

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

In the Matter of the Dismissal of:

KIMBERLEY COOPER,  
A Permanent Certificated Employee

Respondent.

OAH No. 2013030567

**DECISION**

This matter was heard before a Commission on Professional Competence (Commission) of the Fresno Unified School District on February 3 through 7, 2014, in Fresno, California. The Commission members were Chester Stoeckle, Freda Russell, and Administrative Law Judge Coren D. Wong, Office of Administrative Hearings, State of California, chairperson.

Attorney L. Carlos Villegas from the law firm Fagen, Friedman & Fulfroost, LLP, represented complainant Fresno Unified School District (District). Cynthia Quintana, the District's Administrator of Human Resources for Certificated Employees, also appeared on behalf of the District.

Attorney Joshua F. Richtel from the law firm Tuttle & McCloskey represented respondent Kimberley Cooper, who was present throughout the hearing.

Evidence was received and the Commission met in executive session on February 7, 8, and 10, 2014, after which the record was closed and the matter submitted for decision.

**SUMMARY**

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

## FACTUAL FINDINGS

### *Jurisdictional Matters*

1. Respondent acknowledged receipt of the District's Notice of Unsatisfactory Performance (Notice) on September 4, 2012. The District subsequently prepared an Amended Notice of Unsatisfactory Performance (Amended Notice) on September 19, 2012, and served it on respondent.<sup>1</sup>

2. The Amended Notice provided, in part:

Pursuant to Education Code sections 44938 and 44932, this letter constitutes notice to correct your unsatisfactory performance. The statutes require the Fresno Unified School District ("District") to provide the teacher with such notice at least ninety (90) days prior to initiating formal disciplinary proceedings for dismissal on the grounds of unsatisfactory performance. Please be advised that Section 44938 does not, however, preclude the initiation of such formal disciplinary proceedings for causes other than unsatisfactory performance.

This formal Notice is designed to provide you with sufficient information to understand the nature of your unsatisfactory performance and to illustrate specific instances of such behavior with such particularity as to provide you with an opportunity to correct these faults and overcome the grounds for potential dismissal charges.

3. The Amended Notice cited specific instances of respondent's unsatisfactory performance during the period from September 2, 2010, through May 15, 2012, and included the relevant performance evaluations. The unsatisfactory conduct identified fell under California Standards for the Teaching Profession Standards (CSTP or CSTPs) 1 through 5.<sup>2</sup>

The Amended Notice also said the following about respondent's unsatisfactory conduct and provided her the following directives for improving her performance:

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<sup>1</sup> A copy of the Notice was not produced at hearing. Instead, the District produced the Amended Notice, along with a copy of respondent's signature acknowledging receipt of the Notice. Cynthia Quintana, the District's Human Resources Administrator for Certificated Employees, testified that respondent's "90-day notice period" began on September 4, 2012, and ended on December 4, 2012. Respondent did not dispute that testimony or argue that the Notice was substantively different than the Amended Notice. All subsequent references to "Amended Notice" also include the Notice, unless otherwise specified.

<sup>2</sup> Each of the CSTPs are described further below.

As indicated by the foregoing, your performance has been unsatisfactory. Such performance negatively impacts your students' ability to learn, undermines the District's educational program, and creates concern over your ability to effectively teach the students in your class. In an effort to assist you in overcoming these deficiencies, you will be expected to comply with the following directives:

1. Build upon instruction, pacing, and checking for understanding to ensure students have full understanding of learning objectives of the lesson.
2. Use a variety of instructional approaches and strategies to introduce, explain, and restate subject matter so all students understand and the needs of all students are accommodated.
3. Develop and consistently follow an instructional schedule that adheres to School site and District guidelines to support student learning. Use instructional time effectively to optimize learning by pacing lessons appropriately and adjusting pacing as needed to foster understanding in all students.
4. Consistently implement classroom procedures and routines that support student learning. Use attention getting [*sic*] signals effectively and consistently.
5. Establish and post classroom rules and reinforce daily. Respond to an inappropriate behavior in a fair manner that focuses on the behavior and treats students with respect. Establish a behavior management system that is clearly defined and consistently used.
6. Clearly articulate and model goals/objectives and include students in stating objectives. Consistently check for student understanding of objectives.
7. Assess students to guide instructional planning. Modify and revise instruction based on level of student understanding.
8. Follow all previous verbal and written directives given to you by School site or District administrators.

**9. Submit lesson plans weekly on Monday mornings by 8:00 a.m.**

(Bold original.)

4. The Amended Notice concluded with the following warning to respondent:

You are hereby directed to correct your unsatisfactory performance within 90 days of receipt of this Notice. During the 90-day improvement period, your performance will be monitored regularly by site and/or District administrators. If the above-identified deficiencies are not corrected within the pertinent time periods, the District may institute disciplinary action against you, up to and including possible dismissal.

5. On January 23, 2013, the District's governing board approved service of a Notice of Intent to Dismiss and Statement of Charges on respondent.

6. On March 8, 2013, Kim Mecum, the District's Assistant Superintendent for Human Resources, signed the Accusation seeking to dismiss respondent from the District for unsatisfactory performance. The Accusation alleges each of the specific instances of unsatisfactory performance cited in the Amended Notice and incorporates the relevant performance evaluations.

*Respondent's Background*

7. Respondent received her Bachelor of Arts degree in Liberal Arts from California State University, Fresno, and teaching credential from National University. She holds a multiple subject teaching credential, which allows her to teach all subjects in a self-contained classroom and, as a self-contained classroom teacher, to team teach or to regroup students across classrooms, in grades 12 and below, including preschool, and in classes organized primarily for adults. Additionally, she is authorized to teach core classes consisting of two or more subjects to the same group of students in grades five through eight, and to teach any of the core subjects she is teaching to a single group of students in the same grade level as the core for less than 50 percent of her work day.

8. Respondent obtained her first teaching position in 2002 with a charter school affiliated with the District and that serves students who have been expelled from traditional schools. At the beginning of the 2006/2007 school year, she began teaching in the District at Carver Academy Elementary School. She taught the following classes during the following school years:

- a. 2006/2007: Fifth grade language arts and social studies.
- b. 2007/2008: Seventh grade social studies and physical education.

- c. 2008/2009: Eighth grade language arts.
- d. 2009/2010: Eighth grade language arts and social studies.

9. Respondent transferred to Ayer Elementary School, and was assigned to teach one of three sixth grade classes, at the beginning of the 2010/2011 school year.

10. First through sixth grades are often taught by a single teacher in a self-contained classroom, which means that the same teacher teaches the same students for the entire school day. However, there were two new sixth grade teachers at Ayer Elementary School at the beginning of the 2010/2011 school year, and Maria Lynn Rocha-Salazar, the principal, decided that the entire sixth grade would be “departmentalized” to allow the new teachers time to learn the sixth grade curriculum. Therefore, each sixth grade teacher – respondent, Ms. Chun, and Ms. Rodriquez – was responsible for teaching a particular subject to the entire sixth grade (respondent was responsible for reading language arts, Ms. Chun for writing, and Ms. Rodriquez for math), while also having a group of students assigned to her as her “homeroom” and to whom she was responsible for teaching the remainder of the sixth grade curriculum.<sup>3</sup>

11. Respondent returned to Ayer Elementary School to teach sixth grade for the 2011/2012 and 2012/2013 school years. She continued to teach under the departmentalized method of teaching.

12. The District placed respondent on paid administrative leave at the conclusion of the first semester of the 2012/2013 school year.

13. At all times relevant, respondent has been a permanent certificated employee in the District.

#### *Performance Evaluations and the CSTPs*

14. The law requires school districts to conduct regular performance evaluations of its certificated employees. Effective for the 2001/2002 school year, the District’s governing board adopted the FUSD Continuum of Standards for the Teaching Profession (Continuum), which provides guidelines for evaluating the performance of certificated employees.

15. The revised Continuum that took effect during the 2010/2011 school year provides the following regarding its purpose:

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<sup>3</sup> Evidence was introduced that Principal Rocha-Salazar had other motivations for deploying sixth grade, none of which contradicted her testimony that she wanted to make the transition to teaching sixth grade easier for respondent and Ms. Chun. Ultimately, her reasoning for deploying sixth grade is not relevant to the outcome in this matter.

The purpose of this handbook is to remove the guesswork from knowing what makes an effective, inspiring teacher. In 1997 the State of California first published the California Standards for the Teaching Profession (CSTP). Revisions to the CSTP (2009), [sic] have been developed to respond to the changes in teaching and learning over the past decade. Most importantly, the California Department of Education, in conjunction with the Commission on Teacher Credentialing and California State Board of Education, revised the CSTP to address the following needs: an increasingly diverse student population, substantial innovations in technology and its effects on instructional practices, updates in K-12 curriculum frameworks, the implementation of the academic content standards, and the effect that globalization of our world has had on teaching in the 22nd century classroom. The intended purpose of the CSTP is to provide a “common language” for all teachers in California. The CSTPs are organized around six interrelated domains of teaching practice. The following are the identified standards by which California teachers are to be measured:

STANDARD 1: Engaging and Supporting ALL Students in Learning

STANDARD 2: Creating and Maintaining Effective Environments for Student Learning

STANDARD 3: Understanding and Organizing Subject Matter for Student Learning

STANDARD 4: Planning Instruction and Designing Learning Experiences for ALL Students

STANDARD 5: Assessing Students for Learning

STANDARD 6: Developing as a Professional Educator

(Capitalization original.)<sup>4</sup>

16. The Continuum provides for one of two “ratings” for each CSTP – “Meets Standards” and “Does Not Meet Standards” – and provides criteria for each rating. Within the rating of “Meets Standards,” the Continuum contains the subratings “Highly effective,” “Effective,” and “Developing,” and specifies criteria for each.

