

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

In the Matter of the Dismissal of:

LINDA ROSS-SMITH,

A Permanent Certificated Employee,

Respondent.

OAH No. 2012070950

DECISION

This matter was heard before a Commission on Professional Competence (Commission) of the Fresno Unified School District (District) on January 15 to 18, and January 21 to 25, 2013, in Fresno, California. The Commission included Victoria R. Stotts, Rebecca E. Strong, and Danette C. Brown, Administrative Law Judge, Office of Administrative Hearings, presiding.

David A. Moreno, Attorney at Law, Fagan, Friedman & Fulfroost, represented the Fresno Unified School District (District).

Joshua F. Richtel, Attorney at Law, Tuttle & McCloskey, represented Linda Ross-Smith (respondent).

Evidence was received, the record was closed, and the matter was submitted for decision on January 25, 2013. The Commission met in executive session on January 28, 2013, and February 4, February 12, and February 25, 2013.

SUMMARY

The District sought to dismiss respondent from her employment as a school psychologist pursuant to Education Code section 44932, subdivisions (a)(4), unsatisfactory performance; and (5), evident unfitness for service.¹ The District's action was based upon respondent's poorly written assessment reports which contained inaccurate, confusing, or

¹ All further statutory references are to the California Education Code, unless otherwise specified.

incorrect information; failure to complete assessments in accordance with professional standards; lack of communication and collaboration with school staff; failure to prepare for Individual Education Plan (IEP) meetings; failure to respond appropriately to a crisis situation at a school site; inappropriately advocating the use of medication; being unorganized and not adhering to timelines; using incorrect eligibility guidelines; and inappropriately discussing a student with an instructional aide. The evidence presented amply supported respondent's dismissal from employment by the District. Therefore, respondent's dismissal is upheld.

FACTUAL FINDINGS

Procedural Issues and Jurisdiction

1. On May 9, 2012, Kim Mecum, Assistant Superintendent, Human Resources, filed a Notice of Intent to Dismiss and Statement of Charges against respondent. On June 7, 2012, respondent signed a Request for Hearing in accordance with section 44934, and the matter proceeded to hearing.

2. The Notice of Intent and Statement of Charges against respondent states, in part:

TO LINDA ROSS-SMITH, a Permanent Certificated Employee
with the Fresno Unified School District:

YOU ARE HEREBY NOTIFIED that I, Kim Mecum, Associate Superintendent, Human Resources, of the Fresno Unified School District ("District"), pursuant to the provisions of Education Code sections 44932 et seq., attached as Exhibit "A," and other applicable provisions of law and District policy, do hereby file with the Governing Board the following charges against you in support of my recommendation for your dismissal as a certificated employee with the District:

1. Unsatisfactory performance in violation of Education Code section 44932(a)(4);

and

2. Evident unfitness for service in violation of Education Code section 44932(a)(5).)

3. Resolution No. HR 201206 recites the fact that the Governing Board (Board) of the Fresno Unified School District of Fresno County met for the purpose of considering

and adopting a Statement of Charges (Charges) brought and duly filed and verified against respondent, and further states, in part:

WHEREAS, the Charges constitute grounds for the dismissal of LINDA ROSS-SMITH, and it is the desire and intention of the Board to dismiss her based upon these Charges and pursuant to the recommendation of the District administration ... ;

NOW, THEREFORE, BE IT RESOLVED THAT:

[T]he Board of Education of the Fresno Unified School District hereby adopts the Notice of Intent to Dismiss and Statement of Charges against Ms. Ross-Smith attached as Exhibit A.

BE IT FURTHER RESOLVED THAT:

[T]he Board determined that Ms. Ross-Smith will be notified that thirty (30) days after service of notice upon her, she will be dismissed from the District unless she requests a hearing on these Charges within thirty (30) days as provided by Education Code section 44930, *et seq.*

[¶] ... [¶]

4. The Accusation was signed on June 25, 2012, by Kim Mecum acting in her official capacity. The Accusation stated, in relevant part, that the Board seeks to dismiss respondent based on alleged violations of Education Code section 44932, subdivisions (a)(4) and (5), as set forth in the Charges.

Background

5. Respondent completed her psychology studies at California State University, Fresno (Fresno State). She has worked for the District as a school psychologist for 18 years.

6. During 2008 to 2012, respondent was primarily assigned to work with students in elementary and junior high grades at Norseman Elementary School (Norseman), Ericson Elementary School (Ericson), Susan B. Anthony Elementary School (Anthony), and Carver Elementary School (Carver). Respondent started the 2008-2009 school year at Anthony and “switched over” to Ericson at some point during the year, because it was closer to Norseman. Respondent began working at Homan Elementary School (Homan) in 2011-2012. Respondent’s primary duties at the schools were to assess students for special education

eligibility, and to participate in IEP meetings to help identify services and supports for students qualifying for special education services. Respondent's essential functions² were to:

- Plan, organize, manage, and coordinate a comprehensive system of psychological assessment and primary mental health services;
- Communicate and advise school administrators, school staff and other Special Education Specialists regarding the application of Federal and State laws;
- Evaluate students for intellectual and academic giftedness;
- Participate in the development of goals and objectives for assigned programs to educate students at a high level to do their personal best;
- Supervise and manage school staff to ensure timely delivery of high quality and effective services;
- Develop, write, and implement comprehensive IEP's for special education students;
- Consult and work with families, school personnel and other District staff regarding student needs and instructional differentiation to improve learning in the classroom;
- Supervise and evaluate graduate students from clinical, counseling, and school psychology programs;
- Direct and evaluate appropriate legal assessment for Limited English Proficient and minority students with special needs;
- Prepare and facilitate in-service and provide staff development to teachers, administration, and families; act as a resource, provide workshops and outreach opportunities;
- Participate in Student Success Team and 504 meetings and implementations; ensure compliance with federal, state, and local laws;
- Develop and manage the implementation of positive behavior intervention plans;

² Taken from the District's Position Description (duty statement) as approved by the Board on July 28, 2010. The duty statement in effect prior to this date was not submitted.

- Perform other duties as assigned.

7. Respondent's duties also required her to travel to other assigned school sites to perform assessments and attend IEP meetings.

8. Sue Pelligrino was the Special Education Local Plan Area (SELPA) Director for the District for approximately six years before retiring in July 2012. Ms. Pelligrino worked for the District for approximately 26 years in a number of capacities, including school psychologist for the District's special education department for approximately seven years. Her duties included oversight of special education programs and services. In that capacity, Ms. Pelligrino had supervisory responsibility for personnel providing special education services, including respondent. As SELPA Director, Ms. Pelligrino was responsible for completing respondent's performance evaluations.

9. Heidi Haley is the District's lead school psychologist. She has held this position for approximately five years, and was a District school psychologist prior to becoming lead school psychologist. As lead psychologist, Ms. Haley provides support to 50 school psychologists employed by the District. Her support services include providing technical support in the area of assessments and report writing, and support in the areas of behavior intervention, mental health, and crisis intervention. Ms. Haley facilitates communication between her office and school sites. She develops program planning for her department, and determines psychologist staffing for the District. Ms. Haley does not supervise school psychologists. In or prior to 2008, Ms. Pelligrino asked Ms. Haley to review respondent's assessment reports. Ms. Haley was charged with reading respondent's reports, reviewing and editing them, and letting respondent know of any areas of strength, weakness, and concern.

10. The allegations against respondent focus on three areas: (1) assessment report reviews by lead psychologist Heidi Haley; (2) complaints made by site administrators and teachers; and (3) the progressive discipline imposed by the District. Assessment reports are the District's primary tool for evaluating a school psychologist's work, and were reviewed by the District for a period of four years. A significant number of complaints by principals, regional instructional managers (RIM's), and resource specialist program (RSP) teachers concerning respondent over a four year period were also assessed by the District. As a result of the report reviews and complaints, the District imposed progressive discipline based upon respondent's failure to improve her report writing, and her failure to conform her conduct to the District's directives.

