

**BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
MARYSVILLE JOINT UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA**

In the Matter of the Dismissal of:

**KAREN MCNAY, A Permanent Certificated Employee,
Respondent**

OAH No. 2023010490

DECISION

This matter was heard before a Commission on Professional Competence (Commission) for the Marysville Joint Unified School District (District) on June 6 through 9, 13, and 15, 2023. The Commission included Christine Alberg, Luciano Ortiz, and Matthew S. Block, Administrative Law Judge, Office of Administrative Hearings, presiding from Sacramento.

Ethan T. Retan, attorney at Kingsley Bogard, LLP, represented the District.

Matthew Chevedden, attorney at Langenkamp, Curtis, Price, Lindstrom & Chevedden LLP, represented Karen McNay (respondent), who was present throughout the hearing.

Evidence was received and the record closed on June 15, 2023. The matter was submitted for decision when the Commission concluded its deliberations on June 23, 2023.

FACTUAL FINDINGS

Background and Procedural History

1. Respondent is a permanent certificated employee of the District. She teaches third grade at Johnson Park Elementary (JPE) School in Olivehurst, California.

2. On September 1, 2022, respondent was placed on unpaid leave following an incident between respondent and one of her students that occurred on August 29, 2022. On October 24, 2022, District Superintendent Gabe Simon signed the Statement of Charges recommending termination of respondent's employment with the District on the basis of: (1) immoral conduct; (2) unprofessional conduct; (3) dishonesty; (4) unsatisfactory performance; (5) evident unfitness for service; and (6) persistent violation of or refusal to obey the school laws of the state or the reasonable regulations of the State Board of Education or the District.

3. On December 13, 2022, respondent was served with a Notice of Immediate Suspension and Intent to Dismiss. Respondent timely filed a request for hearing and this hearing followed.

District's Evidence

4. Respondent has worked for the District for 17 years, the last three of which have been at JPE. She is one of two third grade teachers. Her direct supervisor is Principal Tracy Pomeroy, who testified at hearing.

5. Emily McKinnon teaches sixth grade at JPE. She and respondent have been friends for several years, and it was Ms. McKinnon who encouraged respondent to apply for a teaching position at JPE. However, in early 2021, their relationship temporarily soured over differences in opinion regarding the job performance of Ms. Pomeroy and other JPE administrative staff members. Eventually, Ms. McKinnon “unfriended” respondent on Facebook.

6. On the morning of March 9, 2021, Ms. McKinnon was working in her classroom. Respondent entered the room, and in a loud and threatening tone, said, “Hey, it’s on!” She then turned and quickly walked away. Ms. Pomeroy observed the incident from afar and spoke with Ms. McKinnon about what occurred. Ms. McKinnon did not know what respondent was talking about and was unable to ask before respondent walked out of the room. She subsequently filed a formal complaint and requested a meeting with respondent and Ms. Pomeroy to discuss the situation.

7. Ms. Pomeroy also spoke with respondent about what she observed. Respondent admitted making the comment. She told Ms. Pomeroy that if Ms. McKinnon tried to get her in trouble, she would lie and say that she was showing support for the Marysville Unified Teacher’s Association (MUTA) and pointed to the MUTA shirt that she was wearing at the time she made the comment. When she met with Ms. McKinnon and Ms. Pomeroy, respondent did say she intended to show support for the union and apologized to Ms. McKinnon for the misunderstanding.

8. At approximately 10:40 a.m. on August 25, 2021, Ms. Pomeroy went to respondent’s classroom after respondent asked for someone to relieve her. When Ms. Pomeroy got to the classroom, respondent met her at the door crying and said she was going to have to take a leave of absence due to stress. She expressed frustration

at the fact that she had 28 students in her class. Ms. Pomeroy stayed in the class with respondent's students for several minutes to allow respondent to compose herself.

9. Later that day, Ms. Pomeroy met with the first, second, and third grade teachers to discuss class sizes for the 2021/2022 school year. JPE enrollment was higher than in previous years, and each first and third grade class had 28 students. The purpose of the meeting was to discuss which grade would receive an additional assigned teacher.

10. At the beginning of the meeting, respondent said that she was going to file a grievance if her class size was not reduced to 24 students by the following day. Ms. Pomeroy explained that pursuant to the District's Collective Bargaining Agreement, each class could have up to 32 students. Respondent told Ms. Pomeroy the meeting was only a "show," and that she knew Ms. Pomeroy had no intention of reducing third-grade class sizes. She then angrily walked out of the meeting.

11. C.L. is a JPE student who was in respondent's class during the 2021/2022 school year. C.L. read well below the third-grade level. She had an individualized education plan (IEP) and received special education services through the JPE resource specialist program (RSP) in addition to her primary classroom education. Lunden Duenas was employed as a special education teacher in the RSP from 2020 through 2022 and testified at hearing. As part of C.L.'s IEP, she received individualized instruction in Ms. Duenas's classroom at various times during the school week.

12. To reward her students for staying on task, Ms. Duenas initiated an incentive program known as "Fun Fridays," where the students were allowed to participate in art projects and other fun activities if they completed their schoolwork as instructed during the week. Respondent refused to let C.L. participate in "Fun Fridays"

on multiple occasions because she did not approve of the students doing art projects as opposed to working to improve their reading abilities. Respondent was the only JPE teacher who did not allow her RSP students to participate in "Fun Fridays."