17. The Certificated Evaluation Form the District used for respondent’s preliminary and summary performance evaluations during the relevant time period provides

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<sup>4</sup> In its forms and documents, the District used both Roman and Arabic numerals to refer to the different CSTPs. For the sake of consistency, this decision will use Arabic numerals only.

for the following possible ratings: "Meet Standards Proficient," "Meets Standards Minimally," or "Does Not Meet Standards."<sup>5</sup>

18. The Lesson Observation Form the District used for respondent's lesson evaluations during the relevant time period provides for the same ratings, but abbreviates them as "MS," "MSM," and "DNM," respectively. It also provides for a rating of "N/O" for those CSTPs that were not observed. Furthermore, the ratings are of performance in different categories under the different CSTPs,<sup>6</sup> which are described as follows:

a. CSTP 1:

1. Using knowledge of students to engage them in learning.
2. Connecting learning to students' prior knowledge, backgrounds, life experiences, and interests.
3. Connecting subject matter to meaningful, real-life contexts.
4. Using a variety of instructional strategies, resources, and technologies to meet students' diverse learning needs.
5. Promoting critical thinking through inquiry, problem-solving, and reflection.
6. Monitoring stated learning and adjusting instruction while teaching.

b. CSTP 2:

1. Promoting social development and responsibility within a caring community where each student is treated fairly and respectfully.
2. Creating physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students.

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<sup>5</sup> Neither the evaluation form nor the Continuum indicates whether a rating of "Meet Standards Proficient" is based on the criteria for "Meets Standards – Highly effective," "Meets Standards – Effective," or a combination of both. The Continuum indicates that a rating of "Meets Standards Minimally" is based on the criteria for "Meets Standards – Developing."

<sup>6</sup> The ratings on the Certificated Evaluation Form, on the other hand, were based on the teacher's performance under each CSTP in general, rather than each individual category under each CSTP.

3. Establishing and maintaining learning environments that are physically, intellectually, and emotionally safe.
4. Creating a rigorous learning environment with high expectations and appropriate support for all students.
5. Developing, communicating, and maintaining high standards for individual and group behavior.
6. Employing classroom routines, procedures, norms, and supports for positive behaviors to ensure claimant in which all students can learn.
7. Using instructional time to optimize learning.

c. CSTP 3:

1. Demonstrating knowledge of subject matter, or academic content standards, and curriculum frameworks.
2. Applying knowledge of student development and proficiencies to ensure student understanding of subject matter.
3. Organizing curriculum to facilitate student understanding of the subject matter.
4. Utilizing instructional strategies that are appropriate to the subject matter.
5. Using and adapting resources, technologies, and standards-aligned instructional materials, including adopted materials, to make subject matter assessable to all students.
6. Addressing the needs of English Learners and students with special needs to provide equitable access to the content.

d. CSTP 4:

1. Using knowledge of students' academic readiness, language proficiency, cultural background, and individual development plan instruction.
2. Establishing and articulating goals for student learning.



3. Developing and sequencing long-term and short-term instructional plans to support student learning.
4. Planning instruction that incorporates appropriate strategies to meet the learning needs of all students.
5. Adapting instructional plans and curricular materials to meet the assessed learning needs of all students.

e. CSTP 5:

1. Applying knowledge of the purposes, characteristics, and uses of different types of assessments.
2. Collecting and analyzing assessment data from a variety of sources to inform instruction.
3. Reviewing data, both individually and with colleagues, to monitor student learning.
4. Using assessment data to establish learning goals and to plan, differentiate, and modify instruction.
5. Involving all students in self-assessment, goal setting, and monitoring progress.
6. Using available technologies to assist in the assessment, analysis, and communication of student learning.
7. Using assessment information to assure timely and comprehensible feedback with students and their families.

f. CSTP 6:

1. Reflecting on teaching practice in support of student learning.
2. Establishing professional goals and engaging in continuous and purposeful professional growth and development.
3. Collaborating with colleagues and the broader professional community to support teacher and student learning.
4. Working with families to support student learning.

5. Engaging local communities in support of the instructional program.
6. Managing professional responsibilities to maintain motivation and commitment to all students.
7. Demonstrating professional responsibility, integrity, and ethical conduct.

19. During the 2008/2009 school year, the District implemented Skillful Teaching/Skillful Learning, a training program for its administrators, including principals and vice principals, to learn how to conduct performance evaluations of certificated employees. Principal Rocha-Salazar explained at hearing that she participated in that training for the first four years, did not participate the following year, and is currently participating in her fifth year.

20. During all times relevant, Principal Rocha-Salazar performed the following types of performance evaluations of her teachers, including respondent:

a. Informal classroom walk-through: generally, an impromptu walk-through the teacher's classroom, the reason for which could be unrelated to evaluating that teacher's performance, such as conducting a student "head count" to determine enrollment.

b. Formal lesson observation: a preplanned visit, during which Principal Rocha-Salazar observes the teacher teach a particular lesson. Prior to the observation, Principal Rocha-Salazar meets with the teacher to discuss the teacher's proposed lesson plan for the observation. During the observation, Principal Rocha-Salazar takes "literal notes,"<sup>7</sup> which she shares with the teacher afterward, usually within one week of the observation (but ideally later that day or the following day). After sharing her literal notes, Principal Rocha-Salazar holds a post-observation conference with the teacher to discuss the observation and provide strategies and techniques for addressing any concerns noticed during the observation.

c. Certificated evaluation (preliminary evaluation): a performance evaluation that usually occurs toward the end of the first semester and is based on Principal Rocha-Salazar's informal walk-throughs, formal lesson observations, conferences, and lesson plan reviews during the applicable semester.

d. Certificated evaluation (summary evaluation): a performance evaluation that usually occurs toward the end of the second semester and is based on Principal Rocha-Salazar's informal walk-throughs, formal lesson observations, conferences, and lesson plan reviews during the applicable semester.

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<sup>7</sup> "Literal notes" are Principal Rocha-Salazar's attempt to write down, verbatim, what the teacher and students said when she was observing the class.

*Evaluations of Respondent's Performance and Assistance Provided by the District During the 2010/2011 School Year*

21. Informal classroom walk-throughs: Every day for the first 10 days of the 2010/2011 school year, Principal Rocha-Salazar walked into every classroom at Ayer Elementary School and counted the number of children for purposes of determining enrollment and class sizes. During these informal walk-throughs, she began to notice that respondent was off to a "rough start." Principal Rocha-Salazar shared her concerns with respondent after each walk-through, and suggested strategies and techniques for solving the perceived problems.

22. Assistance provided by Elin Van Fleet: Based on her observations during those 10 days, Principal Rocha-Salazar developed concerns regarding respondent's classroom management and lesson planning skills. Therefore, she asked Elin Van Fleet, an instructional coach assigned to Ayer Elementary School, to work with respondent.

23. At the beginning, Ms. Van Fleet helped respondent gather the material she needed for classroom instruction and familiarize herself with this school site and where different things were located. As the school year progressed, Ms. Van Fleet provided more strategic instructional coach-based assistance based on the particular topic(s) respondent was teaching at the time the assistance was provided. At hearing, Ms. Van Fleet estimated that she observed respondent in her classroom approximately 10 times throughout the 2010/2011 school year. She provided feedback regarding respondent's performance after each observation.

24. December 7, 2010 lesson observation: Respondent was rated "DNM" for CSTPs 1 (Category 6), 2 (Categories 5 and 7),<sup>8</sup> 3 (Categories 1, 3, and 5), and 5 (Category 5). She received ratings of "MMS" or "N/O" for CSTP 4 and "MS" or "N/O" for CSTP 6. The following are some of the deficiencies observed during the lesson observation:<sup>9</sup>

- a. CSTP 1: Respondent blended the "I Do" and "We Do" teaching methods together, rather than having a clear break when switching from one method to the other.
- b. CSTP 3: The lesson objective actually achieved was different than the stated objective.

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<sup>8</sup> As discussed in Factual Finding 71 below, respondent improved her conduct under CSTP 2 during the 90-day notice period (September 4 through December 4, 2012). Therefore, a detailed discussion of her prior unsatisfactory performance under that standard is not necessary for the reasons discussed in Legal Conclusions 4, 5, and 11.

<sup>9</sup> A detailed discussion of each deficiency noted is not necessary. (*City of Carmel-By-The-Sea v. Monterey County Board of Supervisors* (1977) 71 Cal.App.3d 84, 91.)

c. CSTP 5: The stated and posted objective was “students will be able to identify the author’s conclusion by using textual evidence, a graphic organizer, and writing a language frame.” The lived objective was that some students were able to identify an example of textual evidence to support the author’s conclusion by using the language frame. Student responses included, “Evidence that supports this conclusion is... the water was bubbling, they worshiped gods, and bad things were happening because the gods were mad.” The stated and posted objective was not met.

25. December 15, 2010 preliminary evaluation: Respondent was rated “Does Not Meet Standards” for CSTPs 2, 3, and 4. She was rated “Meets Standards Minimally” or higher for CSTPs 1, 5, and 6. The following are some of the deficiencies noted during the observation:

a. CSTP 3:

During the formal observation, students were very well behaved for the lesson, but the lesson finished five minutes early. Instead of having a sponge activity or quiet reading established, the students were off task and noisy. We discussed during our post observation conference that the teacher needs to maintain and reinforce her behavioral expectations at all times. We also discussed to [sic] need to establish this level of behavior daily with all groups of sixth grade students that she teaches.

b. CSTP 4:

The various phases of direct instruction are evident on a daily basis; however, the quality of the delivery is weak. For example, the “I Do, We Do, You Do” portion of the lesson looked similar (9-9-10).

During the “I Do” portion of the lesson, the teacher questions students before the comprehension input is delivered or she allows students to ask questions (9-14, 11-17).

26. The December 15, 2010 preliminary evaluation included the following feedback: “During a conversation with the teacher in September, I asked her to plan with the instructional coach in order for the teacher to focus on classroom management.”

27. Teacher development plan signed February 16, 2011: When a teacher receives a rating of “Does Not Meet Standards” on one or more CSTPs during a preliminary or summary evaluation, her principal is required to prepare a teacher development plan. A teacher development plan identifies the CSTP(s) needing improvement and contains directives to the teacher about what needs to be done to improve. It also identifies specific assistance that will be provided to the teacher to help her improve.

28. Principal Rocha-Salazar signed a teacher development plan on February 16, 2011, which identified CSTPs 2, 3, and 4 as the standards under which respondent needed to improve. It also identified the following assistance to be provided to respondent during the second semester of the 2010/2011 school year:

- Reflection of the FUSD Continuum
- Conferencing
- Observation checklist for reflection
- Observations for support
- Written feedback
- Selective Scripting
- Verbal suggestions/comments
- Constructive criticism
- Provide materials/resources/tools/strategies
- Model lessons
- Assist students
- Cognitive Coaching
- Collaboration with principal
- Three way [*sic*] conferences (teacher, coach, principal)

29. When a teacher development plan is issued after a preliminary evaluation, the teacher has the following options with regard to who will provide the assistance specified: 1) no one, 2) her principal, or 3) a teacher development coach. When one is issued after a summary evaluation, however, the assignment of a teacher development coach is mandatory. Respondent chose to receive the above assistance directly from Principal Rocha-Salazar.