The District's Assessment Report Template

11. An assessment report contains information regarding a student's eligibility for special education services. The District has an assessment report template that was developed by a team of psychologists in Fresno. The template is a uniform and consistent form that has been universally used by all 50 of the District's school psychologists for the past eight years, so that different school psychologists can read and understand the

components of an assessment, the procedures used, eligibility standards, and recommendations. The template is a proven and accepted tool, and is the primary means of assessing students for special education services. The template “walks through” the whole assessment process and has specific headings so that all of the information that a school psychologist obtains from student testing is included in the template. The template contains the following parts:

- a. TYPE OF ASSESSMENT: INITIAL OR TRIENNIAL
- b. DEMOGRAPHIC TABLE containing student name, identification number, ethnic code, gender, age, birthdate, parents, address, phone, IEP meeting date, school, grade, teacher, primary language, special education program (if any), test date(s), and examiner.
- c. PROCEDURAL TABLE containing student history, prior assessments and interventions, interviews, and assessments.
- d. REASON FOR REFERRAL
- e. BACKGROUND INFORMATION containing developmental/health history, family history, educational history, attendance history, state and District assessments, previous school interventions, and previous assessments.
- f. CURRENT ASSESSMENT INFORMATION containing student, parent, and teacher interviews.
- g. OBSERVATIONS of the student’s academic and social functioning.
- h. INTELLECTUAL ASSESSMENTS determined such tests as the Kaufman Assessment Battery for Children, 2nd Edition (K-ABC-II),³ the Wechsler Intelligence Scale for

³ The KABCII scales measure the following broad abilities: (1) Short-Term Memory: taking in and holding information, and then using it within a few seconds; (2) Visual Processing: perceiving, storing, manipulating, and thinking with visual patterns; (3) Long-Term Storage and Retrieval: storing and efficiently retrieving newly learned or previously learned information; (4) Fluid Reasoning: solving novel problems by using reasoning abilities such as induction and deduction; (5) Crystallized Ability: demonstrating the breadth and depth of knowledge acquired from one’s culture.

Children (WISC-IV),⁴ and the Universal Nonverbal Intelligence Test (UNIT).⁵

- i. ACHIEVEMENT ASSESSMENTS as determined by such tests as the Woodcock Johnson Psycho-Educational Battery III (Achievement Tests),⁶ and the Gray Oral Reading Tests, 4th Edition (GORT-4).⁷
- j. PROCESSING ASSESSMENTS determined by such tests as the Comprehensive Test of Phonological Processing (CTOPP),⁸ Test of Auditory Perceptual Skills, 3rd Edition (TAPS-3),⁹ and the Beery Developmental Test of Visual-Motor Integration, 5th Edition (VMI).¹⁰

⁴ The WISC-IV is a standardized measure of intellectual ability, which has a mean of 100 and a standard deviation of 15. The results are expressed in five components: the Visual Comprehension Index (VCI); Perceptual Reasoning Index (PRI); Working Memory Index (WMI); Processing Speed Index (PSI); and the Full Scale Intellectual Quotient (FSIQ).

⁵ The UNIT is an individually administered intelligence test that is given with only pantomime instructions. All items are nonverbal and require no speech. It is made up of four subtests that provide four Quotient Scores and a FSIQ score.

⁶ The Woodcock Johnson Tests of Achievement (WJ III ACH) contains up to 22 tests measuring five curricular areas. The areas assessed include reading, mathematics, written language, oral language and academic knowledge. The test has both a Standard Battery that contains 10 cluster scores, including a Total Achievement score, and an Extended Battery that contains nine clusters.

⁷ The GORT-4 tests are measures of oral reading for school-age students. The GORT-4 provides scores for reading rate, accuracy, fluency, and comprehension as well as an overall Oral Reading Quotient.

⁸ The CTOPP is a standardized, norm-referenced test designed to measure three reading-related phonological skills. The CTOPP provides information regarding an individual's phonological processing skills. It is comprised of six core subtests and six supplemental subtests. Low scores are suggestive of deficits in phonological processing, a skill essential to reading.

⁹ The TAPS-3 is an individually administered assessment of auditory skills necessary for the development, use, and understanding of language commonly utilized in academic and everyday activities.

¹⁰ The Beery VMI provides an estimate of developmental level of visual-fine motor skills as required for paper-pencil reproduction of a series of increasingly complex designs.

- k. SOCIAL BEHAVIORAL ASSESSMENTS determined by such tests as the Behavior Assessment System for Children, 2nd Edition – Teacher, Parent (BASC-II: TRS/PRS),¹¹ and the Connors Rating Scales, 3rd Edition (Connors 3).¹²
- l. DISCUSSION which analyzes the student’s background information, observations, and test results.
- m. ELIGIBILITY based on one or more of the following handicapping conditions: Specific Learning Disability (SLD), Other Health Impairments (OHI), or Emotional Disturbance (ED).
- n. ELIGIBILITY CRITERIA where student must meet the eligibility criteria for special education services.¹³

¹¹ The BASC2, TRS, and PRS require the teacher and parent to rate the student on 139 behaviors that are grouped into domains. These rating scales yield composite scores for Externalizing Problems, Internalizing Problems, School Problems, and Adaptive Skills. The Externalizing Problems and Internalizing Problem composites comprise the Behavioral Symptoms Index, which reflects an overall level of problem behavior.

¹² The Connors Rating Scales are rating instruments that are completed by a child’s parent and teachers. The scales give scores relating to ADHD-like behavior, and other common co-morbid disorders – Oppositional Defiant Disorder (ODD) and Conduct Disorder (CD), based on the DSM-IV-TR criteria. The Connors 3 also includes Screener items for anxiety and depression.

¹³ California Code of Regulations, title 5, section 3030 (5 CCR § 3030), requires a discrepancy of 1.5 standard deviations between ability and achievement in order for a child to be eligible for special education programs as a learning disabled student, or SLD. The eligibility criteria for OHI determined where a student has limited strength, vitality or alertness, including a heightened alertness to environmental stimuli that result in limited alertness with respect to the educational environment, that is due to chronic or acute health problems, such as a heart condition, attention deficit disorder or attention deficit hyperactivity disorder, cancer, leukemia, etc. The eligibility criteria for ED under 5 CCR § 3030 is where a student exhibits one or more of the following: 1) An inability to learn which cannot be explained by intellectual, sensory, or health factors; 2) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; 3) Inappropriate types of behavior or feelings under normal circumstances exhibited in several situations; 4) A general pervasive mood of unhappiness or depression; and/or 5) A tendency to develop physical symptoms or fears associated with personal or school problems.

- o. RECOMMENDATIONS to the IEP in making the special education placement decision.

REPORTS REVIEWED OVER FOUR-YEAR PERIOD

12. Ms. Haley reviewed approximately 88 of respondent's Multidisciplinary Psychoeducational Reports (assessment reports) over a four-year period, from 2008 to 2012. On average, Ms. Haley spent four hours reviewing each of respondent's assessment reports. Some took longer. Reports with less significant errors took approximately three hours to review. Ms. Haley reviewed 24 reports for the 2008-2009 school year, 18 reports for the 2009-2010 school year, two reports for the 2010-2011 school year, and 44 reports for the 2011-2012 school year. Ms. Haley's report reviews were exhaustive and complete. The metrics, or standards of measurement, used to review respondent's assessment reports included review of the following: overall quality of respondent's assessments; qualification criteria; sufficiency of substantive information needed to consider the student eligible for special education; and accuracy and interpretation of test results. Ms. Haley developed a report review template wherein she noted report writing concerns and professional concerns. Ms. Haley changed her review template over the four-year period, ultimately developing a summary table that identified minimal, medium, and extreme errors in need of correction. Ms. Haley's reviews and comments are based on best practices in report writing, which Ms. Haley asserted was part of the psychology curriculum at Fresno State.