13. Respondent frequently yelled at C.L. during the 2021/2022 school year and complained that she did not feel supported by C.L.'s parents. On several occasions when Ms. Duenas went to pick up C.L. from respondent's classroom, she found C.L. sitting in the back of the class facing the rear wall. Shelby Miller worked in respondent's classroom as a paraeducator from October 2021 through January 2022. Ms. Miller testified at hearing. She spent approximately three hours every morning in respondent's classroom and observed multiple interactions between respondent and C.L. Respondent was always very stern with C.L., and she frequently isolated C.L. from other students by making her turn her desk around and face the rear wall as a form of discipline.

14. During an afternoon recess in late October 2021, Ms. Pomeroy and JPE Outreach Consultant (ORC) Yesenia Cachu Rio observed respondent screaming at C.L. because she tried to get a drink of water from a drinking fountain. It was a warm day, and Ms. Pomeroy told respondent that she could not refuse water to a student. Respondent began to cry and accused Ms. Pomeroy of undermining her authority as a teacher. Ms. Cachu Rios encouraged respondent to take a "breather," and Ms. Pomeroy took the students back to the classroom.

15. M.C. was a JPE student who started the 2021/2022 school year in respondent's class. On November 1, 2021, respondent administered an exam to the class. When M.C. performed poorly on the exam, respondent told him that he needs to read more at home in front of the entire class. M.C. went home crying, which prompted his mother to contact the school.

16. Carol Wood worked as an attendance clerk and office secretary at JPE from 2014 through 2022 and testified at hearing. She answered the call from M.C.'s mother and transferred it to Ms. Pomeroy at the mother's request. When respondent heard about the phone call, she became angry that M.C.'s mother was allowed to speak to Ms. Pomeroy without first speaking to respondent. After learning that M.C. was transferring to a different school because of the incident, respondent wrote an email to Ms. Pomeroy and Ms. Wood, which stated, in pertinent part:

It is unfortunate that mom was not directed to speak to me first. When mom and I were messaging back and forth last night, I thought we had worked things out. Apparently, I underestimated the damage that was done when she bypassed speaking with me first. I fear that [M.C.] will now have to wait that much longer to get the help he needs. This situation breaks my heart on many levels.

17. On November 30, 2021, respondent contacted the office and spoke to Ms. Wood about an absent student. During the conversation, respondent told Ms. Wood that she was too nice to parents and directed her not to allow the parents of her students to speak with Ms. Pomeroy unless they have spoken with her first. She told Ms. Wood that M.C.'s life was ruined because his mother spoke with Ms. Pomeroy before speaking with respondent. She also complained that nobody at JPE did their job and said that "wrath" is going to come down on the school.

18. On December 3, 2021, Ms. Wood called respondent and asked her to send a student to the office with his backpack because his sister needed to speak with him. Respondent became frustrated because the phone call interrupted her teaching and refused to send the student to the office until Ms. Wood gave her a reason for the

request. When Ms. Wood told respondent the student's sister had locked herself out of their home and needed to use his key, respondent sent the student to the office but without his backpack. The student was sent back to respondent's classroom to retrieve the backpack, which interrupted the class a second time.

19. During the 2021/2022 school year, K.D. was a student in the other JPE third grade class. K.D. struggled with behavioral issues and was physically aggressive toward other students. It was not uncommon for his teacher, Jeff Ahlberg, to send K.D. to respondent's classroom as a disciplinary measure.

20. Respondent was not at school on December 6, 2021. When she returned on December 7, 2021, she was told that K.D. choked C.L. on the playground the day before. Despite having no personal knowledge of what had occurred, she approached K.D. in the school office, pointed her finger in his face, and threateningly said, "don't you ever lay a finger on one of my students." This occurred in front of school secretary Angie Buckland, who testified at hearing. According to Ms. Buckland, respondent's face was very close to K.D.'s face when she made the comment and K.D. appeared scared. It was later determined that K.D. had not choked C.L. the day before, that the students were playing a game, and that C.L. was the one who initiated the game.

21. On certain Friday mornings, JPE students gather outside as a student body to say the Pledge of Allegiance and sing the school fight song. One such occasion was December 10, 2021. On that day, the parent of A.C., one of respondent's students, came to school to retrieve A.C.'s math book because he was home sick. Ms. Wood approached respondent to get the book because the parent was waiting in the office. When she did, respondent held her hand up in Ms. Wood's face and refused to speak to her. Consequently, Ms. Wood was unable to provide the parent with A.C.'s math book.

22. On the afternoon of December 15, 2021, respondent attended C.L.'s IEP meeting with Ms. Duenas and C.L.'s parent. On that day, Ms. Duenas was responsible for dismissing students in the parking lot and making sure they safely boarded the school bus to be taken home. As a result, she was several minutes late to the IEP meeting. As she walked to the meeting, respondent called her cell phone and angrily asked if she was going to show up for the meeting. She then behaved in a dismissive and disrespectful manner throughout the meeting in front of C.L. and her parent.