30. April 12, 2011 lesson observation: Respondent received a rating of "DNM" for CSTPs 1 (Category 2), 2 (Categories 2, 4, and 5), 3 (Categories 2 and 3), and 4 (Category 4). She received a rating of "MS" or "N/O" for CSTPs 5 and 6. Some of the deficiencies noted during the observation include:

a. CSTP 1:

During the lesson, the teacher asked students to "turn to their neighbor and discuss. See if you can come up with an answer." During the comprehensive input, the teacher asked students to define the word break, which was the teacher's example of a multiple meaning word. The teacher took three student responses and said, "I wrote some down and wrote if they were nouns or verbs." This was an opportunity to make connection with how the meaning may change based on the context of the sentence. How is the word being used? The teacher asked students to come up with a sentence for each of these words. It was unclear as to which words were used to define the word break and exactly what the three sentences were that students

were to have created. The teacher said, "We have used our own three different definitions of the words break." During the question related to the word stock, the teacher gave the answer.

b. CSTP 3:

On 4/12, the teacher recognized that students might need assistance with the words multiple, meaning, identify and interpret. As such, she reviewed and defined each word. The building background component of the lesson consisted of one example, and that "students need to know which meaning is being used for the CST." It should have included the following: Many common words have more than one meaning. They can be used in different ways depending on the surrounding words, known as context. This portion of the lesson should also have included the use of the word homographs. During the "I DO" [sic] portion of the lesson, the teacher modeled thinking aloud and finding the correct answer by using a process of elimination. When answering for the word finished, a student was confused and thought it meant ended. Teacher clarified. The teacher said, "When I looked at your test, I see that you looked to see... oh, finish means ended. It doesn't work that way." The teacher then showed a picture of beautifully finished cabinets and went on to the next question of the We Do portion of the lesson. Students answered on their own.

c. CSTP 4:

On 4/12, the teacher planned the lesson based on a previous class assignment and GLAS results. The lesson was based on an appropriate sixth grade standard. R 1.2 Identify and interpret figurative language and words with multiple meanings. The objective was students will be able to identify the correct definition of the multiple meaning words being used by displaying the correct answer on the whiteboard. There was evidence of I DO [sic], We Do, You Do portions of the lesson, however, during the designated We Do portion, students answered on their own and the teacher moved directly into the You Do portion. During the You Do portion of the lesson, students were confused about the meaning of the word crucial. The students were unable to complete the last two questions on their own.

31. April 29, 2011 lesson observation: Respondent received ratings of "MMS" or above or "N/O" for all CSTPs.

32. May 6, 2011 summary evaluation: Respondent was rated "Does Not Meet Standards" for CSTPs 2, 3, and 4. She was rated "Meets Standards Minimally" for CSTP 1 and "Meet Standards Proficient" for CSTPs 5 and 6. The following are some of the deficiencies noted during the observation:

a. CSTP 3:

On 4/29, there was a clear connection between the identified standard and the examples presented in the lesson. The connection between the presented CST release questions and student text was less aligned. The teacher gave an example by asking "If I was doing research on what T-Rex eats, I would need to be more specific." The example was specific. The teacher then proceeded to define/discuss the meaning of expository text. There was an opportunity to make a connection between the need to research dinosaurs using expository text.

b. CSTP 4:

On 4/12, the teacher planned the lesson based on a previous class assignment and GLAS results. The lesson was based on an appropriate sixth grade standard. R 1.2 Identify and interpret figurative language and words with multiple meanings. The objective was students will be able to identify the correct definition of the multiple meaning words being used by displaying the correct answer on the whiteboard. There was evidence of I DO [*sic*], We Do, You Do portions of the lesson, however, during the designated We Do portion, students answered on their own and the teacher moved directly into the You Do portion. During the You Do portion of the lesson, students were confused about the meaning of the word crucial. The students were unable to complete the last two questions on their own.

33. The May 6, 2011 summary evaluation included the following recommendation for respondent:

The lesson format used is very familiar to students. I would recommend that the teacher remove the underlined sentence that indicates the passages [*sic*] main idea as a means of modeling critical thinking and problem solving. Lessons have been presented in this manner many times over the course of the year and students should be able to identify the main idea on their

own. Students could be asked to highlight or underline on their own, especially now that we are at the end of the year.

34. Teacher development plan dated May 27, 2011: Principal Rocha-Salazar signed a teacher development plan on May 27, 2011, which identified CSTPs 2, 3, and 4 as the standards under which respondent needed to improve. It also identified the following support to be provided to her during the first semester of the 2011/2012 school year:

- Lesson scripting for reflection
- Reflection on FUSD Continuum
- Three way [sic] conferencing with teacher and administrator as needed
- TDP Support
- CSTP Support
- Lesson planning and curriculum support

35. Respondent was assigned Lois Ortiz, a teacher development coach in the District's Veteran Teacher Support Program. While Ms. Ortiz was originally assigned to work with respondent for the first semester of the 2011/2012 school year, her assignment was eventually extended through the end of that school year.

36. At hearing, Ms. Ortiz had difficulty remembering the specific details about the assistance she provided respondent. She did recall, however, having observed respondent in the classroom throughout the Fall Semester. She explained that she tried to observe respondent at least once each week. Ms. Ortiz also explained that after each observation, she would discuss with respondent any concerns that had arisen during the observation, but could not recall any specific concerns discussed.

37. Ms. Ortiz also recalled having provided respondent strategies for improving her classroom performance, but explained that respondent did not consistently implement those strategies.

38. Ms. Ortiz explained that during the 2011/2012 school year, she felt respondent initially showed improvement in her performance, reached a plateau at some point during the school year, and then began digressing. She felt respondent ended the school year "roughly" where she began in terms of her classroom performance.

*Evaluations of Respondent's Performance and Assistance Provided by the District During the 2011/2012 School Year*

39. December 8, 2011 lesson observation: Respondent was rated "DNS" on CSTPs 2 (Categories 4 and 7), 3 (Categories 2, 3, and 6), 4 (Categories 1, 3, 4, and 5), and 5 (Category 4). She was rated "MS" or higher or "N/O" for CSTP 1 and "MS" or "N/O" for CSTP 6. Some of the deficiencies noted during the lesson observation include:

- a. CSTP 3:



The formal lesson on 12/8/11, was built around the concept of figurative language. Students were expected to identify and interpret figurative language. This teacher presented six uses of figurative language in a handout that gave them the terms and definitions. The students could have met the lesson objective had their understanding of each type had [sic] been previously established. This lesson would have been a good closure to a unit on figurative language. It was too early in their experience to move into application of the concept.

b. CSTP 4:

The teacher understands that instruction related to this standard was necessary as it is grade level appropriate. RC 1.2 Identify and Interpret figurative language and words with multiple meanings. The students in this group did not have the academic readiness required to meet the objective. For some students, it may have been a lack of language proficiency. The teacher clearly articulated the lesson objective. The sequence of long and short term goals related to this standard was not evident.

c. CSTP 5:

The teacher referenced that data was used as an indicator for the purpose of this lesson, however, it appears that the data was not read in a way that would have indicated the next appropriate instructional step as students were unable to meet the intended objective. Prerequisite skills were lacking.

40. December 19, 2011 preliminary evaluation: Respondent was rated "Does Not Meet Standards" for CSTP 3. She was rated "Meet Standards Proficient" for CSTPs 1, 5, and 6 and "Meets Standards Minimally" for CSTPs 2 and 4. Among the examples of the deficiencies noted during the evaluation period, the preliminary evaluation cited the December 8, 2011 lesson observation, and the deficiency identified for CSTP 3 (Finding 39. a).

41. The teacher development plan created in response to respondent's December 19, 2011 preliminary evaluation was not produced a hearing. However, Principal Rocha-Salazar testified that she was "certain" one was created. Respondent did not dispute such testimony.

42. May 15, 2012 summary evaluation: Respondent was rated "Does Not Meet Standards" for CSTPs 3 and 4. She was rated "Meets Standards Minimally" for CSTP 1 and

“Meet Standards Proficient” for CSTPs 2, 5, and 6. Some of the deficiencies noted during the observation include:

a. CSTP 3:

On 4-24-12, the teacher identified shades of meaning as words expressing the weakest meaning to the strongest, but did not create the context needed nor did she provide examples of writing that would assist students with determining which word would be the most effective word choice.

While teaching the concept “shades of meaning,” practice opportunities were limited to filling in the blank in a given sentence. Any word choice would’ve fit appropriately.

In the “We Do” section of a lesson on shades of meaning, the following sentence frame was provided. Sally was a(n) \_\_\_\_\_ member of her club. Students were supposed to fill the blank with three different word choices.

[ ]... [ ]

Although a student gave the correct answer as C, they were unable to define the word hymn. The word was also incorrectly read by the student. The student was unable to articulate that hymn is another word for song or that the answer must be c as the other answer choices were incorrect. There was no conversation about the words love ballad as opposed to hymn of praise. It could have been asked, “Which type of song would be most appropriate when singing about our country?” Instead, the teacher stated, “I don’t know how you know it if you don’t know what hymn is.”

b. CSTP 4:

The lesson objective on 2-28-12 was IWBAT<sup>10</sup> find the main idea of text by analyzing details. The teacher attempted to model note taking. Students were unfamiliar with the note-taking structure. Students asked such things as “Write that? Right here? Where do I write it? Do I write the main again next to...? Students were unable to identify the main idea. The teacher switched from asking students to identify the main idea to identify details.

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<sup>10</sup> IWBAT is an acronym for “I will be able to.”

[¶]... [¶]

The posted objective was IWBAT identify the meaning of an unknown word by using the context of the sentence(s). There was a slide that was labeled "I Do," however, the teacher did not completely model how to determine the word meaning using the keywords she highlighted. The teacher moved to looking at the answer choices before there was clarity about the meaning of the word which led to more confusion. The teacher plugged in three of the four answer choices as an attempt to assist students with using the process of elimination to determine the meaning of the word anthem, however, students failed to identify the meaning as a song of allegiance as the best answer choice was hymn of praise.