General Concerns of Lead Psychologist

13. Ms. Haley cited numerous concerns when reviewing respondent's assessment reports. Throughout the assessment reports, she found misspellings and information not required that needed to be deleted. Overall, such errors would not have been a major concern, but in looking at respondent's reports as a whole, and the errors consistent throughout, such errors created a mistrust of the accurateness of the information contained in the reports.

14. In the Demographic sections, Ms. Haley sometimes found the wrong chronological age of students, which called into question whether the test protocols were scored with the correct age of the student.

15. In the Procedural Tables, Ms. Haley found three types of errors which she "saw all the time." The procedural tables list all of the assessment strategies and tests that were administered. One type of error was that respondent would give particular tests, but the tests would not be listed in the procedural table. The second type of error would be that there were tests listed in the procedural table that were not given. The third type of error would be that the name of the test would be wrong, for example, the WJIII was administered, and the wrong test would be listed in the table. Another example is where respondent listed the wrong version of the test, such as the "WISC 3" instead of the "WISC 4," which has been used for the past ten years. These errors caused Ms. Haley concern because they created "inconsistency of knowing what actually was administered ... [which] misguides the reader."

16. In the Referral sections, Ms. Haley sometimes found that respondent did not address students' three-year progress in a triennial report. This is important to determine whether the interventions for the past three years have been successful. Another concern was that the areas to be evaluated were not listed in the reason for referral. For example, ED was not identified as a reason for referral, even though the testing measures would be assessing ED. Another example is where the reason for referral was stated twice, one at the top of the report, and the other at the bottom. The one at the top stated specific areas of concern, and the one at the bottom stated other areas of concern.

17. In the Background Information sections, Ms. Haley stressed that psychologists in California "assess the entire child," which requires that information be gathered, including birth history, family composition, and medical information. It is the school psychologist's responsibility to look at the commonalities of the strengths and weaknesses, and to "make sure that everything in the report points to the same direction." Ms. Haley explained that when background information, such as birth information (e.g. very low birth weight), is omitted from an initial evaluation report, "that's very critical. Or if there is a family history of attentional difficulties, and the child is being re-evaluated for attentional difficulties, there is a gap in the report." With regard to health information, Ms. Haley did not expect respondent to do the school nurse's job, which was to obtain health information for psychologists to use in their assessment reports, inter alia. However, she stated, "It is not uncommon to ask about the health related information with the parent, especially if the psychologist is needing to follow the reason for referral ... So a vigilant psychologist is going to want to make sure that ... family background information, and the behavioral developmental information is present in the report. That is not necessarily the nurse's responsibility. The nurse's is more medically related."

18. In the Observation sections, Ms. Haley found in one report that respondent had indicated that the observation was for an initial evaluation, but the observation stated that the child was observed in a special day class, which raised confusion about whether this was an initial or triennial evaluation. In a couple of respondent's reports, she stated that in the testing environment, the student was copying geometric forms and was erasing. According to Ms. Haley this raised concerns about the validity of the test results, in that erasing is not allowed on this test.

19. In the Previous Assessments sections, Ms. Haley found that at times, the date of the previous assessment would not be indicated. Of more concern, however, was the lack of a narrative, just a list of scores. Ms. Haley stated that this is a concern because the assessment report is written for the parent, the professional, and the teacher. "And if information in the report is not discussed and explained, then it does not support the student and it does not provide the parent the information so they can be an advocate for their child."

20. In the Current Assessments/Intellectual Testing category, Ms. Haley noticed large discrepancies between the derived scores within the KABC-II, creating an inconsistency which would then invalidate the KABC-II, and would possibly impact the

eligibility of the student. Another example was that the scores in the table of the report did not match what was written in the narrative. In another instance, the information described in the narrative did not explain the data in the table. For example, the data would show that an area was “average,” and the narrative would state this particular area as “borderline.” The concerns were that if the derived scores were incorrect, they would invalidate the testing information. In addition, if there is inconsistency between the data and the narrative, and this is not explained in a way that the reader can understand, then there is great doubt over the accuracy of the eligibility criteria or how the information supported whether the student was or was not eligible for special education services.

21. In the Current Assessments/Academic Testing category, Ms. Haley found many instances where data in the table did not match the narrative, and the narrative described information in the data table that was not correct. Another area of great concern was that in the District’s template, all subtests were required to be listed in the data table. Respondent did not consistently do this in her reports. The concern was that the parent would not be provided with “all of the information that a parent has a right to.”

22. In the Information Processing section, Ms. Haley noted that this section is one of the key areas assessed for a specific learning disability. She stated, “It’s very important that if a child is being evaluated for a specific learning disability to make sure that the areas of concern are evaluated.” For example, “If there’s a suspicion of a reading disability, then auditory processing in some way needs to be evaluated.” Therefore, Ms. Haley stated that it is a concern where a student identified as having a visual processing disorder does not have visual processing information provided in the Information Processing section in the report. This information was not provided in one or more of respondent’s reports.

23. In the Social Emotional sections, Ms. Haley found areas of concern such as: the information in the data table was not congruent with the information in the narrative; and information in the social emotional section indicated, for example, elevated levels of attentional problems and hyperactivity, yet, in the synthesis of the report, those areas were not considered and the student was ultimately qualified for special education under SLD without those obvious elevated areas of concern being addressed.

24. In the Discussion sections, Ms. Haley emphasized that the Discussion portion of the report “is truly one of the most important portions of a psychoeducational report, and the reason for that is that all this information and data is provided in the body of the report. The Discussion piece is where it’s all synthesized. This is where the school psychologist makes sense of all the background information, all the testing information.” Ms. Haley found that the “synthesis” was truly a key area of difficulty for respondent. In one instance, the reason for referral in a report was OHI, and the information in the report indicated low cognition and learning difficulties, which respondent did not address. Ms. Haley also stated:

There are many other examples where ... it was not uncommon where there would be areas of academic concern that were not

addressed in the summary or that a child was being evaluated for an emotional disturbance, and learning difficulties were not addressed ... [t]he summary section was not bringing together all the information in the report and addressing those areas that were identified in the report itself.

25. In the Eligibility Criteria sections, Ms. Haley noted that there are 13 different areas of eligibility criteria for special education, and that the reason for referral states which areas the psychologist is going to be considering for eligibility. Applying the eligibility criteria, the psychologist needs to rule out all those areas of suspected disability stated in the reason for referral. In order to qualify a student under SLD, a significant discrepancy between cognitive and academic scaled scores must exist. Ms. Haley indicated that “a significant discrepancy is a 1.5 standard deviation plus or minus four standard error of measure. As far as pointwise, that’s 18 to 26 points.” Ms. Haley cited an area of concern where one student’s cognitive ability nonverbal score ranged between 58 and 69, and the academic score ranged between 72 and 74, and the student was qualified as SLD. Ms. Haley stated that it was not uncommon to find that respondent qualified a student as SLD without a significant discrepancy in scaled scores. She also found that respondent lacked consistency in making sure that all specific academic areas of concern were truly evaluated and addressed. This was a great concern in regards to the denial of services for the student in those academic areas where services are needed. Ms. Haley also had concerns about respondent’s assessment reports as they related to OHI. She noted that OHI is generally considered where there are concerns with attentional difficulties. Ms. Haley found that there were times that the BASC-II scores clearly identified attentional concerns such as clinically significant hyperactivity inattention, yet respondent did not consider OHI for attentional difficulties. In addition, Ms. Haley noted an instance involving a student with a brain tumor, which respondent concluded was a Traumatic Brain Injury (TBI). This caused Ms. Haley concern because a student with a brain tumor qualifies under Other Health Impaired (OHI) criteria, and thus the student was not being qualified in the correct area. The result is that the goals and objectives were not accurate and correct for the student, and the services that the student is receiving may not be specific for that student’s disability.

