on September 13, 2018, Respondent did not monitor student off-task behavior and effectively redirect student's off-task behavior as set forth in paragraph 95 of the Accusation as follows:

A. Respondent released the students from a PE activity to use the restroom. All the students ran to the restroom and one student, M.O., tripped and was injured.

B. From 8:58 a.m. to 9:07 a.m., while Respondent transitioned the students from the playground to the classroom, two girls left the line-up area and twirled around the playground; four students ran around the playground; student G.C. ran to the other side of the playground and retrieved a basketball; three students picked up a jump rope and played with it, and three students ran away from the class and stood at the top of the steps.

C. During the ELA Read Aloud and Shared Reading activity, which lasted from approximately 9:09 a.m. to approximately 9:40 a.m.: a) C.L. and S.D. talked to each other; b) I.B. walked around the classroom, sat down, and then repeated her



movements; c) A.A. placed his jacket over H.M.'s head and then removed it; d) C.L. drank water from his water bottle and then spit the water back into the bottle; A.P. laid on the floor; e) and I.B. played with her hair.

D. During the 12 minute ELA Mentor Read Mini-lesson: a) student D.C. talked; b) C.L. got up to answer the door; c) G.C. continued to make knocking noises and a few minute later both C.L. and G.C. made competing knocking noises their desks; d) three female students stood at the sink and talked for approximately four minutes, until Respondent called them back to the rug; and e) A.P. and G.C. rolled around on the carpet.

345. The District did not present evidence in support of paragraph 96 of the Accusation. Accordingly, the District did not establish the charges stated therein.

346. Based upon Factual Findings 336 to 343, the District did not establish that Respondent willfully refused to comply with directives to "(1) Plan and develop criteria that is communicated to students to base their work on, (2) Teach standards-based lessons that cognitively engage students, (3) Teach a directed standards-based lesson each day, (4) Teach a directed standards-based lesson for each curricular area, (5) Implement the Depth of Knowledge questions and use them on a daily basis, and (6) Implement Depth of Knowledge (DOK) questions, beyond level 1 questions, recall questions, and use them on a daily basis, as set forth in paragraph 97 of the Accusation.

347. Based upon Factual Finding 344, the District established that Respondent did not monitor student behavior and redirect any students who are off-task, and she did not address all off-task behaviors as they occur until they have been corrected. In addition, Respondent did not actively monitor and supervise the students so that she

was aware of their actions, safety and whereabouts, or redirect them as needed. However, the Commission finds that Respondent's conduct was not willful when considering all of the circumstances.

### **NOTICES OF UNSATISFACTORY SERVICE OR ACTS AND SUSPENSION**

348. On September 24, 2018, Principal Narvaez issued to Respondent a Notice of Suspension of Certificated Employee, and a Notice of Unsatisfactory Service or Acts of Certificated Employee for the period of November 9, 2016 to June 4, 2018, for: (1) unsatisfactory performance; (2) unprofessional conduct; (3) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District; and (4) persistent violation of and refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public school by the state board of education or by the governing board of school district employing her. Principal Narvaez indicated in the Notices that Respondent failed to follow the District's TLF, Foundation Policy, and Multi-tiered Framework for Instruction, Intervention, and Support as well as the CSTP.

349. Principal Narvaez recommended in the notice of Unsatisfactory Service of Certificated Employee that Respondent be suspended for 11 days. She stated in her opinion Respondent did not make satisfactory progress despite being given assistance and guidance and directives to improve her practice.

350. On September 25, 2018, Respondent appealed the Notice of Suspension. The appeal has not been resolved.

351. On November 13, 2018, Principal Narvaez issued to Respondent a Notice of Suspension of Certificated Employee, and a Notice of Unsatisfactory Service or Acts

of Certificated Employee for incidents occurring on September 13, 2018, for: (1) immoral conduct; (2) unsatisfactory performance; (3) unprofessional conduct; (4) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District; and (5) persistent violation of and refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public school by the state board of education or by the governing board of school district employing her. Principal Narvaez indicated in the Notices that Respondent failed to follow the District's Codes of Conduct and Ethics, the Board Resolution, Foundation Policy, CSTP, and TLF, Elementary Teacher Class Description.

352. Principal Narvaez recommended in the notice of Unsatisfactory Service of Certificated Employee that Respondent be suspended for 6 days.