43. The following was written in the May 15, 2012 summary evaluation:

In a conversation on Jan. 25th, the teacher acknowledged that the students relied on her to do the work. She was concerned about student effort and work performance. I recommended three actions.

1. Be sure to communicate the directions and expectations about the assignment.
2. Share the criteria for success.
3. Give specific feedback (see Skillful Teacher).

44. The teacher development plan created in response to respondent's May 15, 2012 summary evaluation was not produced at hearing. However, Principal Rocha-Salazar testified that she was "certain" one was created, and respondent did not dispute such testimony. Furthermore, respondent testified that Rhonda Day was her teacher development coach during the 90-day notice period.

#### *Notice of Unsatisfactory Performance*

45. As previously discussed, the District gave respondent written notice of her unsatisfactory performance on September 4, 2012, specifying the nature of such performance with specific instances of behavior and particularity in order to furnish her with an adequate opportunity to correct her faults and overcome the grounds for the allegations. Included with the written notice were copies of the relevant performance evaluations of respondent's conduct from September 2, 2010, through May 15, 2012, which identified conduct that did not meet the District's criteria for acceptable performance under CSTPs 1 through 5. No conduct constituting unsatisfactory performance under CSTP 6 was identified anywhere in the Amended Notice or attached performance evaluations.

### *Performance Evaluations During the 90-day Notice Period*

46. For the reasons explained in Legal Conclusions 4 and 5, respondent was entitled to the opportunity to improve her performance during the 90 days immediately following her receipt of the Amended Notice. During that period, which was from September 4 through December 4, 2012, the District conducted regular performance evaluations to determine whether respondent's performance improved. While the 90-day performance evaluation forms did not include any ratings, Principal Rocha-Salazar provided respondent with a rubric that contained her ratings for each of the six CSTPs for each of the 90-day performance evaluations during a three-way conference on October 30, 2012.

47. September 11, 2012 90-day performance evaluation: Respondent received an overall rating of "Meets Standards Minimally."

48. September 19, 2012 90-day performance evaluation: Respondent received a rating of "Does Not Meet Standards" for CSTPs 1, 2, 3, and 4. She received a rating of "Not Observed" for CSTPs 5 and 6.<sup>11</sup> Her overall rating was "Does Not Meet Standards."

49. Some of respondent's deficiencies noted during the evaluation include:

a. CSTP 1:

The teacher posted a graphic that illustrated the elements of poetry on one of the Power Point slides. There was a missed opportunity to ask students to describe the number of elements, read or identify the examples of each element, discuss or hypothesize about why the word content would be at the center of the triangle to prompt student thinking.

At various points of the lesson, the teacher would ask student to fill in the outline. Student responses were "On number two?" "Where do I write it?" Later, "We write that?" At one point, the teacher said, "Put it right on the line where it says repetition. A student said, "No one cares!" The teacher said, "Write it down."

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<sup>11</sup> As explained in Factual Finding 45, neither the Amended Notice nor any of the attached performance evaluations identified any conduct that constituted unsatisfactory performance under CSTP 6. Therefore, no cause exists to dismiss respondent for unsatisfactory performance under CSTP 6 as a matter of law as explained in Legal Conclusions 4, 5, and 12, and a discussion of her performance under CSTP 6 is not necessary.

b. CSTP 3:

The teacher changed the objective of the website lesson which read, "Students will be able to understand the concept of poetry." The teacher's objective was: "Students will be able to identify elements of poetry by completing an outline."

[¶]...[¶]

At the end of the lesson, the teacher had read through the slides and covered the areas of content and language. When students were asked what they learned today, three out of seven students read the objective off the board. Four didn't know[,] couldn't identify or articulate the learning for the class period.

c. CSTP 4:

The objective written in the lesson plan to start the unit on poetry was: IWBAT identify the tone of a poem by analyzing highlighted feeling words. Alone by Maya Angelou.

Posted objective for lesson observed: IWBAT identify elements of poetry by completing an outline. This objective was not included in the lesson plan.

50. Principal Rocha-Salazar recommended the following strategies to assist respondent with improving her performance:

1. Collect student work for your review when completed.
2. Some of the elements of poetry have been taught in previous grades (4-5). It would be helpful to gather data about what students already know. Introducing all elements at once can be information overload. It would be appropriate to read some poetry aloud or for students to read to each other and ask students questions related to the elements to determine their level of understanding.
3. Consider the level of rigor in the assignments for your students.
4. Planning lessons that engage students will assist with managing their behavior.
5. Reinstate CHAMPS in your classroom to successfully communicate your expectations.

51. September 26, 2012 90-day performance evaluation: Respondent received a rating of "Does Not Meet Standards" for CSTPs 1, 3, 4, and 5. She received the rating

“Meets Standards” for CSTP 2 and “Not Observed” for CSTP 6. Her overall rating was “Does Not Meet Standards.”

52. Some of respondent’s deficiencies observed include:

a. CSTP 1:

Ms. Cooper’s questioning strategies did not facilitate student understanding of the lesson objective.

Teacher: “How does that make you feel?” The student responded, “Sad.” Teacher: “Sad but [*sic*] what ...?” Student said: “Sad like there is going to be a funeral.”

Teacher, “Who else? Anybody?” Student said, “Shouldering its way.” Teacher replied, “What does that make you feel like?” Student replied, “Upset.”

The teacher asked students what is the definition of tone and/or meaning 12 times during the lesson.

Although students could define the word and site [*sic*] examples such as those listed above, they couldn’t apply their understanding of tone to the poem as a whole nor how that tone was developed by the writer.

b. CSTP 3:

The teacher stated that her intent was to use the components of language: repetition, rhythm, rhyme and word choice to assist students in determining the content (tone and meaning) of the poem.... The example provided by the teacher did not create a connection for students. Most students were unfamiliar with the [*sic*] Outsiders.

c. CSTP 4:

The lesson plan for today read: Focus Standard RC 3.4/3.7  
Objective: IWBAT infer the meaning of a poem by analyzing the poem – I, Too, Sing America by Langston Hughes  
Closure: share one thing learned with a partner

The actual objective for today’s lesson was IWBAT identify the tone and meaning by identifying and analyzing language in poetry.

d. CSTP 5:

Ms. Cooper was aware that students were not able to determine the tone of the poem that was read together and yet, [sic] she asked students to read the next poem for the purpose of identifying the tone on their own.

[¶]...[¶]

As such, students were left on their own to apply a skill that had not yet been mastered.

53. Principal Rocha-Salazar recommended the following strategies to assist respondent with improving her performance:

1. Read over the lesson plan to assist in your understanding of what is being taught. For example, identifying rhyming words in the poem: "Nothing Gold Can Stay" in order to ensure your understanding before sharing it with students.
2. Use the graphic organizer provided to support student learning.
3. Know your intended outcome.
4. Do not expect students to work on their own when they failed to meet the objective with support.
5. Adjust your lesson plan as needed. The lesson did not match your plan.

54. October 3, 2012 90-day performance evaluation: Respondent was rated "Does Not Meet Standards" on CSTPs 1, 3, 4, and 5; "Meeting Standards Minimally" on CSTP 2; and "Meet Standards Proficient" on CSTP 6. Her overall rating was "Does Not Meet Standards."

55. Some of respondent's deficiencies observed include:

a. CSTP 1:

The teacher was going to select a student to read aloud and then decided to ask students to chorally read the poem together. When a student asked if he could read in a funny voice, the teacher said, "If it doesn't bother anybody." Students could not successfully read the poem aloud together. The teacher decided to read the poem aloud on her own.

[¶]...[¶]

There were no clear directions on what to do with the first poem from the teacher prior to her leaving the room.

Students appeared confused about the questions being asked on the bottom of the page.

Students were confused by what the teacher had said about Jim Crow Laws.

[¶]...[¶]

Be more cognizant of what it is you ask students to do. When you brought up the idea of Jim Crow Laws prior to leaving the classroom without explanation or context, [sic] was almost like throwing a bomb and walking out. The students were confused and unsure about what to think say or do. African American students would definitely have a strong reaction to the brief information shared and there was no real place for them to go with it after you left.

b. CSTP 3:

Ms. Cooper intended to focus on multiple meaning words and the element of content [sic], but did not ask questions in a way that made meaning for students.

During vocabulary practice, the teacher posed the following question:

The deer left its track in the snow as he walked across our front yard.

- a) a path along which something moves
- b) a course laid out for running or racing
- c) a mark left by something that is passing through
- d) a set of rails on which railroad cars run on

T. What type of word is it?

St. Idiom

T. No

St. Personification

T. That's not it.

St. Idiom

T. C

T. Its C, but what is it?

St. A multiple meaning word



T. Yes. I tried to give you a hint by giving you these choices.

**[Suggestion: Based on the answer choices, what do you know about the underlined word in the sentence?**

**Response: it is a multiple meaning word.]**

(Bold in original.)

c. CSTP 4:

The students were unable to answer the four questions listed at the bottom of the page which had the poem about being in sixth grade. Students did not understand two of the three directions.

1. Highlight words that are similar in meaning.
2. Can you underline any figurative language.
3. Circle any elements of poetry.
4. Do I have a connection?

d. CSTP 5:

Ms. Cooper was aware that students were not able to determine the tone of the poem that was read together and yet, [*sic*] she introduced the next poem without fully explaining the expectations for responding to the first poem.

56. Principal Rocha-Salazar recommended the following strategies to assist respondent with improving her performance:

1. CHAMPS Suggestion: Have it posted in the classroom.  
Keep the expectation short and simple. For example:  
Conversation: Voice Level 0  
Help: Raise your hand  
Activity: Read silently & analyze the text  
Movement: None  
Participation: reading and write silently  
Success: Correctly completing the assignment on your own
2. Use homework to check for student understanding.
3. Use data to assist with planning and how best to address confusion.
4. Pre-plan acceptable student responses to the questions posed and provide support to ensure student success for assigned tasks.
5. Check student understanding of the four elements of poetry.

57. October 4, 2012 90-day performance evaluation: Respondent's overall rating was "Does Not Meet Standards," with ratings of "Does Not Meet Standards" on CSTPs 3, and 4, and 5; "Meets Standards Minimally" on CSTP 1; "Meet Standards Proficient" on CSTP 2; and "Not Observed" on CSTP 6.