26. In the Recommendation sections, Ms. Haley noted that it was vital to include areas of student weakness. She stated that it is a District’s responsibility to provide services for the areas of weakness as determined by the assessment report. After the weaknesses are identified, the psychologist then lists recommendations for services for that student. Ms. Haley found that respondent listed recommendations that were not areas of concern for a student. In doing so, respondent put the District at risk by recommending services and interventions that the District should not provide.

27. Ms. Haley had other general over-arching concerns with respondent’s assessment reports. Ms. Haley noted an extremely high number of spelling and grammatical errors that greatly impacted the readability of the reports. She found incomplete sentences, and different names of students in the reports. There were times where Ms. Haley found two different student’s names whose test scores were cut and pasted into the report, which

created a lot of confusion as to whether the scores and other information pertained to the student referenced in the report, or to another student(s) whose information was cut and pasted into the report. Ms. Haley also found many instances in respondent's reports where she referred to students using incorrect pronouns. Ms. Haley acknowledged that it is not uncommon for school psychologists to cut and paste material from other reports into a current report. However, with cutting and pasting, a school psychologist must "individualize" the information pasted into the report. Thus, careful editing and review must be done by the school psychologist when cutting and pasting.

2008-2009 School Year

28. Ms. Haley reviewed 24 of respondent's assessment reports for the 2008-2009 school year. Twelve of those reports were admitted into evidence. Based on Ms. Haley's review, the following areas of key concern were established:

- Inconsistencies regarding tests identified to be assessed in Procedures Table, but not actually administered (e.g., CTOPP listed but not administered.)
- Reports very poorly written (numerous spelling and grammatical errors indicative of a lack of editing by respondent, cut and paste errors including information from another student's report, "he's" instead of "she's" and vice versa, wrong student's name in report, incomplete sentences.)
- Incomplete Information (incomplete or no family background, medical or educational history, no identification or explanation of prior assessments, standardized scores missing, lack of explanation regarding medical history such as brain tumor, head injury, delayed development, lack of descriptive paragraphs on strengths and weaknesses, lack of summary, *Larry P. v. Wilson* disclaimer not included, no explanation of subtest scores.)
- Incorrect Information (attendance data incorrect, incorrect test narratives.)
- Previous Assessments (failure to provide explanation stating summary or conclusion of previous assessment report.)
- Lack of "synthesis" of information (no interpretive explanation of assessment results, attentional behaviors not addressed in testing or summary.)
- Eligibility Determinations not explained or ruled out (SLD qualification with no explanation, failure to discuss significant discrepancy in scores, not ruling out prior eligibility when student previously qualified and is no longer qualified, test results do not match eligibility criteria and no explanation included, failure to address other qualification criteria despite test results pointing to those criteria.)

- Inconsistencies in Summary and Conclusions (overall narrative did not reflect the testing conclusions, recommendations at end of report not addressed or assessed within report.)

Summary of Report Reviews in 2008-2009

29. The reports reviewed by Ms. Haley had consistent errors as set forth above. Respondent put the District at risk of having to provide a student with special education services that were not warranted, or depriving a student of Free and Appropriate Public Education (FAPE) by failing to qualify a student for special education services under the correct eligibility criteria.

2009-2010 School Year

30. Ms. Haley reviewed 18 of respondent's assessment reports for the 2009-2010 school year. For the 2009-2010 school year, Ms. Haley created a detailed summary table identifying the following main areas of review: (1) Writing; (2) Technical; (3) Analysis of Test Battery Results; (4) Overall Technical Writing; and (5) Suggested corrections.

31. In the area of Writing, Ms. Haley listed the following sub-areas which she reviewed: Misspellings; Incomplete Sentences; Use of Unexplained Acronyms; Paragraph Organization; Organization of Report; and Writing Clarity.

32. Under the Technical area, Ms. Haley listed the following sub-areas which she reviewed: FUSD Template; Demographics; Reason for Referral; Developmental/Family/Health History; Educational History; Attendance; Discipline History; GLAS/CST Test Results; Previous School Interventions; Previous Assessments; Interviews; and Observations.

33. Under Analysis of Test Battery Results, Ms. Haley listed all of the assessment tests which were administered for a specific student, e.g., WJIII; GORT-4; CTOPP; VMI; BASC-II, etc.

34. There were approximately 33 individual areas that Ms. Haley identified in her summary table. Ms. Haley reviewed these areas, and noted the items which were "well done/acceptable," and identified minimal, medium, and extreme errors in need of correction. Ms. Haley's purpose for creating the summary table was for respondent to see the areas where she was doing well, and to work on those areas needing significant improvement. The summary table was intended as a tool for respondent to self-monitor her progress and improvement. The other purpose for creating the summary table was to show different levels of errors. The minimal and medium errors were a cause for concern and needed correction, but did not necessarily put the District at risk of liability. The extreme errors were generally those that were going to put the District at risk of liability for failing to provide special education services to the student, and for denying FAPE to the student. Based on Ms.

Haley's review, the following general areas of key concern with respondent's assessment reports for the 2009-2010 school year were established:

- Minimal Errors: Correct "his" to "her" or vice versa; correct sentence structure; wrong version of test identified; failure to provide dates of previous assessments; and failure to state how a student qualifies as SLD.
- Medium Errors: Sentence tenses do not match; words within sentence are missing; scores documented incorrectly; cluster scores reported when subtests not administered; missing information; inaccurate information; wrong tests identified as being administered; failure to state errors of suspected disability; wrong headings; and table corrections.
- Extreme Errors: Numerous errors where verb tense within sentences do not match; cutting and pasting from one student's report to another without editing; incorrect spelling of student's name; failing to provide narrative of test results; incorrect reporting of test results; failing to provide narrative of previous assessments; lack of narrative on students' qualifying criteria; failing to provide strengths and weaknesses; missing information making the report incomplete; inconsistencies in procedural table – identifying tests not actually administered; failing to state reason for SLD or OHI eligibility; incomplete developmental/family/health section; cluster scores used where certain subtests were not administered; and failure to consider additional areas of qualifying criteria.

At hearing, Ms. Haley provided her specific concerns with reports for Students 23, 25, 27, 29, 30, and 37¹⁴, which were established:

35. Student 23. Ms. Haley had concerns with the derived scores. They were all similar, but the final score for the "unit" was "not consistent" with the derived scores. In addition, the student qualified as mentally retarded. This was a new eligibility criteria, and there was little explanation of how or why the mental retardation qualifying criteria was chosen. And, as in most of respondent's reports, spelling was an issue, as was mixing "his" and "hers." Lastly, Ms. Haley felt that respondent needed to explain very well in the narrative why she was changing direction in this student's qualifying criteria, given that the child was complex, with a lot of issues in this student's life of which Ms. Haley was personally aware.

36. Student 25. Ms. Haley indicated that the assessment report for Student 25 was incomplete. The narrative did not explain what was contained in the data table, which created confusion as to whether the test data was correct, or whether the narrative was

¹⁴ In order to maintain student confidentiality, the students referenced herein are identified by numbers or letters.

correct. Ms. Haley also noted that respondent failed to complete the “strengths and weaknesses” table, which is important during the IEP, when services, goals, and objectives are written.

37. Student 27. Ms. Haley indicated that the incomplete sentences in Student 27’s assessment report were so significant that they impacted the “understanding” of the report. Moreover, respondent wrote in her report that the foster parent reported that Student 27 has an older brother with similar fighting and bullying behaviors, and that the IEP team discussed that it was not a good idea for Student 27 to spend a lot of time with his brother due to his negative influence. Ms. Haley stated that “this is not a school psychologist’s call ... it would be the social worker’s call.” Ms. Haley’s comment to respondent was that “this is NOT an IEP decision – please strike this from the report.” Ms. Haley clarified her concern, in that if respondent specifically addressed Student 27’s skills, and those skills pertained to getting along with the brother, then respondent’s comment would be appropriate.

38. Student 29. Ms. Haley’s primary concern with the assessment report for Student 29 was the eligibility criteria. Ms. Haley found that respondent did not provide a clear and succinct paragraph explaining how Student 29 qualified for special education services. Furthermore, Student 29 could have qualified for “reading decoding” based on her GORT-4 scores, and for “reading comprehension” based on her WJIII scores, however, respondent did not address these eligibility criteria in her report.