353. On November 13, 2018, Respondent submitted a Notice of Appeal of the Suspension. The appeal has not been resolved.

354. On May, 8, 2019, Principal Narvaez issued to Respondent a Notice of Suspension of Certificated Employee, and a Notice of Unsatisfactory Service or Acts of Certificated Employee in connection with Principal Narvaez's September 13, 2018 observation for: (1) unsatisfactory performance; (2) unprofessional conduct; (3) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the District; and (4) persistent violation of and refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public school by the state board of education or by the governing board of school district employing her. Principal Narvaez indicated in the

Notices that Respondent failed to follow the District's TLF, Multi-Tiered Framework for Instruction, Intervention, and Support, and Code of Ethics as well as the CSTP.

355. Principal Narvaez recommended in the notice of Unsatisfactory Service of Certificated Employee that Respondent be suspended for 15 days and dismissed from the District. She stated that her recommendation was based upon her determination that she not seen any improvement in two years. Principal Narvaez contended that she had the conference meetings with Respondent with the hope that Respondent would improve her practice so that she could provide effective instruction for all students for the 180 days that they were in school. She expressed her belief that she provided Respondent with adequate support, strategies, and resources to deliver effective instruction at the state standard level. Principal Narvaez testified that Respondent's teaching practice resulting in a loss of instructional time during the 2016-2017 school year due to Respondent's failure to have materials ready, her lesson plans were not adequately delivered or prepared, and the students were disengaged and not-redirected. She also stated that Respondent's students did not progress that school year but did not provide evidence to support her statement. Principal Narvaez also contended that students during the 2017-2018 school year were not able to access differentiated lessons and lost instructional time due to what she described as Respondent's inadequate delivery of instruction.

356. Principal Narvaez stated that she was sincere in providing resource, guidance and support to Respondent as she is with all teachers. She believed Respondent to be defensive during the conference meetings and not open to grow and learn.

## **TESTIMONY OF KEVIN MCCLAY**

357. Mr. McClay was CPES Coordinator when he co-observed Respondent's teaching with Principal Narvaez. Mr. McClay obtained a Bachelor of Arts degree from Rutgers University in business and accounting, and he also earned a master's degree in administrative education. He earned an elementary K-6 credential, and administrative credential, and is a National Board-certified teacher in elementary teaching. He has been employed by the District for 22 years and taught fourth and fifth grade math and science for five years, sixth and seventh grade middle school students for one year, and served as a School Site Coordinator for two years. Mr. Clay was an Assistant Principal for three years and a Principal for eight. He has performed at least 150 formal observations and 200 to 400 informal observations. He is familiar with the TLF and the CCSS and the standards applicable to the grade levels taught by Respondent during his observations.

358. After co-observing Respondent's teaching with Principal Narvaez, she and Mr. McClay went to the main office to debrief and calibrate their notes of what each of the saw. They discussed what went well, what was ineffective, and areas for improvement. However, none of the things that went well were included in the conference memoranda. Mr. McClay stated that he used the information collected during the observation and debriefing to support Principal Narvaez in drafting conference memoranda detailing the observation using the TALF.

359. If Principal Narvaez stated during the debriefing that she observed deficient teaching or off-task behavior that Mr. McClay did not observe, he included it in the memorandum because the document was issued by Principal Narvaez. As a

result, the memoranda reflected observations from both he and Principal Narvaez, or Principal Narvaez only.

360. Mr. McClay asserted that Respondent was assigned to his caseload because of her Below Standard evaluations. He co-observed Respondent in the classroom with Principal Narvaez on the following dates: September 13, 2017, October 20, 2017, November 27, 2017, February 26, 2018, and April 11, 2018. Mr. McClay stated that on those dates, he and Principal Narvaez entered the classroom at the same time and observed from different parts of the classroom.

361. Mr. McClay stated that the conference memoranda accurately memorialized deficiencies that were jointly observed by him and Principal Narvaez, or Principal Narvaez alone. At the hearing, Mr. Clay reviewed each of the conference memoranda and the deficiencies noted therein and while he rated Respondent as developing in a few areas, he assessed Respondent as mostly ineffective in the areas of planning and preparation, delivery of instruction, and classroom environment using the TLF. Mr. McClay's testimony, while instructive on why Principal Narvaez and the District believe Respondent is an ineffective teacher, it is summarized here and afforded less weight because the Commission found Respondent's written responses to the conference memoranda very persuasive as discussed herein. Mr. McClay testified that he had never seen any of Respondent's written responses.