58. The following are examples of deficiencies noted during the evaluation:

a. CSTP 3:

The teacher said, "I didn't get anything from this group. Sweet scented stuff... For imagery. What is sweet scented stuff?"

Imagery and..."

St. Alliteration

T. What is alliteration?

St. The same sound.

St. Beginning sounds.

T. Eugenia what do you picture your image?

St. Flowers

**[In the context of this poem, the author was referring to the scent of saw dust *[sic]*.]**

(Bold in original.)

b. CSTP 4:

Ms. Cooper did not ensure that each element of poetry was identified in a cohesive and logical manner.

In speaking with Ms. Cooper, I learned that the following steps were taken in her planning.

The teacher found a video to use with students.

The teacher identified figurative language as an area of focus while teaching elements of poetry.

The intended outcome was for students to be able to cite evidence in the text to support the students identification of the element used in this piece of poetry.

This teacher has reviewed SSQ and Inspect test items to see how questions about poetry are asked.

The teacher then created the following assignment.

Follow the directions.

1. Highlight words that have similar meanings write the words down and tell me what they mean?

2. Circle figurative language i.e. (Simile, metaphor, personification, alliteration, onomatopoeia). Write down what language is being used and interpret what it means.
3. Underline language and poetry – i.e. Rhyme, repetition, rhythm – please tell me what poetic device is being used.
4. What is the tone of the poem? Cite your evidence.
5. What is the meaning of the poem? Cite your evidence.
6. Is this person [*sic*] written in first person? Cite your evidence.

The teacher's goal was for students to be able to identify elements of poetry by highlighting similar words in order to identify key ideas. Identify the use of figurative language.

In the post observation conference, the teacher identified the objective as SWBAT<sup>12</sup> identify and interpret the elements of poetry and site the evidence.

The learning objective was not explicitly stated at the beginning, during, or end of the lesson.

During the lesson, the teacher asked for examples of figurative language, alliteration, simile, metaphor, personification, etc.

As such, students were not able to successfully practice their ability to identify the use of figurative language in this poem.

c. CSTP 5:

Ms. Cooper did not collect student work or review the answers provided on the worksheet she created for students to complete after they read the poem "Out, Out" by Robert Frost.

In our post observation conference, the teacher was unsure about the number of students that were able to determine the meaning of the poem.

As such, students will not be able to monitor their learning of the elements of poetry.

59. Principal Rocha-Salazar recommended the following strategies to assist respondent with improving her performance:

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<sup>12</sup> SWABT is an acronym for "Students will be able to."

1. In the TDP, it was recommended that the teacher create a plan for the semester. It was also recommended that the [sic] Ms. Cooper rewrite the submitted plan because the outline submitted did not list specific learning outcomes. The district [sic] provided pacing guide provided more information than what was created by the teacher. A new plan has yet to be submitted.
2. Today's lesson was provided as an example of how such a plan would assist the teacher in preparing lessons to successfully meet the learning objective. The teacher designated a two week [sic] window for teaching poetry. It was recommended the elements of poetry be identified and sequenced on the plan with specific poems identified that would provide students with examples of the use of the various elements of poetry that are to be taught. In this way, the teacher could identify the appropriate examples of poetry and structure student exposure and practice in a meaningful way.
3. I recommend that the teacher answer her own written questions prior to assigning them to students to ensure that they are sequenced in a way that will assist students in making meaning from the text. Had Ms. Cooper identified the responses to her question, she would have identified that there was little use of figurative language in the Poem [sic] "Out, Out" for students to identify. The lesson could have gone in a different direction. The focus of the lesson could have been an extension or a cross curricular [sic] connection could have been made in Social Studies. If the teacher believed students needed more practice on figurative language, a different poem should have been selected.
4. Ms. Cooper needs [sic] go back and collect student work to check student understanding of the text based on student responses to her written questions. Were students able to identify the tone and [sic] meaning of the poem?

60. October 8, 2012 90-day performance evaluation: Respondent received an overall rating of "Does Not Meet Standards." She was rated "Does Not Meet Standards" on CSTPs 1, 3, and 4; "Meet Standards Proficient" for CSTP 2; and "Not Observed" for CSTPs 5 and 6.

61. Some of respondent's deficiencies include:

a. CSTP 1:

The teacher said, "On Friday I gave you a note that talked about our Focus wall and our team... What Really Happened? I asked

you to bring an artifact. I gave you two days to bring it in. Julian do you have a question. Julian said, "I have stones." The teacher replied, "Stones?"

**(There was no request for clarification or explanation. The teacher moved on.)**

[¶]...[¶]

Students spent 15-18 minutes sharing various ghost stories with the teacher. "Ok, all the rest of you are going to have to keep them." The teacher rang her bell and said, "It's my turn."

(Bold in original.)

b. CSTP 3:

The teacher said, "We are going to look at real life mysteries. We will also look at some mysteries that are not real life. Raise your hand if you can tell me what is involved in a mystery?" Student responses included: death, murder, ghosts, the devil, UFOs, and when... "People go somewhere and don't come back."

The teacher explained that "in a mystery, there is something happening that you need to solve."

**[There was a missed opportunity to clarify student understanding by sharing the definition of mystery: anything secret or unknown/unexplained, not fully understood, baffled, and eludes understanding.]**

(Bold in original.)

c. CSTP 4:

The teacher followed up with "Now that we have talked a little about mysteries, were going to talk a little about... As you read tonight, I want you to read two paragraphs and write a summary statement."

A student asked, "Can we do this with any book?" The teacher said, "You can, but if you are reading for 30 minutes already anyway, you may want to do more than a paragraph."

**[There was a lack of clarity around the amount of reading to be completed (to read two paragraphs or for thirty minutes) and the writing assignment (to write a summary statement or more than a paragraph).]**

(Underline and bold in original.)

62. Principal Rocha-Salazar recommended the following strategies to assist respondent with improving her performance:

1. Be mindful of the standard being taught and the lesson objective. Review a list of possible ideas about the activity selected that will move students closer to the objective. Think through the purpose of each before determining which would be the most effective.
2. When you recognize that student sharing is moving students away from the purpose, stop them. In this particular case, after one or two quick personal experiences, ask students to raise their hand if they have had a similar experience and move on. Since almost every student had a story to share, it would have been a good idea for those students that have extra time, [sic] to do a quick write [sic] on the topic at a later time.
3. When collecting artifacts, asks students to describe why or how that artifact is relevant to the theme or new learning. "I choose to bring in stone because it reminded me about what I had heard about Stonehenge."
4. Use the language of the objective written in the lesson. Students will be able to determine which reference source would provide the best evidence to support the main idea.
5. When teaching about reference sources, make them available. Bring in the telephone directory, thesaurus, dictionary, Atlas, Almanac, Encyclopedia, Autobiography, Biography, a copy of an editorial page, print a large copy of a meaningful quote, take a statement and post it, post a web address, bring in a newspaper article and a personal diary (if possible).

63. October 15, 2012 90-day performance evaluation: Respondent was given an overall rating of "Does Not Meet Standards." For CSTPs 1, 3, 4, and 5, she was given a rating of "Does Not Meet Standards." She was rated "Meet Standards Proficient" for CSTP 2, and "Not Observed" for CSTP 6.

64. The following are examples of deficiencies noted during the observation:

a. CSTP 1:

Throughout the lesson, students struggled to answer questions related to finding the main idea in [sic] story.

T. "So they took off, east to west, then they crashed, then what happened after that?"

S. "They tried it again."

T. "So what's the main idea in this paragraph?"

S. "They couldn't fly east to west."

b. CSTP 3:

The teacher identified the key concept and underlying themes prior to presenting the lesson by referencing previous learning.

T. "We talked about main idea last week, about finding the main idea."

The teacher briefly introduced vocabulary words contained in the story. Students were not given the opportunity to respond to whether they had previous knowledge of the words or if they understood the meaning of each word.

[¶]...[¶]

As a result, students were unable to use the instructional strategies in order to understand and identify the key concepts of the lesson.

c. CSTP 4:

Ms. Cooper was not able to extend students understanding of the key concepts and model the lesson objective.

The objective of the lesson was to determine which source best supports the main idea by reading the text and thinking about the details.

Students had difficulty understanding the main idea in each section.

[¶]...[¶]

As a result, students were not provided with the academic rigor necessary to understand the lesson objective.

d. CSTP 5:

During the post conference, I stated a concern that students were not able to identify the main idea of each paragraph/section. Ms. Cooper explained that students still struggle with this concept even though it is a standard throughout all grade levels. Students only named two main ideas within the hour lesson, one of which was answered by the teacher. I asked the reasoning as to why students were required to supply the source/reference material and Ms. Cooper stated that there are many questions related to this concept on the CST and GLAS. I addressed the fact that students were not able to supply the source because they didn't correctly identify the main idea. Students were given a frontloading lesson on source/reference material prior to this observation. Ms. Cooper was able to engaged [*sic*] students during the "popcorn" reading. During most of the observation, some students were off task and had to be redirected multiple times. Some students did not complete the assigned worksheet. It was unclear whether some students understood the reading and able to identify the main idea due to lack of response or written work. The objective was written and stated although students were not able to understand or complete the objective. Vocabulary words were introduced and defined but students were not given the opportunity to identify the meaning and how it corresponded within the reading. Students were not prepared to complete the assigned tasks when stated by the teacher.

65. Vice Principal Derrick Hansen recommended the following strategies to assist respondent with improving her performance:

1. It was recommended that since students were struggling to identify the main idea in each paragraph/section, the teacher should reteach how to use details in a story to find the main idea. The teacher could use frontloading lessons as an instructional strategy.
2. I recommended that due to the lack of comprehension and understanding of the story and main ideas, it would be beneficial for students to hear the story read back to them, read with partners, and independently read themselves. This would give students three separate readings of the story.
3. Due to the lack of all students responding in small groups, the teacher should offer incentives or points for any student in



the group to give the correct answer. This would require all students to participate and know the correct answer during group discussion.

4. The teacher should provide examples of source/reference material within the classroom based on the story that they are reading. For example: an Encyclopedia, on-line website, and biography on Amelia Earhart would be available for students to view/use during independent practice.