39. Student 30. Ms. Haley noted that areas of weakness were not included in the table. Moreover, with regard to the KABCII assessment, respondent administered delayed recall subtests that she did not include in the data table, but referred to them in the narrative section. This lack of inclusion in the tables, while referring to them in the narrative, deemed respondent’s reports unreliable. Ms. Haley stated that it was very important “to make sure that there was a second balance system to be able to see that the information in the narrative was also in the data table.” She further emphasized that in all reports, the subtests that are listed in the data table must be discussed in the narrative. This is a requirement made of all school psychologists.

40. Student 37. Ms. Haley noted discrepancies in the KABC-II subtests, which may have resulted in a derived score error. In addition, she had a concern regarding respondent’s synthesis of information. The majority of the scores indicated very low cognition, however, respondent did not address mental retardation. Ms. Haley indicated that mental retardation needed to be “ruled out.”

Summary of Report Reviews in 2009-2010

41. Respondent continued to commit the same types of errors as she had in the previous school year. Ms. Haley documented over 36 minimal errors, 21 medium errors, and over 64 extreme errors in six report reviews that were submitted in evidence. Approximately 93 items within the six reports were either well done or acceptable. However, despite improvements in spelling errors, organization, and sentence structure, Ms. Haley’s key

concerns remained, which diminished the quality and accuracy of respondent's reports for the 2009-2010 school year.

2010-2011 School Year

42. Ms. Haley reviewed and documented two of respondent's assessment reports for the 2010-2011 school year. Ms. Pelligrino changed her directive to Ms. Haley, where respondent was to submit to Ms. Haley a list of the students that she assessed each quarter. Ms. Haley would then randomly choose five students from that list. In the first quarter, respondent submitted a list of students, and Ms. Haley chose two out of five student's names whose assessment reports she reviewed. Ms. Haley explained:

[T]here [was] a level where it was becoming difficult to have reciprocity in getting these lists of students from Linda, and I was not receiving them. I also did not take responsibility for emailing her consistently and asking her over and over and over again to please send me the lists...So as a result of that, only the first quarter was submitted and I read two of the five in that order.

43. Ms. Haley's key concerns in 2010-2011 were the same as her previous concerns. Respondent continually failed to list subtest scores in the data table. Another continuing concern was that respondent's summary did not match the eligibility criteria, which called into question which section was correct. In the two reports that she reviewed, Ms. Haley documented a total of approximately six extreme errors, seven medium errors, and 12 minimal errors needing correction. She noted approximately 40 areas that were well done or acceptable.

44. Student 48. Ms. Haley's concerns with Student 48's assessment report were that the subtests scores for the KABCII were not itemized in the data table. Ms. Haley explained that the KABCII is unique, in that it includes five subtests, "so it's really important for anyone who's looking at the report to be able to look at these five subtests and determine if there's any type of variability among those five, just because the index score itself is basically an average. We want to see if there is any specific strength or weaknesses within that particular index." Ms. Haley also added that the District is particular about having psychologists be very clear that "we do not diagnose ADHD." Ms. Haley noted that school psychologists identify attentional problems, but do not diagnose ADHD, which is a clinical diagnosis with the Diagnostic Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV). Respondent indicated in the Recommendation section of the report that an ADHD addendum was to be conducted based on new information from Student 48's father regarding a recent diagnosis of ADHD. Ms. Haley indicated that this was a concern because respondent's recommendation is identifying that the District will be evaluating for ADHD, and school psychologists are not credentialed to evaluate for medical diagnoses.

45. Student 49. Ms. Haley's key concern in Student 49's assessment report was that the information in the summary narrative did not match the eligibility criteria, raising the question as to which was correct. For example, in the narrative, respondent indicated that Student 49 qualified for special education services in reading comprehension and reading decoding. However, the eligibility criteria reflected only one of the two areas. Moreover, Ms. Haley found that respondent did not list all of the subtest scores for the WJIII achievement tests. This was a concern because "they comprised a cluster," and it raised a question about the reliability of the scores because it could not be confirmed whether the subtests were administered in order to get the composite score.

Summary of Report Reviews in 2010-2011

46. Despite marked improvement in writing and organization, respondent continued to commit extreme errors by not including subtest scores in the data table. Ms. Haley stated that "this was an error that was fairly consistent throughout quite a number of [respondent's] reports where ... the subtest scores were not listed individually, which would then comprise the nonverbal index for the KABC." Another continuing extreme error was that the summary narrative did not match the eligibility criteria, raising a question about the reliability of the test scores, and whether all subtests were administered.

2011-2012 School Year

47. Ms. Pelligrino changed her directive to Ms. Haley for the 2011-2012 school year, whereby Ms. Haley was to read and review all of respondent's reports. Ms. Haley received 44 of respondent's assessment reports for review.¹⁵ The concerns in Ms. Haley's report reviews were ongoing concerns that she had seen in the previous three years. The continuing concerns included eligibility errors, significant lack of synthesis errors, data tables not reflecting the narrative information, significant cutting and pasting where an assessed student's name was in the narrative section, but the actual scores were from another student. There were continued procedural table errors, and continued errors on assessment plans where an area was evaluated, but the assessment plan was not assigned for that specific area.

48. Student 50. Ms. Haley explained that this student fell out of a window at age three and his traumatic brain injury (TBI) was not an area being addressed. However, Ms. Haley felt that Student 50's TBI should have been discussed in the report, rather than just stating that the child fell out of a window. Ms. Haley wanted to know if there were any extenuating concerns regarding the head injury, whether the parents took him to the doctor, or whether there was any other kind of follow-up. This additional information is "something that school psychologists always need to be vigilant to, to make sure all information is pointing in the same direction." Ms. Haley also noted that respondent administered the CTOPP, BASC, and Conners tests, but these were not included in the evaluation table. This

¹⁵ Ms. Haley's review reports (summary tables) for Students 50, 52, 55, 56, 62, 65, 66, 67, 68, 72, 74, 80, and 87 were admitted into evidence.

was an ongoing problem throughout the history of Ms. Haley's reviews. In addition, in the Reason for Referral Section, respondent did not indicate why Student 50 qualified for special education services under OHI. Ms. Haley noted as an extreme error respondent's failure to add areas that were being evaluated under the referral section.

49. Student 52. Ms. Haley noted inconsistencies, incongruencies, wrong and incomplete information in the report. When she finished reading the report, she was confused, and not able to make sense of, or follow the report "in the direction that Linda was going." As an example of inconsistency in the information, in the Educational section, respondent stated that recommendations were made during kindergarten, and the date of the recommendation was the date of the student's birth. Another example of inconsistency was that respondent indicated this assessment was for an English Language Learner. However, respondent indicated that Student 52's primary language was "English Only." Ms. Haley noted that these errors were just part of the over-arching examples of inconsistent information that made the report very confusing to follow.

50. Student 55. Ms. Haley's concerns were that this student was evaluated for a triennial evaluation. He was previously qualified for SLD with an information processing disorder. The eligibility criteria of respondent's report indicated that she was going to dismiss Student 55 from special education; however, due to her failure to synthesize information, respondent failed to address information in the body of her report stating that the parent and teacher had concerns regarding attention, and that there had been a previous medical diagnosis for ADHD in 2005. Thus, Student 55's attentional difficulties were not completely evaluated and investigated, and the student was going to be dismissed from special education. In addition, there were ongoing academic difficulties that caused concern for Ms. Haley. The possible consequences of dismissing a child from special education that might otherwise still qualify for services are that the school district can be held liable, and the child would be denied FAPE.