362. With respect to the September 13, 2018 observation, Mr. McClay recalled that the students were engaged in a PE activity on the schoolyard and then they transitioned to the classroom. He also recalled that the students engaged in an ELA activity in the classroom and that that Respondent had difficulty managing the students. Mr. McClay further testified that students were misbehaving and rolling

around on the carpet while Respondent was trying to instruct the students. Mr. McClay could not recall the words Respondent used to try and redirect the students, but he remembers that Respondent seemed frustrated because she could not manage the students.

363. Mr. McClay did not observe Respondent grab A.P. or C.L. by the arm or tap C.L. with the pointer stick. He expressed concern because the behavior described to him by Principal Narvaez was inappropriate.

### **ADMINISTRATIVE REVIEW (*SKELLY* REVIEW)**

364. Mr. Campos is the District's Instructional Director. He earned a bachelor's degree in English from UCLA, two master's degrees in education, and three credentials – a multiple subject credential, a reading specialist credential, and an administrative services credential. Mr. Campos is in the process of completing doctoral work at the University of California, Irvine. He has been employed by the District for 25 years and has worked as a substitute and permanent teacher for a total of five years of kindergarten, third and fourth grades, as well as classes for students with special needs. Mr. Campos also served as a specialist in the H.R. Division, an assistant principal for four years, superintendent of schools, and a principal for six and one-half years.

365. Mr. Campos' duties as an Instructional Director include supervising 19 principals, assisting them with instruction, visiting classrooms, calibrating observations, looking for trends where a teacher may need support, and guiding principals through the TLF. He has known Principal Narvaez for four years and described her as knowledgeable, experienced, caring, and supportive of her staff.

366. Mr. Campos is familiar with the TLF and how it is used to evaluate teachers based on the elements listed in the initial planning sheet. Administrator observations of teachers focus on delivery of instruction and classroom management.

367. Principals are expected to make decisions about teachers based upon data. They are also expected to provide collaborative structures for teachers including planning lessons and reviewing data with teachers, visiting classrooms and providing actionable feedback. He believes that Principal Narvaez meets those expectations and that she provides teachers the opportunity to review student data, organizes professional development aligned with assessments, implement learning academies, and provides structures for teachers to collaborate on lesson planning.

368. Mr. Campos visited Respondent's classroom two to three times during the 2016-2017, 2017-2018, and 2018-2019 school years as a part of his practice to visit two schools per day. During those visits, he looked for evidence of systems and routines and the teachers' communication of learning objectives to the students by asking them what they are learning and looking for evidence on the board or elsewhere in the classroom.

369. Mr. Campos recalls being shown Respondent's classroom schedule and he was aware of what was supposed to be taught. According to Mr. Campos, not all students were on task, half of the students were reading books and talking. He observed Respondent circulating among the students but she did not seem to be aware of the students' off task behavior. When she did become aware, she attempted to re-direct the students by making a shushing sound. Mr. Campos was only in the classroom for 15 minutes, but asserts that during that time he saw no differentiation of instruction. The lesson was taught to the whole group, he did not notice a learning



objective on the board and no current student work was displayed. This observation stood out for Mr. Campos because Respondent seemed to be getting upset because the students were not following directions. Respondent raised her voice when students were off-task, fidgeting with pencil and engaging in other off-task behavior. Mr. Campos remained in the classroom for five additional minutes. He expressed concern for what was occurring when he was not in the classroom.

370. On a date not specified in the record, Respondent was notified by email that a meeting was scheduled for May 29, 2019, before the District's governing board to discuss her possible dismissible and immediate suspension from her employment with the District.

371. On May 28, 2019, Respondent requested that the meeting be rescheduled for 30 days later, at a minimum, for health reasons and because documents containing the charges against her that were supposed to be attached to the email were not. Respondent also requested that the meeting be rescheduled to allow her to retain an attorney and prepare documents in defense of the charges. Mr. Campos denied Respondent's request and instead rescheduled the meeting to June 3, 2019, two business days after the original meeting date.

372. In a written response dated June 3, 2019, Respondent expressed her opinion that the two additional business days she was given to prepare a response was insufficient to gather documents she believed necessary to present in her defense. She attached a certificate she received from the PAR Panel indicating that she met the goals established for the year, which correlated to the goals she set with Principal Narvaez for the 2017-2018 school year. She explained that the PAR consulting teacher observed her two to three times per week, every week for the entire school year.

Respondent was confused as to how Principal Narvaez could find her teaching to be below standard when she met her teaching goals.