23. On the morning of December 16, 2021, Ms. Pomeroy encountered respondent in the JPE parking lot before the school day began. She mentioned that she had received several complaints from staff about their interactions with respondent. After learning of the complaints, respondent said, "[l]et's have a meeting and I will tell them they need to do their fucking job." She also said Ms. Pomeroy was being a "John," referring to the prior JPE principal. She encouraged Ms. Pomeroy to have the employees draft formal complaints about her and said that she would "call them on their shit." When Ms. Pomeroy reminded respondent of her obligation to behave professionally at school, respondent said, "[t]his is who I am. I was told when I taught kindergarten that I needed to talk to them cutesy. I talked to them like people."

24. After school started that morning, respondent took her students to the JPE library. Abigail Smith was the school librarian at the time and testified at hearing. As the children were silently reading, respondent began to loudly complain about how she got in trouble again and about how JPE administrative staff members were incompetent. When it was time to return to the classroom, respondent told her students to line up. However, she then stated that she was told she needs to be nicer and asked them to line up in a sarcastically polite tone. She then asked the students, "I've been told I'm mean and scary, are you guys scared of me?" According to Ms.

Smith, the students appeared visibly uncomfortable after hearing respondent's comments.

25. Later that day, Ms. Pomeroy went to respondent's class to read a story to the students and lead them in an art project. When they were ready to begin the art project, C.L. raised her hand and asked Ms. Pomeroy for a pencil. Respondent loudly said that C.L. "does not get a pencil because she draws in class." According to Ms. Pomeroy, C.L. appeared embarrassed by respondent's comment, which was made in front of the entire class.

26. On the morning of January 24, 2022, K.D. was involved in a physical altercation with another JPE student. As a result, respondent made K.D. spend the day with her as a disciplinary measure. Respondent took K.D. to lunch in the school cafeteria with her own class at approximately 11:30 a.m. Kayla Holmes worked in the JPE cafeteria during the 2021/2022 school year and testified at hearing. When she noticed K.D. enter the cafeteria with respondent, Ms. Holmes asked respondent if she would be supervising both third grade classes during the lunch break. Respondent told Ms. Holmes that K.D. was spending the day with her because he could not keep his hands to himself. She also said that if she were the parent of the child K.D. hit, she would call the police and press charges against him.

27. K.D. was scheduled to participate in behavioral counseling with Ms. Cachu Rios during the lunch break on January 24, 2022. Ms. Cachu Rios went to pick him up at the cafeteria and found respondent aggressively leading him in the direction of the office. She asked respondent what was going on, and respondent told her that K.D. was staying with her because he punched another student and should not be allowed to be around other students. She also told Ms. Cachu Rios that the behavioral counseling she was providing to K.D. was clearly not working.

28. On February 1, 2022, respondent was served with a Notice of Unprofessional Conduct and Suspension (Notice) based on the incidents discussed above. The Notice included the following language:

This is an extremely serious and job-threatening situation. Unprofessional conduct and unsatisfactory performance are cause for discipline up to and including dismissal, as authorized by [Education Code] Section 44932.

29. JPE employees frequently use a radio device to communicate with each other and members of the school administration. When an employee uses the radio, the transmission can be heard by any employee who has their radio turned on at the time. On April 1, 2022, respondent used the radio to contact the office because A.C. was not doing his work or following instructions. There was no ORC or counselor available, so Ms. Buckland walked down to respondent's room to assist. She found A.C. sitting by himself in the hallway and decided to take him for a walk around campus. After approximately 10 minutes, respondent broadcast over the radio that A.C. was missing. Ms. Buckland responded that she was with A.C., and respondent said that A.C. was not allowed back in her class.

30. Ms. Buckland took A.C. to the office and called respondent for a further explanation of why A.C. needed to be sent home. Respondent told her that he doesn't follow directions and that he needed to be "picked up." Ms. Buckland contacted A.C.'s father, who agreed to pick him up.

31. District policy limits the circumstances under which a student can be formally suspended and sent home. After Ms. Buckland contacted A.C.'s father, Ms. Pomeroy determined that A.C. had not committed an offense for which he could be

sent home. However, he could be placed on an “in-house” suspension. When a student is suspended “in-house,” they are not sent home, but they are not allowed to attend their normal class.

32. At Ms. Pomeroy’s request, Ms. Buckland contacted respondent again to retrieve schoolwork for A.C. to work on in the school office. She told respondent that A.C. could not be sent home and that his father was in the office and wanted to speak with her. Respondent then told her that she never asked to have him sent home but wanted him to go to the office to call home.

33. Respondent’s contentious relationships with JPE staff members continued throughout the duration of the 2021/2022 school year. Ms. Wood and Ms. Buckland were both fearful of contacting respondent because she frequently treated them rudely. Nonetheless, Ms. Wood approached respondent in June 2022 and suggested that they start the upcoming school year “fresh.” Respondent put her hand up in Ms. Wood’s face and said, “I just can’t. Just go.”

34. J.G. is a JPE student who started the 2022/2023 school year in respondent’s class. J.G.’s struggles with reading and writing are so significant that respondent recommended his participation in a Student Study Team (SST), which is a precursor to a student receiving special education instruction.

35. On August 29, 2022, respondent administered a spelling test to her class. During the test, J.G. became frustrated because he could not read or write the words and flipped his paper over. Respondent told J.G. to turn the test back over, and he told her he could not read the words. He turned the paper over when instructed to do so by respondent but flipped it back over a short time later. After J.G. flipped his paper over several more times, respondent aggressively turned the paper over and shouted

at J.G. to do his work. She then directed him to the front of the classroom, where she called J.G.'s mother in front of the entire class.