51. Student 56. Ms. Haley noted approximately eight extreme errors in the report with regard to accuracy of the assessment plan in not identifying the actual assessments administered to the student, putting the wrong student identification number in the Demographics section, missing Social Emotional section, inconsistencies between the narrative and table for the WJIII and WRAML2 tests, lack of scores in the table for the WRAML2 subtests, re-writing the WRAML2 paragraph addressing the Picture Memory subtest because it is written up twice in two different manners (cutting and pasting error), and failing to report on the Design Memory subtest.

52. Student 62. Ms. Haley noted that in the Observation section, respondent stated that the student was frequently erasing her drawings. The VMI test is standardized so as not to allow erasing. The kit for the test is supplied with a pencil with no eraser. Thus, the standardized score was invalid.

53. Student 65. Ms. Haley noted as extreme error that the student identification number under the Demographics section was incorrect. However, Ms. Haley's biggest

concern was that Student 65 had a brain tumor, which did not qualify the student for special education (SPED) services under TBI criteria under the Education Code. Respondent then contacted New York, and obtained the eligibility guidelines under the New York Education Code, which does consider a brain tumor as a TBI. Respondent inappropriately considered guidelines that were not applicable in California. Therefore, the issue became whether the student qualified as TBI, or OHI. Ms. Haley noted as an extreme error in her file review that “TBI can be a suspected area of disability – however, OHI must be included as this is the eligibility criteria that the tumor is under.” Ms. Haley also had concerns regarding respondent’s synthesis of information in the report. This student had visual issues as identified by the nurse. The visual issues raised the question of whether the student had visual processing difficulties because of the tumor, or because of a specific learning disability, which would impact the determination of appropriate interventions. Ms. Haley noted that a psychologist must “take a look at the whole child and all the information received about the child.” She further commented that this report had been written primarily as an SLD report, however, the assessment needed to thoroughly consider the effects and impact of the tumor and its relationship to the OHI and TBI eligibility.

54. Student 66. Ms. Haley noted that there may be additional areas of qualifying criteria that needed to be determined for Student 66, such as reading difficulties which reflected a low standard score. In addition, she found procedural table errors again, where the CTOPP needed to be added, and the TAPS3 needed to be removed because it was not administered. She also noted that the discussion of eligibility criteria was not clear. Respondent qualified the student based upon her WJIII writing sample subtest score of 60, but did not explain how the student qualified based upon a 16-point discrepancy between intellectual ability and achievement in written expression

55. Student 67. Ms. Haley noted in her file review that the report was well done. Ms. Haley commended that respondent thoroughly assessed and documented Student 67’s strengths and deficits. This report needed a few corrections, such as making percentile corrections in the CTOPP table, and correcting the attendance rate.

56. Student 68. Ms. Haley noted a continuing ongoing error where respondent did not mark on the assessment plan the areas evaluated.

57. Student 72. This student’s report had two wrong names in it. Ms. Haley stated that this is a great concern for the parent, who is reading the report and sees another student’s name. For that reason, the report was no longer valid. Ms. Haley’s other concern was whether the information belonged to the students whose names were cut and pasted into to the report, or to Student 72. She also noted that it was a concern because of the liability to the District. Ms. Haley found that this report also contained the repeated error of the narrative being different than the results in the test table, which causes confusion. She also stated that if there is a “No” or “Yes” under a particular eligibility criteria, there should be an explanation as to why. Here, respondent indicated that this student was eligible under SLD, but did not explain why.

58. Student 74. Ms. Haley found the wrong name in this student's report. She also noted inconsistent information between the attendance table, where the student was shown to have good attendance, and respondent's statement that this student missed a significant amount of school each year. There were also qualifying criteria concerns. This was a triennial report, and Ms. Haley stated that "it is very important that any time a child is being assessed for a triennial evaluation, all previous eligibility criteria must be reviewed and either ruled in or ruled out." This student previously qualified as intellectually disabled (ID), but respondent did not re-evaluate this student for ID. In this assessment, respondent qualified the student under SLD. Respondent included ID as an area to evaluate, but did not evaluate it. Respondent did not list SLD as an area to evaluate, but evaluated this area anyway.

59. Student 80. Ms. Haley noted that since this was an initial assessment, respondent needed to provide thorough background information, including family history, which respondent omitted from the report. Respondent stated that Student 80's reading comprehension was below average under the GORT-4, yet she qualified the student using the WJ III scores, which were not clearly discussed or emphasized. Ms. Haley noted that this level of skill discrepancy must be comprehensively discussed and reasoning justified within the Summary and Eligibility sections.

60. Student 87. Ms. Haley noted reporting inconsistencies throughout the report. Family and developmental history were omitted, although this was an initial report. Health history was not included although this information was available in the District's database (SEIS) prior to the IEP date. Respondent noted that this student was in the third grade and had 101 absences. Ms. Haley stated that the absences were very significant, and "as we all know, that is an exclusionary item in the Ed Code for SLD if it is justified." Ms. Haley noted that the student's absences were not comprehensively discussed or justified within the report. Ms. Haley also found that respondent emphasized Listening Comprehension throughout the report as being the student's greatest area of need, yet the student was qualified under Basic Reading. As a result, the District could be subject to liability for not providing services in the area of greatest assessed need. Ms. Haley further noted that the student qualified under his GORT-4 scores, not WJ III. This was not discussed either in the Summary or Eligibility Criteria. In her file review chart, Ms. Haley marked that she had previously addressed the above-mentioned issues in other file reviews.

61. Student 63.¹⁶ Ms. Haley stated that, in a student assessment, is it not common for a suggestion to be included in the Recommendation Section that a student be referred for additional assessment or services. Ms. Haley recalled that respondent had recommended Student 63 for mental health therapy. Ms. Haley was concerned because the District could be held liable to provide that service, just on the basis of the referral or recommendation.

¹⁶ Ms. Haley recalled from her independent recollection the report reviews she completed for Students 63, 71, 76, and 85.

62. Student 71. Ms. Haley confirmed that she noted numerous careless errors impacting the readability and meaning of the test results. She further found a contradictory statement about meaningful associated learning, and that the incorrect test report narrative was then carried throughout the entire report, requiring corrections in all areas of the report. She further found that the Social Emotional assessment was not completed, therefore “no baseline cognitive assessment data can be justified.” Due to the errors in the report, Ms. Haley confirmed that the report casted doubt as to the validity of the reported test results.

63. Student 76. Ms. Haley confirmed that there were inconsistencies in reporting, and contradictory information in the report. Under the Reason for Referral section, respondent duplicated information regarding what areas of disability to assess. The second time, respondent stated SLD as the reason for referral, however, SLD was not assessed. Under the Health section, the area assessed was “Autistic Like Behaviors,” which was medically diagnosed. However, this was not discussed in the Health section.

64. Student 85. Ms. Haley confirmed that medication and history of ADHD was not discussed within the Health section, however in the latter parts of the report, the use of medication was used as a reason to disqualify the student for OHI due to attentional difficulties. Ms. Haley noted that this must be discussed. Furthermore, Ms. Haley confirmed that she noted that the qualifying criteria rationale in the report did not match the narrative eligibility statements in the Summary.

Summary of Report Reviews in 2011-2012

65. Ms. Haley stated that her concerns with all 44 reports reviewed for 2011-2012 were a repetition of the same concerns from previous years.

Summary of Lead Psychologist's Report Reviews

66. Ms. Haley's testimony was credible and persuasive. Ms. Haley's concerns with respondent's assessment reports in addition to the reports already identified in Findings 13 to 65 were consistent with the concerns already cited herein. The errors in respondent's assessment reports from 2008 to 2012 occurred repeatedly. Ms. Haley expended over 450 hours reviewing respondent's reports. Ms. Haley also met with respondent approximately four to five times when she began reviewing respondent's reports. Ms. Haley did not provide 450 hours of support to any other school psychologist in the District. There are approximately 50 school psychologists working for the District. Ms. Haley provided assistance and support to nine other school psychologists in the District during the period that she reviewed respondent's reports, and expended between four to 20 hours in providing support to those nine psychologists that self-referred to Ms. Haley for assistance. Ms. Haley analyzed the nine other school psychologists' reports with the same depth as respondent's reports. She did not create a document which noted each error in the report, as she did with respondent. She reviewed reports of the nine psychologists, then made an appointment with them to review their reports and provide suggestions, answer questions, identify areas of weakness, strengths, and concerns.