373. Respondent informed Mr. Campos that Principal Narvaez ignored or refused her requests to demonstrate a lesson in her classroom so that Respondent could clearly see what Principal Narvaez expected of her. Respondent stated that Principal Narvaez failed to provide her with clear guidance and support, and when Respondent asked for clarification or specific examples cited in the conference memoranda, Principal Narvaez gave vague and unclear answers. Principal Narvaez gave Respondent the DOK Stems sheet twice, but Respondent performed her own research and worked on that area with her PAR consulting teacher. Respondent collaborated with her colleagues and observed different classrooms to learn about their teaching practices. Respondent contends that she discovered that positive feedback was provided to teachers who engaged in practice similar to hers and whose students conducted themselves in the same manner as Respondent's students. She believes Principal Narvaez's expectations for her were different than the other teachers at Bushnell Way.

374. Respondent informed Mr. Campos that her request to be transferred to another school as a reasonable accommodation for the health challenges she experienced caused by the stress resulting from her interactions with Principal Narvaez. Respondent's request was denied. Similarly, her request to voluntarily displace herself was denied, even though there were excess teachers the previous school year. Instead, Principal Narvaez displaced two teachers with more seniority than Respondent. Principal Narvaez told Respondent that she did not have to accept Respondent's request. Finally, Respondent noted that she had not yet had an

opportunity to be heard with respect to the two grievances she filed regarding her below standard evaluations.

375. Respondent was not able to attend the meeting on June 3, 2019. Instead, her attorney appeared and presented Respondent's statement. Also present was Juan Alfayate, a District Staff Relations Field Director.

376. Mr. Campos performed the administrative review. To prepare for the administrative review meeting Mr. Campos reviewed the conference memoranda and Notices of Unsatisfactory Acts/Performance issued to Respondent, as well as her responses to the memoranda and performance evaluations. He also called on his personal experience observing classroom.

377. Mr. Campos considered Respondent's request to be transferred to another school. He believes that Respondent did not show any growth during the times relevant to the Accusation so she would have challenges implementing the TLF and standards because they are utilized across the District. He concluded that Respondent would have an adverse impact on any school. Mr. Campos also considered the fact that Respondent had never been disciplined by any principal prior to Principal Narvaez. He stated that Respondent was previously not evaluated according to the TLF so he believes Respondent's argument to be moot. However, the TLF was adopted in 2013, prior to Principal Narvaez's assignment at Bushnell Way. Mr. Campos did not find any evidence of bias in Principal Narvaez's conference memoranda, he believes they were descriptive accounts of Respondent's teaching deficiencies, and there was no subjective information in the memoranda.

378. Mr. Campos recommended Respondent's separation. He concluded that the evidence demonstrated that Respondent's students were not receiving high quality

instruction, the memoranda demonstrated a trend of Respondent's failure to clearly communicate learning objectives, she did not establish a classroom management system, and rigorous standards-based instruction was not being delivered to students. Based upon the artifacts he reviewed, he does not believe Respondent is fit to teach because she was not meeting expectation.

379. Mr. Campos refused to directly answer questions on cross-examination. When presented with evidence during the 2016-2017 school year Respondent's reading fluency increased, he refused to credit Respondent with having anything to do with the outcomes. He stated that the students' growth was not necessarily because of the teacher. Mr. Campos minimized the PAR Panel's decision that Respondent met her PAR goals based upon the fact that PAR teachers do not hold credentials that allow them to perform teacher evaluations. He stated that the PAR Panel's determination "does not tell a whole lot." He did not recall complimenting Respondent on her teaching practice on November 2, 2017. Mr. Campo's testimony was unpersuasive since PAR consulting teachers are chosen to coach teachers that are underperforming based on their proficiency and familiarity with the TLF. Accordingly, the Commission assumes that PAR consulting teachers, and Respondent's consulting teacher in particular, can determine whether a teacher meets expectations for planning and preparation, delivery of instruction and managing the classroom environment. Moreover, when shown Respondent's responses to the conference memoranda, Mr. Campos did not recognize them though he stated he spent adequate time reviewing them prior to the administrative review, which he described as looking at them briefly. He could not recall reviewing the numerous certificates of completion of professional development Respondent included with her June 3, 2019 statement. Accordingly, Mr. Campos' testimony was afforded little weight.

380. By letter dated June 10, 2019, Respondent was notified that Mr. Campos recommended discipline of dismissal and immediate suspension should be sustained. Respondent was further notified that the recommendation of dismissal was forwarded to the Board of Education for adoption.

## **Respondent's Evidence**

381. This would have been Respondent's 23rd year at Bushnell Way. She worked with four principals before Principal Narvaez arrived in 2015.