36. J.G.'s mother testified at hearing. When respondent called her, she said J.G. was misbehaving in class and was unable to write or pronounce his letters. She also said that most of the help he needed would have to come from home because respondent was unable to devote all her time to him. Respondent then told J.G.'s mother that if his behavior did not improve, she or her husband would need to sit next to J.G. during class. J.G.'s mother asked to speak with him, and after a brief conversation, J.G. handed the phone back to respondent and said that his mother was coming to pick him up.

37. Respondent did not allow J.G. to participate in the morning recess, which began several minutes after her phone call to his mother. After recess, she began a grammar lesson, and asked the students to write their names on a piece of paper. When J.G. did not follow respondent's instructions, she used her radio to contact the office, and said "I already called mom. Get the student out."

38. Neither Ms. Pomeroy nor JPE Vice Principal Melissa White were available to respond to respondent's request. Ms. Buckland asked ORC Beatriz Jaquez to bring J.G. to the office and warned her that respondent may be overwhelmed. As Ms. Jaquez approached respondent's classroom, she could hear respondent yelling through the closed door. When Ms. Jaquez entered the classroom, respondent aggressively pointed at J.G. and said, "he's right here!" She then told Ms. Jaquez that J.G. never completes his work.

39. As J.G. gathered his belongings several items fell to the floor. When Ms. Jaquez went to assist J.G., respondent yelled, "he's a third grader and can do it by

himself." Ms. Jaquez told J.G. "it's ok," at which time respondent loudly said, "it's not ok!" Once Ms. Jaquez and J.G. were outside the classroom, he told her that he does not do well when grownups scream at him. J.G.'s mother held him out of school for the next two days, after which he was transferred to the other third grade class.

40. Respondent was interviewed about the incident with J.G. by District legal counsel Paul Gant on September 27, 2022. She told him she was not concerned whether her treatment of J.G. was embarrassing to him. In fact, she admitted that she wanted him to feel "uncomfortable." Respondent also denied asking for J.G. to be removed from her class and insisted that she was only asking for "assistance."

Respondent's Evidence

41. Respondent testified at hearing. She has worked at JPE for the last three years. She holds a multiple-subject teaching credential which she earned at California State University, Sonoma. She also holds a master's degree in special education. She described her teaching style as structured and firm, but fair. She denies ever yelling at a student and said that she uses her "teacher voice" to get the attention of students who are misbehaving.

42. The 2021/2022 school year was the first time students returned to in-person learning at JPE since the beginning of the COVID-19 pandemic. Many students demonstrated significant behavioral problems upon their return and respondent believes the District initially failed to provide guidance regarding how to handle the situation. However, as the year progressed, the two third grade classes were assigned a paraeducator to assist with instructional and behavioral issues.

43. Respondent admits that the incident in Emily McKinnon's classroom occurred because Ms. McKinnon had recently "unfriended" respondent on Facebook.

She also admits she told Ms. Pomeroy she was going to lie, and in fact did lie, to avoid being disciplined over the incident. She eventually apologized to Ms. McKinnon, and they remain friends.

44. Respondent admits that she behaved inappropriately at the class size meeting with Ms. Pomeroy and the other teachers on August 25, 2021. Respondent went to the meeting believing that Ms. Pomeroy had no intention of assigning an additional teacher to third grade to reduce her class size. When Ms. Pomeroy commented that she could not imagine having 30 children in a first-grade class, respondent said, "there's your answer," and walked out of the meeting. Respondent believed that as principal, Ms. Pomeroy should have made the decision herself without involving anyone else. However, she acknowledges it is not her place to tell the principal how to do her job.

45. Respondent describes C.L. as smart, caring, and "a ray of sunshine." However, C.L. has trouble focusing, and her behavior can be challenging. Respondent has never denied water to any of her students, including C.L. On the day of the October 2021 incident, all the students, including C.L., were given the opportunity to get a drink of water after they finished Physical Education (PE), and were then instructed to line up to return to class. C.L. refused to stand in the line and kept going back to the drinking fountain.

46. C.L. had a habit of drawing in class instead of paying attention to instruction and completing her work. The understanding between respondent, C.L., and her parents is that she would only be provided with writing instruments when the need to write arose during a lesson. Respondent did not intend to embarrass C.L. on December 16, 2021, and she does not believe that C.L. was embarrassed. Respondent was merely explaining to Ms. Pomeroy why C.L. did not have a pencil at her desk.

47. Respondent admits that she refused to allow C.L. to participate in "Fun Fridays" because she does not consider them part of RSP services. She denies ever refusing to send a student for RSP services other than Fun Fridays. Ms. Duenas never raised any concerns about respondent failing to send students for RSP services. Respondent does not believe that she was rude during the December 2021 IEP meeting with Ms. Duenas, C.L., and her parent. Ms. Duenas never complained about respondent's behavior and their relationship has always been a positive one.

48. Respondent had a friendly relationship with Ms. Wood at the beginning of the 2021/2022 school year. However, Ms. Wood tended to call respondent or enter her classroom and interrupt respondent while she was teaching. She would also try to have personal conversations with respondent that took respondent's attention away from her students. This frustrated respondent, and her relationship with Ms. Wood began to deteriorate.