67. Ms. Haley's intent in providing support to respondent was to assist respondent with her report writing, assessment strategies for test-giving skills, and synthesis of information skills. Ms. Haley's intent was also to inform respondent of her areas of strength, i.e., what she was doing correctly; the areas that needed more work; and the areas of correction. The goal was for respondent to write consistently and concisely, such that respondent's reports complied with legal requirements in accordance with District standards. Ms. Haley strongly asserted that she did not hold respondent to a higher standard than any other psychologist in the District. In her professional judgment, Ms. Haley believed that the accuracy of respondent's assessment reports could not be trusted, respondent exposed the District to potential liability, and respondent cannot perform her job as a school psychologist without continued ongoing support.

Respondent's Testimony Regarding Her Report Writing

68. During respondent's 18 years of employment with the District, she has had six or seven supervisors. She recalled being evaluated every two years, and only when it was required. Respondent asserted that she has never had a negative evaluation.

69. Around 2005-2006, respondent began to feel lethargic and exhausted. She could not sleep. She went to many health professionals to find out what was wrong, and in 2007, respondent was prescribed thyroid medication. The medication helped, but did not resolve respondent's symptoms. It was later determined that respondent was not sleeping due to her adrenal hormones being out of balance. She was diagnosed with "adrenal insufficiency." Respondent indicated that her doctor performed a sleep study, and prescribed what respondent called the "date rape drug" so that she could sleep and rest her body. She took the drug for approximately four to six months, but the drug did not work for her.

In his letter dated February 9, 2009, William R. Work, M.D., respondent's doctor, stated that respondent suffered from adrenal insufficiency. Symptoms included difficulty tolerating stress, extreme and pervasive fatigue, sugar cravings, and a "crashing" syndrome that occurred when respondent has "put a sudden extra stress on herself (or someone has added it to her load)." Dr. Work indicated that respondent was put on adrenal hormone replacement therapy, and he expected respondent to begin to have significant improvements in her functioning within four to six months of treatment. During that time, respondent also suffered from sinus infections. She had two surgeries on her sinuses, with the second surgery occurring in September 2010. Respondent missed a significant amount of work in the 2008-2009 school year due to her sinus infections. She did not recall how much work or time that she missed.

70. Respondent asserted that she had a history of good reports prior to the 2008-2009 school year. She further asserted that her 2008-2009 report issues were directly related to her health, and that she told Ms. Pelligrino about the sleep study and provided a doctor's note. Respondent stated that Ms. Pelligrino "just kind of dismissed it" and said "you can turn it in to personnel." Respondent felt that Ms. Pelligrino treated respondent as though she was

“making an excuse.” Despite respondent’s assertions that her health affected her work, respondent’s health issues in 2009 and 2010 did not explain or excuse her poor performance in subsequent years.

71. As to Student 67 (Finding 55), respondent stated that it was questionable whether attendance was an issue for SLD. Respondent called Ms. Haley for direction, because respondent did not qualify a previous student, Student 39, for special education services based on the same issue, and Ms. Haley reversed respondent’s assessment and qualified Student 39. At that point, respondent asserted that she did not have knowledge of what the District considered an attendance rate so severe that the student did not qualify for services.

72. Addressing Student 87’s report (Finding 60), respondent asserted that Ms. Haley was directing her to use the student’s poor attendance history as a basis for not qualifying the student for special education services. Respondent stated:

She’s now arguing the point that I should be looking at using attendance for not qualifying. So I’m trying to be conservative and not look at it, which is very different. It’s done very differently by every psychologist in the district. There has been no training on what the standard is ... So I feel like I was in a no win because I’m trying to use the things she has previously reported back to me, be conservative. I’m trying to be conservative in that regard and now it’s being switched to the other end of it ...”

Respondent’s testimony was not persuasive. Respondent mistakenly focused on why she was required to disqualify the student based on absences, which is not what Ms. Haley suggested. Ms. Haley simply made the suggestion that more discussion was required regarding the student’s absences, how the student qualified under Basic Reading, and why Listening Comprehension was not a basis for qualification even though it was the student’s greatest area of need. Moreover, respondent explained that the health information was not in her report because the nurse failed to download her report into the database prior to respondent turning in her report to Ms. Haley for review. However, Ms. Haley indicated that it is not uncommon in an initial evaluation for a school psychologist to ask about health related information with the parent. According to Ms. Haley,

A vigilant psychologist is going to want to make sure that family information, family background information, and the behavioral developmental information is present in the report. That is not necessarily the nurse’s responsibility. The nurse’s is more medically related.”

73. Addressing Student 72’s report (Finding 57), respondent asserted that she made corrections to put the correct student’s name in the report. She stated that there must

be an error in her template when she uses the “replace” function. In addition, respondent qualified the student under Intellectual Disability. Respondent stated,

[Ms. Haley] came back and said that I should have considered SLD as well, which we don’t do. It’s either one or the other.”

However, Ms. Haley’s comment clearly stated that respondent needed to provide an explanation for marking “NO” under SLD, since the student’s profile very clearly fit the definition of SLD. Respondent’s testimony was not persuasive.

74. Addressing Student 86’s report (which was submitted by respondent and received in evidence), respondent qualified the student under SLD and Intellectual Deficiency (ID). Respondent stated that she knew this was not correct:

I would have done purely SLD, but in light of her ... I knew it wasn’t correct, but in light of her saying to consider both previously, I said, you know, I give up at this point. Okay, I’ll qualify both. It’s not correct. I know it’s not correct, but that’s the direction I’m being given.

Respondent asserted that Ms. Haley criticized her for qualifying the student for both SLD and ID, as shown by Ms. Haley highlighting “mental retardation” under the SLD section of the report. However, Ms. Haley clearly stated on page 23 of the report that a “student cannot qualify under ID and SLD – ID is an exclusion under the SLD criteria.” Respondent believed that Ms. Haley induced her to putting something in her report that she knew was not true. Respondent’s testimony was not persuasive in this regard.

75. Addressing Student 80’s report (Finding 59), Ms. Haley noted that respondent needed to provide family history and background, and potential prenatal exposure. Respondent’s response to Ms. Haley’s comment was:

I was not able to by the five-day deadline gather information from the nurse. I did not know of anyone on campus ... the previous person who was bilingual and did the assessments was not working there any longer, so I had no one to call and gather this information. The nurse had not entered her information yet ... I’m like where are you getting prenatal exposure? I talked with this parent at the IEP and I have no idea what that refers to ... [Additionally] her concern in the file review was that I did not clearly differentiate which reading comprehension score I was using. The decision was correct and any psychologist would know what to look for. And this added clarification that she’s asking for is not commonly found in a majority of Fresno Unified psychologists’ reports.

With regard to the comprehension scores, Ms. Haley noted that respondent provided contradictory information – respondent determined that reading comprehension was below average, yet that is how he qualified. Ms. Haley was seeking clear justification as to how the student qualified, i.e., what scores or skills were used to qualify the student. Respondent’s testimony was not persuasive in this regard.

76. Respondent admitted that there were errors in her reports, but contended that the quality of her reports greatly improved after the 2008-2009 school year. However, even in the 2011-2012 school year, respondent continued to make the same errors, from careless spelling and grammatical errors, to failing to “synthesize” or provide congruent information in her analyses. She felt that Ms. Haley held her report writing to a higher standard than other school psychologists, and that she was “set up to fail,” although Ms. Haley also provided positive comments on her reviews, and based her comments on best practices learned during a school psychologist’s training and education through a university’s psychology curriculum, the ethical standards for the National Association of School Psychologists (NASP), and the District’s training. Respondent asserted that there was little or no training on report writing standards. On September 16, 2011, the District offered training on report writing, which was presented by Ms. Haley and Deeds Gill, another lead psychologist in the District. Respondent did not attend the scheduled training. The nature and extent of respondent’s continued errors in her report writing undermines the credibility and accuracy of her reports. Ms. Haley expended over 450 hours reviewing respondent’s reports over a period of four years, while providing support to the approximately 50 other school psychologists in the District. The District cannot rely on respondent to provide accurate, professional, and well-reasoned assessment reports to the District, for the benefit of teachers, parents, and site administrators. Her attempts to excuse her conduct were not persuasive.