382. Respondent believes that Principal Narvaez singled her out for criticism. In support of her contention, she submitted a memorandum dated April 20, 2017, entitled "Open House Attendance Results" that Principal Narvaez circulated among the entire school. The memorandum lists overall parent participation in Open House that year by teacher. Respondent's parent participation was the lowest at 26 percent, with overall schoolwide participation of 69 percent. Respondent explained that during the 2016-2017 school year, her parents were hospitalized several times. She was off work for a period of time and returned before she was ready. Respondent was not able to promote Open House that year like she did for the previous school year when the parent participation for her class was 70 percent. Principal Narvaez's memorandum made her feel dejected. No other principal had ever circulated such a memorandum, and Principal Narvaez did not prepare a similar memorandum the following year when Respondent's turnout was higher.

383. Respondent's testimony regarding the observations conducted by Principal Narvaez and Mr. McClay was consistent with her responses to the conference memoranda. She provided additional testimony as set forth below regarding her teaching practice during the school years at issue in this matter.

384. Respondent was notified only two to three weeks before the 2017-2018 school year began that she would be teaching a fourth and fifth grade combination class. She was concerned because teaching a combination class takes a lot more work than a single grade class and she felt she had insufficient time to prepare. In addition, she had not received instruction on how to teach a combination class. Respondent had already prepared materials for the fifth grade, so she had to double the work. She would have liked at least a month to prepare.

385. Respondent explained that she attended an initial planning meeting with Principal Narvaez at the start of each school year where they reached an agreement on what areas Respondent would focus on the areas for evaluation. In this way, she could understand what she would be evaluated on. Respondent also submits an initial planning sheet that contains her data-based objective. For the 2017-2018 school year, she submitted her initial planning sheet to Principal Narvaez on September 22, 2017 and met with her on October 3, 2017. However, Principal Narvaez conducted her first observation of Respondent on September 13, 2017, prior to the submission of the initial planning sheet and three weeks prior to the initial planning conference.

386. With respect to classroom management, Respondent contends that she always had a system in place that was communicated to her students. For the sixth grade, the students completed behavior logs at the end of each day that she reviewed. On Fridays, she sent notes home with students who had behavior challenges during the week, and the students brought them back on Monday. Respondent contends that thereby she was in constant communication with the students and their parents. Respondent's fifth grade students also completed behavior logs. In addition, she provided them with verbal warnings when they were off task, she made notations on their behavior logs and made telephone calls to parents. For her fourth and fifth grade

combination class, she strived to make the students more accountable in the classroom by assigning jobs to them. Respondent's classroom rules were to be respectful, listen, students were to raise their hands when they asked or answered a question. She used ClassDojo., a school communication platform where teachers can share with students and families what occurs in the classroom and send messages, as much for positive reinforcement as to note behavior issues. ClassDojo allowed Respondent to provide instant feedback to parents to assist with enforcement of the classroom rules.

387. Respondent participated in PAR program from August 14, 2017, through April 18, 2018. The PAR panel found that Respondent met her PAR goals.

388. Respondent contends that she always posted her classroom rules on a poster that listed four or five rules as well as the consequences and rewards. The rewards consisted of noting the positive behavior and completion of assignment in ClassDojo. The students were also given the opportunity to win a prize in a raffle, or to earn classroom rewards like extra recess time or to engage in an activity of the students' choice. Respondent also rewarded students with table points where the table with the most points for adhering to the classroom rules received a prize.

389. Respondent implemented a progressive discipline system in every class consisting of a verbal warning, written warning, messages on ClassDojo, a note home, a telephone call phone home, and sending students to the office.

390. Between April 24, 2017, and June 15, 2018, Respondent took 13 district approved, professional development courses, some of which were recommended by Principal Narvaez, in the following areas: a) classroom discipline and management; b) ensuring equity for ELA/ELD students; c) vision, organization, and expectations; d)

English learner; e) culturally and linguistically responsive pedagogy for pre-kindergarten through twelfth grade; f) targeting ALD & ELD through integrated literacy instructions; g) developing higher order thinking questions using DOK; and h) the ABCs of student engagement.

391. Respondent contends that she tried to satisfy Principal Narvaez and she did her work to the best of her ability. She would like to return to the classroom because she misses interacting with her students. Respondent loves teaching and believes it is a privilege to see her students' growth, knowing that she made a difference. She also wants to feel valued again and be part of the team at Bushnell Way.