49. Respondent admits being frustrated that M.C.'s mother was allowed to speak with Ms. Pomeroy before speaking with respondent on November 1, 2021. She also admits telling Ms. Wood that she was too nice to parents.

50. Respondent admits that she was dismissive of Ms. Wood on December 10, 2021. She did not want to walk to her classroom and retrieve A.C.'s math book because she wanted to supervise her students while they were gathered outside. She believes that A.C.'s father either picked the book up at the end of the day, or that respondent dropped the book off at A.C.'s home. Respondent admits that Ms. Wood approached her in June 2022 and asked to start the new school year on more friendly terms. She replied that she would maintain a professional relationship with Ms. Wood. She denies holding her hand up in Ms. Wood's face.

51. Respondent admits she referred to Ms. Pomeroy as “John” on the morning of December 16, 2021, and that she knew the comment would upset her. Respondent denies complaining about JPE staff in the library on December 16, 2021. However, she admits speaking in a sarcastically polite tone and acknowledges it was unprofessional to do so in front of the students.

52. Respondent admits she told K.D. not to touch any of her students on December 7, 2021. She denies yelling at him or pointing her finger in his face. Following the physical altercation between K.D. and another student on January 24, 2022, respondent told Ms. Holmes in the cafeteria that K.D. was shadowing respondent for the day because he could not “keep his hands to himself.” She admits telling Ms. Holmes that she would call the police and press charges against K.D. if she were the parent of the other child, and she now regrets doing so because she can understand how the comment may have made K.D. feel.

53. On April 1, 2022, respondent contacted the office and said that A.C. needed to call home because he was not following directions and distracting other students. A.C.’s parents are in the Air Force and their phone numbers are not from the same area code as JPE, which is why respondent did not have A.C. call home from her classroom. She told A.C. to go to the office but did not supervise him once he left. Respondent denies ever saying that she wanted A.C. to go home.

54. Respondent denies aggressively turning J.G.’s paper on his desk on August 29, 2022. Rather, she gently turned the paper over and said words to the effect of “leave it there, honey.” She admits that she called J.G.’s mother in front of the class to make him feel uncomfortable. She elected to place the call during class time as opposed to during the upcoming recess because she believes she had recess duty. She

admits telling J.G.'s mother that she needed help from home, and that she or J.G.'s father would need to sit with him in class if his behavior did not improve.

55. J.G. continued to ignore respondent's directions after recess, which is why she contacted the office for assistance. However, she admits that J.G. was not disrupting the class at the time. She denies that she ever said, "I already called mom, get the student out." She admits telling Ms. Jaquez "it's not ok!" as she tried to reassure J.G. Respondent denies ever yelling at J.G. However, in retrospect, she believes she could have handled the situation more professionally.

56. Respondent called two witnesses to testify at hearing. The first was Toni Vernier. Ms. Vernier is the Director of Curriculum for the Plumas Lake Elementary School District. She previously worked for the District for 12 years as the Executive Director of Student Services. Ms. Vernier has never seen respondent behave inappropriately with students or colleagues, and she believes that she is an excellent teacher.

57. Respondent also called Mr. Ahlberg as a witness. Mr. Ahlberg has worked collaboratively with respondent for the past three years and referred to her as the best teaching partner he has ever had. Mr. Ahlberg has never seen respondent behave inappropriately with students or colleagues.

58. K.D. was a student in Mr. Ahlberg's class. He frequently engaged in disruptive and physically aggressive behavior toward other students, and it was not uncommon for Mr. Ahlberg to send him to respondent's class to calm down. J.G. was transferred to Mr. Ahlberg's class after the incident in respondent's class on August 29, 2022. Mr. Ahlberg described J.G. academically as the lowest student he's ever had to teach.

Analysis

59. The Commission must resolve two issues in this case. First, it must determine whether respondent engaged in the conduct alleged in the Statement of Charges. If so, it must then determine whether that conduct indicates that respondent is unfit to teach. The Statement of Charges alleges five categories of behavior that constitute cause for dismissal. Each will be addressed in turn below.

UNPROFESSIONAL AND INAPPROPRIATE INTERACTIONS WITH STUDENTS AND STAFF

60. It is alleged that on March 9, 2021, respondent behaved unprofessionally when she entered Ms. McKinnon's classroom, and in a threatening tone, said, "[h]ey, it's on!" The District has proven the incident by a preponderance of the evidence. Respondent admitted making the comment in a subsequent conversation with Ms. Pomeroy and in her testimony at hearing. She also admitted she was prepared to lie and in fact did lie to avoid being disciplined.

61. It is alleged that respondent unprofessionally screamed at C.L. for attempting to get a drink of water on a warm afternoon in October 2021. The District has proven the allegation by a preponderance of the evidence. Ms. Pomeroy and Ms. Cachu Rios both witnessed the incident firsthand. Respondent's behavior was so agitated that Ms. Cachu Rios encouraged her to take a "breather" and Ms. Pomeroy had to take respondent's students back to the classroom for her.

62. It is alleged that respondent unprofessionally demeaned M.C. on November 1, 2021. The District has proven the allegation by a preponderance of the evidence. When M.C. performed poorly on an exam, respondent rudely told him that

he needed to read more at home. Respondent's behavior caused M.C. to feel unintelligent and prompted his mother to remove him from JPE.