66. October 25, 2012 90-day performance evaluation: Respondent received an overall rating of "Meets Standards."

67. November 7, 2012 lesson observation: The following are the relevant ratings respondent received:

a. CSTP 1:

1. Category 1: "DNM."
2. Category 2: "DNM."
3. Category 3: "N/O."
4. Category 4: "N/O."
5. Category 5: "DNM."
6. Category 6: "DNM."

b. CSTP 3:

1. Category 1: "DNM."
2. Category 2: "DNM."
3. Category 3: "DNM."
4. Category 4: "DNM."
5. Category 5: "N/O."
6. Category 6: "N/O."

- c. CSTEP 4:
  - 1. Category 1: "DNM."
  - 2. Category 2: "MMS."
  - 3. Category 3: "N/O."
  - 4. Category 4: "DNM."
  - 5. Category 5: "N/O."
- d. CSTEP 5:
  - 1. Category 1: "N/O."
  - 2. Category 2: "N/O."
  - 3. Category 3: "N/O."
  - 4. Category 4: "N/O."
  - 5. Category 5: "N/O."
  - 6. Category 6: "N/O."
  - 7. Category 7: "N/O."
- e. CSTEP 6:
  - 1. Category 1: "DNM."
  - 2. Category 2: "DNM."
  - 3. Category 3: "DNM."
  - 4. Category 4: "DNM."
  - 5. Category 5: "DNM."
  - 6. Category 6: "DNM."
  - 7. Category 7: "DNM."

68. Some of the deficiencies noted during the evaluation include:

a. CSTP 1:

Ms. Cooper did not use information regarding students' cultural backgrounds, prior knowledge, life experiences, and interests. [¶]...[¶] As such, students were not able to determine what would be considered a significant detail what how best to summarize the text.

b. CSTP 3:

Ms. Cooper did not integrate key concepts, themes and relationships in ways that ensure clean connections across subject matter and relevance to students. [¶]...[¶] As such, student responses were low level summaries that were disconnected from a deeper understanding of the text.

c. CSTP 4:

Ms. Cooper did not incorporate diverse subject matter perspectives into the planning [of a lesson involving the book *The Great Depression*]. [¶]...[¶] As such, students fail to grasp the full meaning of the boys [*sic*] work, *The Great Depression* [*sic*], and why the character expressed fear at various points in this story related to the plot.

*Determination of Whether Respondent's Performance Improved Sufficiently to Avoid Dismissal*

69. On December 21, 2012, Principal Rocha-Salazar completed a preliminary evaluation to determine whether respondent's performance as a teacher had sufficiently improved during the 90-day notice period such that her employment with the District should not be terminated.

70. The evaluation was based on 90-day performance evaluations on September 11, 19, 26, October 3, 4, 8, 15, 25, and November 1, 2012; formal lesson observations on November 7 and 15, 2012; conversations between Principal Rocha-Salazar and respondent on September 7, 14, 21, 26, 28, October 8, 12, 16, 23, 30, November 13, 16, 27, and 28, 2012; and Principal Rocha-Salazar's review of samples of students' work, respondent's lesson plans, and a student progress review.

71. Respondent was rated as "Does Not Meet Standards" for CSTPs 1 (Engaging and Supporting Students in Learning), 3 (Understanding and Organizing Subject Matter for Student Learning), 4 (Planning Instruction and Designing Learning Experiences for All

Students), 5 (Assessing Student Learning), and 6 (Developing as a Professional Educator). She was rated "Meets Standards Minimally" for CSTP 2 (Creating and Maintaining Effective Environments for Student Learning).

72. Some of the deficiencies noted in the preliminary evaluation include the following:

a. CSTP 1:

During the first formal lesson observation on 11-7-12, the teacher began by saying, "There was something we talked about that was very important. What was it?" The students said, "It was the Great Depression." The teacher followed up by saying, "Now that we have activated what we learned yesterday, I will read the objective. By the end of this lesson I will be able to construct a summary statement by analyzing details from the text." There was no discussion about what was learned about the Great Depression, or how it related to the new learning.

[¶]...[¶]

At the end of the lesson, the teacher asked students to write the definition of the word "tone" at the bottom of a poem that had been previously read. The teacher said, "Go back to your outline and then write it on the bottom of your paper." A student said, "Didn't we just do that?" Students had already written the definition of the word "tone" on the outline and students wanted to write their understanding of the tone of the poem.

[¶]...[¶]

During the lesson on 10-8-12, students were asked to share the artifact they chose to bring to class as part of an extra credit assignment. Students were not asked how this artifact related to the theme of the story which was what the teacher identified as the purpose of the activity.

b. CSTP 3:

During the following four observations, the teacher made seven erroneous or confusing statements that led students away from the lesson objective.

1. "We have learned about different elements. Today we are going to start with the language part. It all builds on each other. We won't forget that we already looked at rhyme and repetition. We might need those. Today we are looking at parts of language." (9-26-12) [Error: Rhyme and repetition are parts of language.]

2. The teacher referred back to an example she used about an earthquake and talked about using imagery – which is a component of figurative language. The follow up question was "Who can give me the definition of rhythm from their outline?" [Error: Rhythm is another element of language.]

3. On 10-3-12, during vocabulary instruction, the teacher presented a sentence and underlined the word "track." The students were to identify the definition of this multiple meaning word in the context of the sentence. The teacher asked several questions and her follow up statements caused confusion. [Error: In the context of this sentence, the answer cannot be all of the above as she stated to students.]

4. On 10-4-12, the teacher asked students to share examples of figurative language from a poem shared in class. A student believed that when the author wrote "Five mountain ranges one behind the other..." it was an example of personification. [Error: The mountain ranges bowed down before the sunset, would be use of personification.]

5. The teacher said, "I didn't get anything from this group. Sweet scented stuff ... For imagery. What is sweet scented stuff? The teacher asked Eugenia. Eugenia said, "Flowers." [Error: in the context of this poem, the author was referring to the scent of saw dust *[sic]*.]

6. The teacher said, "The only one we had – alliteration." Chyna said, "So we picked them, they and they. Because they start with the same thing." [Error: Alliteration is identified by looking for words with the same identical consonant sounds. For example, Kerry's cats clawed her couch, creating chaos. When the T and H are used in the words them and they, they are diagraphs not consonants.]

7. The teacher explained that "In a mystery, there is something happening that you need to solve." (10-8-12) [There was a missed opportunity to clarify student understanding by sharing

the definition of mystery: anything secret or unknown/unexplained, not fully understood, baffled, and eludes understanding.] [Suggestion: explain that this particular genre is usually read as a book, a play, or movie about a puzzling event, especially an unsolved crime that makes great use of suspense.]

[¶]...[¶]

The teacher briefly introduced vocabulary words contained in the story. Students were not given the opportunity to respond to whether they had previous knowledge of the words or if they understood the meaning of each word. Only a few students could recognize and call out the main idea of each section.

[¶]...[¶]

Then the teacher asked, "Do you know what the editorial page is?" A student responded by saying, "Newspaper." The teacher said, "It's basically different stories that they talk about. It comes out a lot on the opinion page. They are people's view. These are letters people write to the editor... lots of time they are complaining. It's a place to share your opinions or thoughts. Quotation. What is a quotation?" The teacher then proceeded to go down the page reading the various reference sources and their definition. [Editorial: an article in a newspaper or other periodical presenting the opinion of the publisher, editor, or editors. The statement broadcast on radio or television represents the opinion of the owner, manager or the like.]

c. CSTP 4:

The teacher departmentalizes with two other sixth grade teachers. Ms. Cooper is responsible for teaching reading to all sixth grade students. In the first week of school, the teacher did not teach any of the reading standards, nor have students read from the adopted curriculum or any supplemental materials. The teacher told me she spent the week on rules and expectations.

It was recommended in the Teacher Development Plan that [respondent] develop a semester plan for the reading standards to be taught. It was submitted in August. It was recommended that the plan be rewritten. The information provided was minimal. The principal had provided district pacing guide and

curriculum maps to provide guidance. The expectation was not met, and the plan was resubmitted as requested.

Lesson plans were submitted for 11 out of 15 weeks. Substitute teacher plans were not included.

When time was designated for GLAS review in the lesson plans for the week, information was provided. Based on formative data results, the teacher should have identified what standards needed to be re-taught. She did not.

[¶]...[¶]

There are a minimum of 15 occurrences in the 11 observations that the teacher's instructional delivery lacked alignment to the objective.

d. CSTP 5:

The teacher did not collect the students' outlines. On the post test, 70% of the students passed with an A, B, or C. Eight students failed the post test. The eight students had also failed the pre-test. The teacher did not provide re-teaching or specific feedback. (9-11-12)

The teacher did not administer the pre-assessment provided in the unit. Teaching three different reading levels, the pre-assessment would have assisted the teacher in her planning for the various reading levels. (9-19-12)

In our post observation conference, the teacher was unsure about the number of students that were able to determine the meaning of the poem.

[¶]...[¶]

While meeting with the teacher each week, I asked if she knew which students learned the lesson objective. Ms. Cooper frequently said she was unsure.

73. Principal Rocha-Salazar provided respondent with the following feedback:

1. Model creating an outline in order for students to visualize how to format the page and teach the skills of identifying main topics and subtopics.

2. Expand the students learning, [sic] by requiring students to create their own outline, extend student thinking by asking students to explain. For example ask, "What do you know about The Great Depression?"
3. Backwards map your lesson. Start with the end in mind and see if your plan will assist students in meeting objectives.

### *Respondent's Arguments*

#### *Failure to prove allegations*

74. The May 6, 2011 summary evaluation criticized respondent because her class was "very talkative" during a lesson on propaganda on February 1, 2011. But the District's witnesses admitted at hearing that "students will talk." And student talking generally does not become an issue unless it interferes with: 1) the teacher's ability to teach, or 2) the ability to learn of (a) students who are talking, or (b) other students. The District did not provide evidence of any such interference. Therefore, there is insufficient contextual evidence to establish that respondent's performance on February 1, 2011, was unsatisfactory due to students talking.

75. Respondent was criticized in the same evaluation for not posting the lesson objective on September 14, 2010. However, Principal Rocha-Salazar's literal notes of her observation that day state: "Objective. Students will be able to correctly identify an event that comes before or after a particular event and create a summary of the event by taking notes in using language frames." Therefore, there is insufficient evidence to establish that respondent's performance on September 14, 2010, was unsatisfactory due to her failure to post the lesson objective.