### **CHARACTER TESTIMONY**

392. Y.A. attended Bushnell Way for two years and was a student in Respondent's fifth grade class during the 2016-2017 school year. She described Respondent as an excellent teacher who treated all students with respect. According to Y.A. Respondent was never mean to students nor did she yell at them. However, Respondent was "strict," which Y.A. defined as redirecting students when they were not paying attention. Respondent taught the class various subjects as well as P.E. Y.A. never observed Respondent force a student participate in P.E. if they had a note or indicated that they were not feeling well.

393. Y.A. recalls Respondent explaining the classroom rules at the beginning of the school year, repeating them every day and posting them in the classroom. The rules included the requirement for students to raise their hands when they wanted to ask or answer a question and respecting other students. Y.A. is aware that Respondent



used ClassDojo to send notes home to parents and she rewarded students who were on-task with table points for answering questions and abiding by the class rules.

394. Y.A. stated that Respondent gave clear instructions to the class. In addition, Respondent assigned work from textbooks and worksheets and provided poster board and paper to draw maps. Y.A. was failing math when she entered the fifth grade and struggled with reading comprehension, but she performed better with Respondent's instruction. She contends that Respondent explained things better than her other teachers. In addition, Respondent tutored her after school, in the morning, and during recess and lunch. Y.A. became excited about attending school due to Respondent's teaching.

395. Y.A. informed Principal Narvaez between five and seven times that she was being bullied. She also informed Principal Narvaez approximately four times that other students were being bullied as well. Y.A. contends Principal Narvaez told her she would talk to the students doing the bullying but as far as she knew that did not happen and the bullying did not decrease. On the other hand, when Y.A. informed Respondent that she was being bullied, Respondent spoke with the students and the bullying decreased. On one occasion, Respondent assigned Y.A. and the student who was bullying her to assist another teacher and they got along as a result of their interaction.

396. In Y.A.'s opinion, Respondent stood out in a very positive way over other teachers and she would be excited about having Respondent as a teacher in the future. She believes she only passed the fifth grade due to Respondent's help.

397. E.A., Y.A.'s mother, testified that Y.A. struggled with reading comprehension and math when she entered the fifth grade. However, after

Respondent began tutoring Y.A. after school she began to understand the work, her confidence increased, and she felt that she was well able to complete the assignments Respondent gave her. E.A. believes that Y.A. would still be struggling with math if Respondent was not her teacher. E.A. observed Y.A. complete homework Respondent assigned throughout the school year. It challenged Y.A. but was appropriate for the fifth grade. E.A. noticed that Y.A. was excited to attend Respondent's class but she had not been excited about any of her prior classes or teachers. Similarly, Y.A. never complained about Respondent although she complained about her previous teachers. In addition, Y.A.'s reports of bullying diminished after Respondent intervened to assist Y.A. E.A. would have no concerns if Respondent was assigned to be Y.A.'s teacher in the future.

### **CHARACTER REFERENCE LETTERS**

398. A.G.'s son is currently in sixth grade. Respondent was his Transitional Kindergarten (TK) teacher at Bushnell Way when Respondent taught a combined TK-Kindergarten class. A.G. volunteered in Respondent's class and observed her teaching and interactions with students. During that school year Respondent had more than 25 students but did not have a teaching assistant. According to A.G., Respondent effectively managed the two grades, she taught her students to organize their classroom materials, and she encouraged parents to be more involved in the students' learning. Respondent sent a color chart home with students every Friday that informed parents how the students were performing. A.G.'s son enjoyed having Ms. Rivas as a teacher and was able to meet all benchmarks for Kindergarten at the end of the year.

399. M.D.'s son was in Respondent's class at Bushnell Way during the 2001-2002 school year. M.D. volunteered in the classroom and observed that the classroom

was organized, and the students were excited. She described Respondent as a nice, fair, and firm teacher who engaged with the students in groups and one-on-one. Respondent even taught M.D.'s son how to tie his shoes.

400. Respondent was also M.D.'s younger son's kindergarten teacher during the 2014-2015 school year. M.D. also volunteered in the classroom during that school year and observed that learning posters were hung in the classroom and a timeline was also present so that the students knew what they were supposed to do at all times during the school day. She described Respondent as a good teacher who was engaged, caring, and polite.