63. It is alleged that respondent unprofessionally complained about her colleagues and members of the JPE administration on November 30, 2021. The District has proven the allegation by a preponderance of the evidence. Ms. Wood testified that during a telephone call, respondent told her that no one at JPE did their jobs and that "wrath" was going to come down upon the school. She criticized Ms. Wood for being too nice and told her not to allow parents to speak with Ms. Pomeroy unless they have spoken to her first. Finally, she told Ms. Wood that M.C.'s life had been ruined by his transfer out of JPE, which she attributed to Ms. Wood transferring his mother's telephone call to Ms. Pomeroy.

64. It is alleged that respondent behaved unprofessionally in her interaction with Ms. Wood on December 10, 2021. The District has proven the allegation by a preponderance of the evidence. Ms. Wood testified that she approached respondent to retrieve A.C.'s math book because his father was waiting in the office. When she did, respondent put her hand up in Ms. Wood's face and refused to speak with her. This behavior was not only rude to Ms. Wood, but it prevented her from providing A.C.'s father with the math book. Respondent's testimony that she could not assist Ms. Wood because she had to supervise her class was unpersuasive. The entire faculty was outside at the time for the Friday event. Respondent could have requested that another teacher or a member of the JPE administration supervise her students for a brief period of time.

65. It is alleged that respondent unprofessionally complained about Ms. Pomeroy to JPE Counselor Luvpreet Sahota on December 14 and 15, 2021. The District

did not present sufficient evidence in support of the allegation, and therefore failed to prove it by a preponderance of the evidence.

66. It is alleged that respondent behaved unprofessionally in C.L.'s IEP meeting on December 15, 2023. The District has proven the allegation by a preponderance of the evidence. Ms. Duenas testified that respondent was incredibly rude to her and a therapist who were in attendance, which undermined the collaborative nature of the meeting.

67. It is that alleged respondent behaved inappropriately in response to complaints about her behavior from JPE staff on December 16, 2021. The District has proven the allegation by a preponderance of the evidence. Ms. Pomeroy testified that when she attempted to discuss the complaints with respondent, respondent replied, "Let's have a meeting and I will tell them they need to do their fucking job." She then referred to Ms. Pomeroy in a derogatory manner as "John," in reference to the former JPE principal, and told Ms. Pomeroy to have the staff members file formal complaints so she could "call them on their shit." Respondent admitted referring to Ms. Pomeroy as "John," and that she did so because she knew it would upset Ms. Pomeroy.

68. It is alleged that on December 16, 2021, respondent unprofessionally embarrassed C.L. in front of the entire class by announcing that she was not allowed to have a pencil because she draws in class. The District has proven the allegation by a preponderance of the evidence. Ms. Pomeroy witnessed the incident and respondent admitted that it occurred.

69. It is alleged that on December 16, 2021, respondent unprofessionally complained about members of the JPE administration in front of her students. The District has proven the allegation by a preponderance of the evidence. Ms. Smith

witnessed the behavior and testified at hearing that it appeared to make the students feel uncomfortable. While respondent denies openly criticizing other JPE staff, she admits using an overly sarcastic tone about being nice and acknowledges that it was unprofessional to do so in front of the students.

70. It is alleged that respondent treated K.D. unprofessionally on January 24, 2022, and that she potentially interfered with services to which he was entitled under his IEP. The District has proven the allegation by a preponderance of the evidence. Ms. Holmes testified that respondent told her K.D. had been involved in a physical altercation with another student earlier in the day, and that if she were the parent of the other student, she would call the police and press charges against K.D. Ms. Cachu Rios testified that on the same day, respondent told her that K.D. didn't need to be around other children, and that she was going to encourage the parents of other students to complain to the school board about K.D.'s behavior. Respondent's comments suggested to K.D. that he should be treated as a criminal, and respondent now admits her behavior was unprofessional. Finally, by forcing K.D. to remain with her throughout the day, respondent interfered with his counseling session with Ms. Cachu Rios.

AGGRESSIVE AND UNWARRANTED TREATMENT OF STUDENT

71. It is alleged that respondent mistreated K.D. in an aggressive and unwarranted manner on December 7, 2021. The District has proven the allegation by a preponderance of the evidence. Ms. Buckland witnessed the incident and testified to what occurred at hearing. Respondent pointed her finger in K.D.'s face and told him never to lay a finger on one of her students based on an unfounded incident the day before. According to Ms. Buckland, respondent's behavior appeared to scare K.D., who had done nothing wrong. Respondent denies pointing her finger and getting close to

K.D.'s face. Whether she did so or not is of minimal significance. Her statement was clearly intended to be interpreted as a threat to K.D.

INTERFERENCE WITH OR FAILURE TO PROVIDE RSP SERVICES

72. It is alleged that respondent interfered with the provision of RSP services during the 2021/2022 and 2022/2023 school years. The District has proven the allegation by a preponderance of the evidence. Respondent refused to allow C.L. to participate in "Fun Fridays" with Ms. Duenas because she disagreed with the curriculum, despite knowing that Ms. Duenas initiated "Fun Fridays" to reward students for completing their RSP work the rest of the week. Additionally, respondent interfered with K.D.'s behavioral counseling session on January 24, 2022.