76. Respondent was criticized during her 90-day performance evaluation on September 11, 2012, because "out of the 33 students in the class, 7 students did not complete the outline. 4 out of the 7 that did not complete the outline passed the test with 88%." Respondent explained at hearing, however, that several of her students were pulled from the beginning of class that day to attend "band class," while others were pulled at the end of class to attend "strings." There was no evidence whether any of the students who did not complete the outline were part of the group of students who missed either the beginning or end of class that day. Therefore, there is insufficient evidence to establish that respondent's performance on September 11, 2012, was unsatisfactory due to the failure of some students to complete the assignment.

77. The September 19, 2012 90-day performance evaluation criticized respondent for "not establish[ing] classroom rules and procedures that supported student learning." But the evidence established that she did in fact establish such rules, but may not have consistently or effectively enforced them. Therefore, there is insufficient evidence to establish that respondent's performance on September 19, 2012, was unsatisfactory due to her failure to establish classroom rules and procedures that supported student learning.



*Disconnect between verbal and written comments about respondent's performance*

78. Respondent explained at hearing that there was always a disconnect between Principal Rocha-Salazar's verbal comments after an observation and her written comments in the subsequent written evaluation. Respondent felt that she was being "railroaded" and that "nothing could be done."

79. On a date not established by the evidence, respondent sent the following e-mail to Principal Rocha-Salazar:

Once again I find myself in shock after meeting with you to sign one of my evaluations. We met on Friday 10-12 to discuss the lesson and once again I felt that you gave me many positive comments, but alas as I went back on Monday there is nothing but negative comments in my evaluation. I had to share the fact that I am disappointed. I am not ineffective, and I feel that there is no way that you will see this. I feel that all you look for is the negative. I've taken the literal notes and I will be looking for evidence that I am passing 3 and 4. Once again I will leave you with the statement that my students are learning and I am not ineffective. Kim"

80. Principal Rocha-Salazar responded to respondent's e-mail by including the following in her comments to the October 8, 2012 90-day performance evaluation:

In our meeting, I felt it was important for me to listen to how Kim was feeling about this process to date. Kim expressed concern about "... everything being negative and not seeing anything positive in her written observation forms." Kim expressed concern about the fact that when we meet, it feels positive, but the written summary is all negative. I felt it was important to clarify that although Kim is always professional in her demeanor and demonstrated a desire to improve during our weekly meetings, I have consistently provided examples of how lessons had not gone well. I cited examples from each of the last three lessons. Those examples included: asking students to do independent work when it was clear to her that they couldn't do the work during guided practice. I explicitly stated that that instruction decision was a mistake. During another lesson, Kim brought up Jim Crow Laws completely out of context, another poor instructional decision. Students were unable to identify the use of figurative language in a poem selected by the teacher. I mentioned again spending 15 minutes listening to student ghost stories is not a good use of instructional time. During our conversation about this particular lesson (10-8-12) it was clear

to Kim that I found that she still struggles on meeting Standard 3 & 4. In light of the evidence, I didn't feel I could mark that she was meeting the standards. Kim took the notes as stated in her e-mail and said she would look for evidence that demonstrates that she has met standard 3 & 4 in that lesson. I haven't received anything to date that would prompt further conversation. There was a request for Kim to collect student work from the lesson on October 4 to demonstrate the level of student understanding. To date, that work has not been submitted for review.

81. The following language appears at the bottom of each of respondent's preliminary evaluations and summary evaluations: "The evaluatee's signature does not indicate agreement. A written response may be submitted within ten (10) days."

82. While respondent explained at hearing that she submitted written responses to some of her evaluations, she did not produce copies of any of those responses or provide any other corroborating evidence. Any written response she submitted to one of her performance evaluations would have become a "permanent attachment to [her] personnel file." (Ed. Code, §44663, subd. (a).)

83. Nor did respondent introduce any evidence that she complained to anyone with the District or her union that she was being unfairly evaluated by Principal Rocha-Salazar.

84. Principal Rocha-Salazar explained that she views her role when evaluating one of her teachers as being the same as the role a classroom teacher plays with her students, and a classroom teacher would not be effective if she only tells her students what they are doing wrong without also praising those things they are doing right. In other words, Principal Rocha-Salazar is concerned about the teacher not having the motivation to improve if she provides only negative feedback. Therefore, Principal Rocha-Salazar said she strives to provide both positive and negative feedback in her verbal and written comments to teachers about performance issues.

#### *Ineffective assistance*

85. Respondent was critical of the assistance provided by Ms. Van Fleet, and said she did not find such assistance as a whole to be very helpful. Respondent explained that while Ms. Van Fleet did a "great job" helping her learn the teaching strategy "I do, We do, You do" and providing other helpful resources, that was the only help provided.

86. Respondent was also critical of the assistance provided by Ms. Ortiz, explaining that she found only some of the different teaching strategies provided helpful.

87. Respondent did not introduce any evidence that she complained to Principal Rocha-Salazar or anyone else in the District or her union about the assistance provided by Ms. Van Fleet or Ms. Ortiz. Nor did she introduce any evidence that she requested a teacher development coach other than Ms. Ortiz.

*Respondent's belief she would be teaching fifth grade*

88. Respondent testified that towards the end of the 2010/2011 school year, Principal Rocha-Salazar told her she would be teaching fifth grade the following school year.<sup>13</sup> She said she spent the following summer preparing lesson plans for fifth grade. It was not until the last week of summer that respondent learned she would be teaching sixth grade, which she said caused her concern since she had been planning for fifth grade all summer long.

89. The significance of respondent's belief about her teaching assignment for the 2011/2012 school year is unclear. Respondent admitted that she did not say "no" to teaching sixth grade again because that was her preferred assignment since she taught it the previous school year. Respondent further explained that she was able to prepare for teaching sixth grade during the last week of summer by pulling out the materials she had used the previous year and contacting the other sixth grade teachers.

*Discussion of Respondent's Arguments*

*Failure to prove allegations*

90. For the reasons discussed in Factual Findings 74 through 77, the District failed to prove that respondent's performance was unsatisfactory on: 1) May 6, 2011, because her class was "very talkative," 2) September 14, 2010, because she did not post the lesson objective, 3) September 11, 2012, because seven students did not complete the outline, or 4) September 19, 2012, because she did "not establish classroom rules and procedures that supported student learning." Therefore, no cause exists to terminate respondent's employment with the District based on those allegations.<sup>14</sup>

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<sup>13</sup> At hearing, the District objected to such testimony on hearsay grounds, and it was admitted as administrative hearsay pursuant to Government Code section 11513, subdivision (d). But whether there is direct evidence of Principal Rocha-Salazar's statement for respondent's testimony to supplement or explain ultimately does not matter because such testimony was offered to prove the effect of the alleged statement on her, rather than the truth of the statement itself. (*People v. Jablonski* (2006) 37 Cal. 4th 774, 820 ["To the extent that Petersen's statement was admitted to show its effect on defendant, the statement was not hearsay because it was not admitted for the truth – that is, that Petersen was afraid of defendant."]; italics in original.)

<sup>14</sup> But the failure to prove those four allegations is not fatal to the Accusation because it alleges the "specific instances of behavior" cited in the Amended Notice and incorporates

*Disconnect between verbal and written comments about respondent's performance*

91. The evidence established that Principal Rocha-Salazar was not as clear as she could have been when communicating her concerns about respondent's performance in the classroom to her. Principal Rocha-Salazar's use of "teacher talk"<sup>15</sup> at times when communicating with respondent may have contributed to the lack of clarity.

92. However, there is no evidence that respondent took the appropriate steps to seek clarification of Principal Rocha-Salazar's concerns or complained to anyone about the substance of her evaluations. While respondent sent Principal Rocha-Salazar an e-mail raising concerns over apparent miscommunications, Principal Rocha-Salazar's comments in her October 8, 2012 90-day performance evaluation clarified that she never had any concerns with respondent's demeanor being unprofessional or her lack of desire to improve. But she said she had consistently provided respondent with specific examples of how lessons had not gone well. Respondent did not dispute such contention or produce any evidence to the contrary. (Evid. Code, § 413 [a party's failure to explain or deny harmful evidence creates an inference that she cannot].)

93. Principal Rocha-Salazar also documented in her comments that respondent said she would provide evidence that she was meeting CSTPs 3 and 4, but never followed through. At hearing, respondent did not offer any evidence to the contrary.

94. In sum, any confusion created by the lack of clarity in Principal Rocha-Salazar's verbal and written communications with respondent was outweighed by respondent's failure to take appropriate steps to seek clarification or complain about the substance of her evaluations. This is especially true in light of the fact that she has been receiving negative performance evaluations since she first arrived at Ayer Elementary School. Respondent's lack of action is inconsistent with the conduct of a teacher who is being wrongly accused of unsatisfactory performance.

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the Amended Notice and attached performance of evaluations. Therefore, the Accusation is interpreted as alleging each of the "specific instances of behavior," when considered as a whole, as constituting a single charge for dismissal for unsatisfactory performance, rather than as separate and independent charges for dismissal. (*Doe v. City of Los Angeles* (2007) 42 Cal.4th 531, 551 [a pleading must allege the ultimate facts that constitute the cause of action, as opposed to the evidentiary facts by which the ultimate facts will be proven]; *Rhode v. Bartholomew* (1949) 94 Cal.App.2d 272, 279 ["Ultimate facts are the logical conclusions deduced from certain primary facts evidentiary in character."])

<sup>15</sup> A method of criticizing someone's behavior by using vague descriptors that are less offensive. For instance, describing someone as "social" instead of saying he talks too much.

### *Ineffective assistance*

95. Respondent's criticism of the assistance provided by Ms. Van Fleet was not persuasive. She admitted during her testimony that Ms. Van Fleet was not assigned to her as a teacher development coach and, therefore, was not tasked with helping respondent improve on the CSTPs she did not meet.

96. Furthermore, respondent did not produce any evidence that she complained to anyone within the District or her union about the assistance she was receiving from Ms. Van Fleet or Ms. Ortiz. Nor did she introduce any evidence that she requested assistance from someone other than Ms. Van Fleet or Ms. Ortiz.

### *Respondent's belief she would be teaching fifth grade*

97. As previously discussed, the significance of respondent's belief about her teaching assignment for the 2011/2012 school year is unclear. Besides, she admitted she wanted to return to teaching sixth grade, and was able to prepare for such assignment during the final week of summer.