## **Credibility Findings<sup>6</sup>**

401. The Commission found the testimony of Respondent to be credible, as her testimony was easy to follow, and her detailed written responses fully addressed

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<sup>6</sup> In this matter, the Commission evaluated the credibility of the witnesses pursuant to the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceeding in which the testimony has been given. The manner and demeanor of a witness while testifying are the two most important factors a trier of fact considers when judging credibility. The mannerisms, tone of voice, eye contact, facial expressions and body language are all

the allegations set forth in the Accusation. Her contentions that Principal Narvaez's and Mr. McClay's depiction of her teaching practice was inaccurate, that she implemented the assistance and guidance and directives issued to her, and that she was making progress was persuasive and supported by her successful completion of the PAR program and numerous professional development courses related to the deficiencies noted by Principal Narvaez. The Commission was concerned that Principal Narvaez never responded to Respondent's written responses to the conference memoranda and ignored Respondent's repeated requests for assistance. Although Principal Narvaez testified that she provided assistance and guidance to teachers who are struggling with the CSTP or the TLF, by reviewing their lesson plans and providing feedback and assistance in the classroom, she did not do so with Respondent. Respondent testified that she prepared her written responses to the conference memorandum from notes that she took after each observation. Consequently, the Commission gave more weight to the written memos penned by Respondent in response to Principal Narvaez's conference memos than to her testimony at the hearing, as they better explained Respondent's perspective. The Commission found that Respondent's responsive memos discredited the testimony of, and the conference memos penned by, Principal Narvaez, and the Commission considered them weightier than the testimony of Mr. McClay. Moreover, Respondent testified in a concise unequivocal manner, and supported her perspective with descriptive facts. The Commission afforded great weight to Respondent's testimony and written responses.

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considered, but are difficult to describe in such a way that the reader truly understands what causes the trier of fact to believe or disbelieve a witness.

402. The testimony of Principal Narvaez and Mr. Clay was afforded less weight, as they were slow to answer and in many instances attempted to avoid direct questions on cross-examination. Notwithstanding that the events described in the conference memoranda, they appeared to have great difficulty recalling facts. In light of Respondent's written responses, the District's evidence did not appear to provide the entire picture of Respondent's teaching and what was occurring in her classroom. Nor did it appear the District took into account the fact that Respondent taught three different grades in as many years and had to adjust to learning new standards.

## **LEGAL CONCLUSIONS**

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The "burden of proof" means the obligation of a party, if he or she is to prevail on a particular fact, to establish by evidence a requisite degree of belief or conviction concerning such fact. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The burden of proof in this proceeding is thus on the District to prove the charging allegations.

2. The standard of proof in this proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040; Evid. Code, § 115.) "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of

truth.' (BAJI (8th ed.), No. 2.60.)" (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

3. A permanent District employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)<sup>7</sup>

4. Section 44932 provides:

(a) A permanent employee shall not be dismissed except for one or more of the following causes:

(1) Immoral conduct . . .

(2) Unprofessional conduct.

[¶] . . . [¶]

(5) Unsatisfactory performance.

(6) Evident unfitness for service.

[¶] . . . [¶]

(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 of Education or by the governing board of the school district employing him or her.

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<sup>7</sup> Further references to statute are to the Education Code.

5. Sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District's choice. It has broad discretion in disciplinary matters. Its role is not limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-30 (*Morrison*). (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 219-22 (*Fontana*).) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

6. The California Supreme Court in *Morrison* set forth guidelines (eight factors) to aid in determining whether the conduct in question indicates such unfitness:

- (1) The likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated.
- (2) The proximity or remoteness in time of the conduct.
- (3) The type of credential held by the person involved.
- (4) The extenuating or aggravating circumstances surrounding the conduct.
- (5) The praiseworthiness or blameworthiness of the motives resulting in the conduct.

(6) The likelihood of the reoccurrence of the questioned conduct.

(7) The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

(8) The publicity or notoriety given to the conduct.

7. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. [Citation.]" (*Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734, 740; see also *Board of Education of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).) For instance, a teacher's falsification of attendance records to add names of three students to secure continued employment was deemed immoral and dishonest conduct based on this definition. (*Weiland*, *supra*, 179 Cal.App.2d at p. 812.)

8. Unprofessional conduct as used in Code section 44932, subd. (a)(1), may be defined as conduct that violates the rules or ethical code of a profession or is unbecoming a member of a 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.)



9. 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 subdivision (a) of section 44932, we are not to presume 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. 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. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and 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 unsatisfactorily to his employing school district. However, 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, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed unsatisfactorily.

10. Evident unfitness for service properly means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. [Fn. omitted.]" (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*)). This cause for discipline connotes a "fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) On this cause for discipline, the criteria for unfitness in *Morrison* "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. [Citation.] If the *Morrison* criteria indicate unfitness to teach, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland*, *supra*, 2 Cal.App.4th at page 1445.) For instance, a teacher's removal of school property (a public address system speaker) from the classroom wall may be considered evidence of evident unfitness for service. (*Palo Verde Unified School Dist. of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 973.)