INAPPROPRIATE TREATMENT OF STUDENT AND VIOLATION OF DISCIPLINARY POLICY

73. It is alleged that respondent treated A.C. inappropriately and violated the disciplinary policies of the District on April 1, 2022. The District has proven the allegations by a preponderance of the evidence. On that day, respondent ordered A.C. out of her classroom because he was refusing to follow directions. Ms. Buckland found him sitting unsupervised in the hallway a short time later and decided to take him for a walk. When respondent realized Ms. Buckland was with A.C., she told her that A.C. was not allowed back in her classroom and needed to be "picked up." However, A.C. had not committed an offense for which he could be sent home and formally suspended. When respondent learned of this, she dishonestly said that she intended for A.C. to call home, not to go home. Respondent's testimony that Ms. Buckland misheard her is unpersuasive. While the word "call" could conceivably be mistaken for the word "go"

over a radio transmission, respondent's explanation is belied by Ms. Buckland's specific recollection that respondent said A.C. needed to be "picked up."

SHAMING A STUDENT AND DISCLOSING CONFIDENTIAL INFORMATION

74. It is alleged that respondent shamed J.G. and revealed his confidential student information on August 29, 2022. The District did not present sufficient evidence in support of the allegation that respondent revealed K.G.'s confidential student information, and therefore failed to prove it by a preponderance of the evidence.

75. However, the District has proven the allegation that respondent shamed J.G. in front of the entire class by a preponderance of the evidence. Respondent was aware of the difficulties J.G. experienced reading and writing, and she was aware he was turning his spelling test over because he was frustrated. However, even though the morning recess was only several minutes away, respondent called J.G.'s mother on the telephone in front of the entire class and complained about how he was unable to write or pronounce letters. She then told J.G.'s mother that she or her husband would need to sit next to J.G. in class if his behavior did not improve.

76. After the morning recess, which respondent did not allow J.G. to participate in, she began teaching a grammar lesson. When J.G. failed to follow her instructions, respondent used her radio to contact the office and said, "I already called mom, get the student out."

77. Ms. Jaquez could hear respondent yelling as she approached her classroom. When she entered, respondent demanded to know whether J.G. was going to be sent home. She then pointed at J.G. and angrily said, "[t]his is the kind of behavior I have to deal with. He never completes work. This is disrupting my class." Ms.

Jaquez told J.G. to gather his belongings and offered to help him. When she did, respondent said "he's a third grader and can do it by himself." Ms. Jaquez then told J.G. that everything is ok, at which point respondent said, "it's not ok."

78. Respondent responded to a child with established learning difficulties by publicly shaming him in front of his classmates. She even admitted she was trying to make him feel uncomfortable and that she was not concerned about his feelings.

Fitness to Teach – *Morrison* Factors

79. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235 (*Morrison*), the California Supreme Court held that "an individual can be removed from the teaching profession only upon a showing that [her] retention in the profession poses significant danger of harm to students, school employees, or others who might be affected by [her] actions as a teacher." The court listed the following factors as relevant when determining whether a teacher's conduct indicates that she is unfit to teach:

[1] the likelihood that the conduct may have adversely affected students or fellow teachers, [2] the degree of such adversity anticipated, [3] the proximity or remoteness in time of the conduct, [4] the type of teaching certificate held by the party involved, [5] the extenuating or aggravating circumstances, if any, surrounding the conduct, [6] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [7] the likelihood of the recurrence of the questioned conduct, and [8] the extent to which disciplinary action may inflict an adverse or chilling effect

upon the constitutional rights of the teacher involved or other teachers.

(*Id.* at pp. 229-230.)

80. As set forth below, when respondent's conduct is considered in light of the *Morrison* factors, the District established that she is unfit to teach.

ADVERSE EFFECT ON STUDENTS OR FELLOW TEACHERS

81. Respondent repeatedly demeaned students who struggled with learning difficulties and behavioral problems. She used ridicule and embarrassment as a form of discipline. In the case of K.D., she suggested that he should be treated as a criminal. Additionally, respondent was routinely rude and dismissive to other JPE employees.

DEGREE OF ADVERSITY ANTICIPATED

82. Respondent's behavior clearly had a negative impact not only on the children subject to her ridicule, but on her entire class. Her behavior was so extreme that two students were removed from her class in successive years. Her attitude toward the JPE administration resulted in employees being unwilling to contact her, which interfered with their ability to do their job.

PROXIMITY OR REMOTENESS IN TIME

83. Respondent was placed on administrative leave two days after the incident involving J.G. That incident occurred less than one year ago. Moreover, respondent displayed a continuous pattern of inappropriate and unprofessional behavior for much of the prior two years. When the evidence is considered in its

entirety, the most recent event is not remote in time, and the previous events are not so remote that they should be excluded from consideration.

TYPE OF TEACHING CERTIFICATE HELD

84. Respondent holds a multi-subject teaching credential. She teaches impressionable third grade students. As an educator, she must be able to display an appropriate demeanor and exercise sound judgment. She has repeatedly failed to do both.

EXTENUATING OR AGGRAVATING CIRCUMSTANCES

85. There is no justification for respondent's treatment of A.C., C.L., J.G., and K.D. All four students were known to struggle academically or behaviorally. Respondent used public humiliation and ridicule to discipline children with well-established learning difficulties. There is also no justification for respondent's unprofessional behavior toward other JPE staff members. Even if respondent did not particularly care for the other JPE staff members, she has an obligation as an educator to behave professionally toward students, parents, and colleagues.