### *Unsatisfactory Performance*

98. When considering respondent's performance as a teacher at Ayer Elementary School prior to issuance of the Amended Notice as a whole, the persuasive evidence established that she did not meet the District's performance standards for CSTP 3 on all, except one, of her lesson observations, preliminary evaluations, and summary evaluations, and CSTP 4 on all, except three of them. Additionally, she did not meet the District's performance standards for CSTPs 1 and 5. And respondent's performance did not improve during the 90-day notice period. She failed to meet standards under: 1) CSTPs 3 and 4 on all, except two evaluations; 2) CSTP 1 on all, except three, evaluations; and 3) CSTP 5 on all, except four, evaluations. Her overall rating for the 90-day notice period was "Does Not Meet Standards."

99. Respondent's unsatisfactory performance under CSTP 2 prior to issuance of the Amended Notice is irrelevant because she improved her performance during the subsequent 90-day notice period. (Factual Finding 71.) Therefore, no cause exists to dismiss her from the District based on her performance under CSTP 2 as explained in Legal Conclusions 4, 5, and 11.

100. Nor is respondent's unsatisfactory performance under CSTP 6 during the 90-day notice period relevant since no such conduct was described in the Amended Notice. (Factual Findings 3 and 45.) Therefore, no cause exists to dismiss respondent from the District based on her performance under CSTP 6 for the reasons explained in Legal Conclusions 4, 5, and 12.

101. The District informed respondent that she was not meeting its performance standards for CSTPs 1, 3, 4, and 5 on numerous occasions. Principal Rocha-Salazar constantly provided respondent with verbal feedback regarding her performance and strategies and techniques for improving her performance. Additionally, respondent was provided copies of all her performance evaluations, which contained Principal Rocha-Salazar's, and on one occasion Vice Principal Hansen's, specific recommendations as to areas of improvement in her performance. The teacher development plans respondent received delineated, in specific detail, the concerns the District had with her teaching and gave her clear direction on the District's expectations. Additionally, the Amended Notice clearly and specifically set forth the District's concerns with respondent's performance and the steps she was directed to take to improve it.

102. Respondent was provided with adequate assistance to meet the District's standards. She was given sufficient opportunity both before and during the 90-day notice period to correct her deficiencies. She had the assistance of an instructional coach (Ms. Van Fleet) and two different teacher development coaches (Ms. Ortiz and Ms. Day). Ms. Van Fleet and Ms. Ortiz observed respondent in her classroom on numerous occasions, and gave her detailed and specific feedback and guidance. Notwithstanding all this feedback and assistance, respondent did not demonstrate sufficient improvement to bring her performance up to a satisfactory level.

103. There is no dispute that respondent is well-liked by both her colleagues and students. This matter is not about whether she is well-liked, but rather her performance in the classroom. During her testimony, respondent did not demonstrate insight into the concerns the District repeatedly raised about her performance. She continuously asserted that she either consistently met the District's standards or sufficiently improved her performance under those standards where she was initially lacking. Respondent showed little understanding of the District's concerns about her instructional delivery. She also failed to demonstrate that she took adequate steps to address the District's concerns, despite the numerous opportunities she was provided. Given respondent's lack of improvement and insight, it would be contrary to the best interests of the District's students to return her to her teaching position. Except as discussed in Factual Findings 74 through 77, 99, and 100 and Legal Conclusions 11 and 12, the District established, by a preponderance of the evidence, that respondent's performance was unsatisfactory. Its dismissal of respondent must therefore be sustained.

## LEGAL CONCLUSIONS

### *Applicable Burden of Proof and Standard of Proof*

1. The District has the burden of proving respondent's unsatisfactory performance by a preponderance of the evidence. (*Gardener v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040.) Evidence that is deemed to preponderate must amount to "substantial evidence." (*Weiser v. Board of Retirement* (1984) 152

Cal.App.3d 775, 783.) And to be "substantial," evidence must be reasonable in nature, credible, and of solid value. (*In re Teed's Estate* (1952) 112 Cal.App.2d 638, 644.)

### *Applicable Law*

#### *Limitations on evidence introduced at a dismissal hearing*

2. Education Code section 44944 sets forth the procedures that must be followed when a school district brings a dismissal action against a permanent certificated employee. Subdivision (a)(5), provides, in relevant part:

No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

#### *Dismissal for unsatisfactory performance*

3. A school district may dismiss a permanent certificated employee for unsatisfactory performance. (Ed. Code, § 44932, subd. (a)(4).) When reviewing a school district's dismissal action against a certificated employee based solely upon unsatisfactory performance, there is no need to apply the standards of fitness to teach set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1175-1176.)

4. Before a school district may dismiss a permanent certificated employee for unsatisfactory performance, it must give the employee notice of her unsatisfactory performance. And that notice must specify the nature of the unsatisfactory performance with sufficient particularity to give the employee an opportunity to correct her deficiencies. Education Code section 44938, subdivision (b), provides, in pertinent part:

The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her

faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

5. Providing the statutory notice, commonly referred to as a "90-day notice," is a jurisdictional prerequisite to the school district taking action to dismiss a certificated employee for unsatisfactory performance. (*Tarquin v. Commission on Professional Competence* (1978) 84 Cal.App.3d 251, 259.) And if the employee subsequently corrects her alleged unsatisfactory performance, cause no longer exists to dismiss her based on such conduct. (*Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334, 350 [concluding no grounds for discipline existed because there had been "a total remediation."])

6. The District gave respondent written notice of her unsatisfactory performance, specifying its nature with specific instances of behavior and particularity as to furnish her with an adequate opportunity to correct her faults and overcome the grounds for the allegations, at least 90 days before it filed allegations of respondent's unsatisfactory performance with its governing board. The written notice included the relevant performance evaluations of respondent's conduct from September 2, 2010, through May 15, 2012.

#### *Performance evaluations for certificated personnel*

7. Each school district, with the advice of its certificated instructional personnel, must establish a uniform system of evaluating the performance of its certificated personnel. (Ed. Code, §§ 44660, 44661.) The performance evaluations must be in writing, a copy must be given to the employee, and the employee has the right to file a written response, which "shall become a permanent attachment to the employees personnel file." (Ed. Code, § 44663, subd. (a).) The school district shall evaluate the performance of a certificated permanent employee with less than 10 years in the school district, such as respondent, "at least every other year ... ." (Ed. Code, § 44664, subd. (a)(2).) With regard to areas of the employee's performance that need improvement, the law requires the following:

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



until the employee achieves a positive evaluation or is separated from the district.

(Ed. Code, § 44664, subd. (b).)

8. At the beginning of the 2001/2002 school year, the District's governing board adopted the FUSD Continuum of Standards for the Teaching Profession for use when evaluating the performance of its certificated employees.

9. During the 2010/2011, 2011/2012, and the first half of the 2012/2013 school years, respondent received multiple written performance evaluations from the District. Each evaluation included recommendations as to areas of improvement in respondent's performance, and notified her that she was not performing her duties in a satisfactory manner according to the District's standards, giving specific examples of her unsatisfactory performance. The District thereafter conferred with respondent and made specific recommendations as to areas of improvement in her performance. It endeavored to assist her with improving her performance.

*Existence of Cause to Dismiss Respondent for Unsatisfactory Performance*

10. The Amended Notice informed respondent of her need to improve her performance under CSTPs 1, 2, 3, 4, and 5 in order to avoid dismissal from the District. Ultimately, however, only that conduct which falls under the CSTPs for which she received a rating of "Does Not Meet Standards" on her subsequent December 21, 2012 preliminary evaluation may serve as a basis for her dismissal for unsatisfactory performance. (*Crowl v. Commission on Professional Competence, supra*, 225 Cal.App.3d 334, 350.)

*Respondent improved her conduct under CSTP 2*

11. Respondent's conduct under CSTP 2 improved during the 90-day notice period, as evidenced by the "Meets Standards Minimally" rating she received on her December 21, 2012 preliminary evaluation. (Factual Finding 71.) Consequently, no cause exists to dismiss respondent from her employment as a teacher with the District for unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(4), based on conduct under CSTP 2.

*The Amended Notice did not specify conduct under CSTP 6*

12. The Amended Notice did not specify any conduct under CSTP 6 that constituted unsatisfactory performance by respondent. (Factual Finding 45.) In fact, each of the performance evaluations attached to the Amended Notice rated her either "Meets Standards Proficient" or "N/O" for that CSTP (Factual Findings 24, 25, 30-32, 39, 40, and 42), and it was not until her November 7, 2012 lesson observation that she received a "Does Not Meet Standards" rating (Factual Findings 47, 48, 51, 54, 57, 60, 63, 66, and 67). Therefore, no cause exists to dismiss respondent from her employment as a teacher with the

District for unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(4), based on conduct under CSTP 6. (Ed. Code, § 44938, subd. (b)(1); *Tarquin v. Commission on Professional Competence*, *supra*, 84 Cal.App.3d 251, 259.)

*Respondent did not improve her conduct under CSTPs 1, 3, 4, or 5*

13. As set forth in Finding 98, respondent's overall performance under CSTPs 1, 3, 4, and 5 was unsatisfactory as set forth in the Amended Notice, and her performance did not improve during the 90-day notice period, as evidenced by the "Does Not Meet Standards" rating she received for each of those CSTPs on her December 21, 2012 performance evaluation. (Factual Finding 71.) Therefore, the District established by a preponderance of the evidence that, notwithstanding the assistance and opportunities it provided to respondent to correct her faults and address the grounds for the unsatisfactory performance allegations against her, she did not improve her performance under CSTPs 1, 3, 4, or 5 to a satisfactory level. Respondent did not demonstrate during the hearing that she has adequate insight into the District's concerns about the quality of her teaching to provide sufficient assurances that, if she was returned to the classroom, her teaching would improve to a satisfactory level. As a result, the District established that respondent should be dismissed from her employment as a teacher with the District for unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(4).

#### ORDER

Respondent Kimberley Cooper is **DISMISSED** as a permanent certificated employee of the Fresno Unified School District.

DATED: April 30 2014



CHESTER STOECKLE, Member  
Commission on Professional Competence



FREDA RUSSELL, Member  
Commission on Professional Competence



COREN D. WONG, Chairperson  
Commission on Professional Competence