11. "Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her," which concerns [Code] section 44932, subdivision (a)(7), requires a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.)

## **Analysis**

12. It was not established that Respondent engaged in immoral conduct within the meaning of sections 44932, subdivision (a)(1) and 44939, and the cases cited

in Legal Conclusion 7, in that the District did not establish that Respondent forced student D.M. to run in PE, nor did the District establish that Respondent grab students A.P. and C.L. by the arm, the two allegations in the Accusation arguably implicating the immoral conduct prohibition.

13. It was not established that Respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(2). As set forth in Legal Conclusion 8, unprofessional conduct addresses whether a teacher is unfit or unsuitable for teaching, by reason of inadequacies, and whether a teacher's conduct is unbecoming of a member of a profession in good standing, respectively. The evidence established that Respondent provided bell-to-bell instruction, began including standards in her lesson plans, posted and reviewed a CCSS as instructed, began implementing strategies for equitable participation in her classroom, and successfully completed the professional development courses recommended by Principal Narvaez and other courses that were not. All of the courses related to the subject areas Principal Narvaez contended Respondent demonstrated deficiencies. There was no evidence that Respondent was defiant or unwilling to improve her practice.

14. Though the District did establish that some of Respondent's acts constituted unsatisfactory performance, other charges, even when proven did not. The Commission determined that the proven instances of unsatisfactory performance, although constituting cause for dismissal under section 44932, subdivision (a)(4), were insufficient to warrant dismissal or demonstrate that respondent is unfit to serve as a teacher.

15. It was not established that Respondent is evidently unfit for service within the meaning of section 44932, subdivision (a)(5), as further defined in Legal

Conclusion 10. It was not established that Respondent has fixed character traits that make her unsuitable for teaching. The record establishes Respondent has had many good years of service to the District and has been successful in educating the students at Bushell Way.

16. It was not established that Respondent engaged in persistent disobedience of applicable rules and regulations. To the contrary, the evidence established that Respondent completed every professional development course suggested by Principal Narvaez, observed model teachers as recommended by Principal Narvaez, and participated in the PAR program and met her PAR goals. In addition, she demonstrated the desire to comply with directives and assistance and guidance by including standards in her lesson plans after being criticized for not doing so, posted and stated objectives as instructed, utilized equity sticks as recommended by Principal Narvaez, and implemented other strategies. Further, Respondent's attitude toward her supervisors during office conferences and during the hearing indicates that Respondent does not have an insubordinate attitude.

17. It was not established that Respondent willfully refused to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the District. The term "willful" carries a volitional coloration which excludes the notion of accidental or even negligent conduct. (*Coomes v. State Personnel Bd.* (1963) 215 Cal.App.2d 770, 775.) A refusal needs to be "conscious, intentional and deliberate to be willful." (*Goodhew v. Industrial Acc. Commission* (1958) 157 Cal.App.2d 252, 257.) "Willful" is "voluntary and intentional, but not necessarily malicious." (Black's Law Dict. (9th ed. 2009) p. 1737, col. 2.) In no way did Respondent's conduct demonstrate an unwillingness or refusal to adhere to specific orders or directives issued by those in authority of her. To the contrary, the evidence

established that Respondent made genuine efforts to implement the assistance and guidance and directives issued to her by Principal Narvaez, which was at least partially acknowledged by Principal Narvaez at the hearing, While Respondent did not comply with Principal Narvaez's direction to display current student work, the Commission finds that Respondent's conduct was negligent and not willful.

18. The Commission agree unanimously few instances of unsatisfactory performance proven by the District were sufficient, separately and in the aggregate, to demonstrate that Respondent is unfit to serve as a teacher and do not deem these incidents to be sufficient cause to terminate Respondent, especially in light of the fact of many years of service without incident, her successful completion of the PAR program and professional development in the areas of delivery of instruction and classroom management.

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## ORDER

The Accusation against Respondent Idolina Rivas is hereby dismissed, and she shall not be terminated as a certificated employee of the Los Angeles Unified School District.

DATE: Jan 6, 2021

  
Lynette Ballas (Jan 6, 2021 13:21 PST)

LYNETTE BALLAS

Commission Member

DATE: Jan 6, 2021

  
Luciano Ortiz (Jan 6, 2021 14:28 PST)

LUCIANO ORTIZ

Commission Member

DATE: Jan 6, 2021



CARMEN D. SNUGGS

Administrative Law Judge

Office of Administrative Hearings