PRAISEWORTHINESS OR BLAMEWORTHINESS OF MOTIVES

86. Respondent is solely to blame for her multiple instances of misconduct. Her disciplinary tactics were clearly intended to punish behavior rather than correct it. Similarly, she ridiculed students with learning difficulties rather than foster a positive learning environment within which her students could thrive.

LIKELIHOOD OF RECURRENCE

87. “Fully acknowledging the wrongfulness of [one’s] actions is an essential step toward rehabilitation.” (*Seide v. Committee of Bar Examiners* (1989) 49 Cal.3d 933, 940.) By failing to fully acknowledge her misconduct, respondent failed to demonstrate that she has engaged in sufficient rehabilitation to establish that she will not continue to engage in similar conduct in the future. Instead, respondent continues to minimize the wrongfulness of her misconduct and cast blame for her inappropriate reactions on the students themselves.

POTENTIAL ADVERSE IMPACT ON RESPONDENT’S CONSTITUTIONAL RIGHTS

88. Respondent did not present evidence or argue that her dismissal will have an adverse or chilling effect on her constitutional rights or the constitutional rights of other teachers. The Commission finds such an adverse impact unlikely.

Conclusion

89. When all the evidence is considered, the District proved it is more likely than not that respondent engaged in the multiple instances of misconduct alleged in the Statement of Charges. When all the *Morrison* factors are considered, the District established that such conduct demonstrates respondent’s unfitness to teach children.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. A school district seeking to dismiss a permanent certificated employee from employment bears the burden of proof by a preponderance of the evidence.

(*Gardner v. Comm'n on Professional Competence* (1985) 164 Cal.App.3d 1035; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.) The term preponderance of the evidence means "more likely than not." (*Sandoval v. Bank of Am.* (2002) 94 Cal.App.4th 1378, 1388.)

Applicable Law

2. A school district may dismiss a permanent certificated employee for immoral conduct. (Ed. Code, § 44932, subd. (a)(1).) In describing what constitutes immoral conduct within the context of the Education Code, the court in *Board of Education of San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808 said:

The term "immoral" has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

(*Id.* at 811, quoting *Orloff v. Los Angeles Turf Club* (1951) 36 Cal.2d 734,740.)

3. A school district may dismiss a permanent certificated employee for unprofessional conduct. (Ed. Code, §44932, subd. (a)(2).) Unprofessional conduct may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing.

(*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553; see *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

4. A school district may dismiss a permanent certificated employee for dishonesty. (Ed. Code, § 44932, subd. (a)(4).)

5. A school district may dismiss a permanent certificated employee for "unsatisfactory performance." (Ed. Code, § 44932, subd. (a)(5).)

6. A school district may dismiss a permanent certificated employee for evident unfitness for service. (Ed. Code, § 44932, subd. (a)(6). That term means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. V. Comm'n on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The term "connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the school district." (*Ibid.*) The court held that the Morrison factors "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service." (*Id.* at p. 1445.) As Woodland court explained, "[i]f the Morrison criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident,' i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

7. A school district may dismiss a permanent certificated employee for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing her. (Ed. Code, § 44932, subd. (a)(8).

Causes for Dismissal

8. Based on the Factual Findings and Legal Conclusions as a whole, and Factual Findings 60 through 78 in particular, the District proved by a preponderance of the evidence that respondent engaged in immoral conduct on multiple occasions. As such, cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(1).

9. Based on the Factual Findings and Legal Conclusions as a whole, and Factual Findings 60 through 78 in particular, the District proved by a preponderance of the evidence that respondent engaged in unprofessional conduct on multiple occasions. As such, cause exists to dismiss respondent pursuant to Education Code section 44923, subdivision (a)(2).

10. Based on Factual Findings 7, 32, 40, 43, 60, and 73, the District proved by a preponderance of the evidence that respondent behaved dishonestly on multiple occasions. As such, cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(4).

11. Based on the Factual Findings and Legal Conclusions as a whole, the District proved by a preponderance of the evidence that respondent's performance as a JPE teacher was unsatisfactory. As such, cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(5).

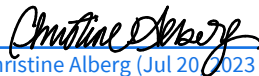
12. Based on the Factual Findings and Legal Conclusions as a whole, the District established by a preponderance of the evidence that respondent is unfit for service because of a defect in temperament. As such, cause exists to dismiss respondent pursuant to Education Code 44932, subdivision (a)(6).

13. Based on the Factual Findings and Legal Conclusions as a whole, the District established by a preponderance of the evidence that respondent engaged in a pattern of misconduct from March 2021 through August 2022, despite receiving several warnings from her supervisor and the District. As such, cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(8).

ORDER

Respondent Karen McNay is DISMISSED as a permanent certificated employee of the Marysville Joint Union School District.


DATE: July 20, 2023


Christine Alberg (Jul 20, 2023 09:40 PDT)

CHRISTINA ALBERG

Member

Commission on Professional Competence


Luciano Ortiz (Jul 20, 2023 14:33 PDT)

LUCIANO ORTIZ

Member

Commission on Professional Competence



MATTHEW S. BLOCK

Administrative Law Judge, Chair

Commission on Professional Competence