COMPLAINTS BY SITE ADMINISTRATORS

Backlog of Referrals at Norseman in 2008-2009

77. Joy Nunes is currently the principal at Anthony (Finding 6.) She has held that position for three years. Prior to that she was the principal at Norseman (Finding 6), from the spring of 2003 to June 2010. Respondent was the school psychologist at Norseman during that time that Ms. Nunes was the principal. Norseman is a high volume assessment school. As a site administrator, Principal Nunes had some supervisory responsibilities over certificated staff working at Norseman, including respondent.

78. Early in the 2008 school year, several of Norseman’s Resource Specialist Program (RSP) teachers (also referred to as special education teachers) shared their concerns with Principal Nunes regarding lack of communication from respondent in receiving completed assessment reports, so that the RSP teachers could finalize their own IEP reports and be prepared for their IEP meetings. Principal Nunes confirmed that her RSP teachers were exhibiting a “high level of frustration” due to “being behind in assessments as well as out-of-compliance.” Respondent also failed to provide a calendar to RSP teachers and to

Principal Nunes regarding assessment schedules. Principal Nunes also confirmed that since being assigned to Norseman for a total of 28 days, during the period from August 18, 2008, to January 23, 2009, respondent completed only 10 assessments, resulting in a backlog of referrals that needed to be completed by respondent. Principal Nunes recalled respondent requesting additional “psych time” to address the backlog, and respondent further requesting that another psychologist assist respondent with the assessments at Norseman, however, there was no evidence that the District responded to respondent’s requests. Prior to the 2009-2010 school year, Principal Nunes requested that another school psychologist be assigned to Norseman, in an attempt to support her RSP team, and to alleviate the team’s frustration. She did not recall that her request was denied, however, she learned that respondent would be returning to Norseman as a school psychologist for the 2009-2010 school year.

79. Respondent asserted that she was a 0.8 full time equivalent (FTE) contract employee with the District, yet she was working full-time at Norseman and Ericson. Of the 10 assessment reports that she completed, six were Emotionally Disturbed (ED) or Other Health Impaired (OHI) Assessments. Respondent asserted that those assessments took longer to complete because of lengthy parental interviews, social/emotional scales, and numerous observations. Putting this information into her assessment report was a lengthy process. Respondent also indicated that her assessments were being reviewed by Ms. Haley, who required respondent to send out her own health form and to conduct her own health interview for the “health” portion of the assessment, which was normally done by the nurse. Respondent asserted that other school psychologists could write that the health report was not available in their assessment reports. Respondent also felt that she was put in a “bad position” by Ms. Pelligrino by having to turn in her reports to Ms. Haley two weeks ahead of the IEP, because it put stress on the whole team. Respondent did not want to tell the teachers that she was on a “work plan” requiring her to submit her reports two weeks prior to the IEP. Respondent acknowledged that the special education teachers were experiencing a high level of frustration with her. Respondent thought she was communicating adequately to school staff, but admittedly, not as much as she needed to.

80. Respondent submitted a Spring IEP Calendar to Principal Nunes on March 23, 2009, but only after she was directed to do so by Ms. Pelligrino pursuant to a January 26, 2009 conference. Principal Nunes noted that in the 2009-2010 school year, respondent improved in submitting her IEP calendars to RSP teachers.

81. The District established that there was a backlog of referrals at Norseman in the 2008-2009 school year while respondent was the school psychologist there, and that respondent failed to communicate to RSP teachers and Principal Nunes regarding her assessment calendar. In mitigation, Norseman was a heavy assessment school, and respondent’s assessment reports were being reviewed by Ms. Haley, which caused delays in providing the assessment reports to the RSP teachers prior to their IEP meetings. Respondent’s health issues may have also affected her productivity, but respondent did not request reasonable accommodation from the District. She asked for additional help, but there was no evidence to show that she received any help from the District other than Ms. Haley’s support.

Failure to Respond to Crisis Situation

82. On May 5, 2009, Lucille Molano, a District Office Manager, called respondent to respond to a crisis situation at one of respondent's assigned school sites. Respondent stated to Ms. Molano, "Oh no, not today!" or words to that effect. Respondent told Ms. Molano to call another psychologist. Ms. Molano contacted another psychologist, but was stressed and frustrated at having to do so. At hearing, respondent denied telling Ms. Molano to call another psychologist, asserting that it was Ms. Molano that offered to call another psychologist. Respondent stated, "[Ms. Molano] said she would call someone else, and the crisis was handled." Respondent contended that Ms. Molano's allegations were not accurate, stating, "I did not allow the crisis to go unanswered." Respondent's testimony was not credible.

Lack of Response to Crisis Situation at Carver in 2010

83. In 2010, Carver (Finding 6) was a 5th through 8th grade school. It is currently a 5th and 6th grade school. Carver was identified by the State as one of three academically low-performing schools in the District. All of the teachers and administrators were released or reassigned, and Steve Gonzales became the principal. Principal Gonzales was given the charge by the District to "bring in a brand new certificated instructional team." Respondent was the school psychologist at Carver in the 2010-2011 and 2011-2012 school years. Stacy Buck is an RSP teacher at Carver, a position she has held for three years. Ms. Buck is the only special education teacher at Carver. In one incident during Ms. Buck's first year of teaching, Ms. Buck felt threatened by a female student that had come into her classroom and made verbal threats against Ms. Buck and the school administrators. The student also made a drawing that depicted guns and violence. A substitute administrator (substitute) was working at Carver that day, and after talking to the substitute, Ms. Buck was directed to contact Linda Simpson, her RIM, who directed Ms. Buck to contact respondent to conduct a threat assessment. Ms. Buck called respondent and asked respondent to come to Carver. Respondent arrived at Ms. Buck's classroom, stayed for 10 minutes, and stated, "I think the student's behavior is escalating because I'm here so I am going to leave." Ms. Buck felt that respondent, who was responsible for determining if there was an immediate threat, left her in the same threatening situation, so she contacted Ms. Simpson again and expressed her concerns. Respondent was contacted again by someone from Carver, and respondent returned. In the meantime, the student left the campus and was not there when respondent returned to Carver to conduct the threat assessment.

When conducting a threat assessment, the school psychologist must interview the teacher and the student. Respondent interviewed Ms. Buck, but could not interview the student because she left. Respondent then asked Ms. Buck to answer the student's questions for her. Ms. Buck felt this was odd, and was surprised and uncomfortable. She felt that respondent was not honest in conducting the assessment. In addition, when respondent returned to Carver the second time, she asked Ms. Buck, "Do you really feel threatened?" The question implied that respondent did not believe Ms. Buck. Overall, Ms. Buck felt that

respondent did not work with her in a collaborative manner. Her interaction with respondent was “very disorganized,” and she was not happy about working professionally with respondent. Ms. Buck told Monica Alvarez, Vice Principal at Carver, about her problems with respondent. Ms. Alvarez characterized Ms. Buck as a very strong, proficient teacher. Ms. Alvarez did not want respondent to return to Carver due to the lack of collaboration between Ms. Buck and respondent. Ms. Buck’s testimony was credible.

84. Respondent explained that RSP teacher Stacy Buck called her while she was at Norseman, informing her of a crisis at Carver. According to respondent, she had seen Ms. Buck interact with the student at issue many times, and described the student as loud and disruptive, which was her behavior every day. Respondent wondered, “Why is this teacher calling me?” Respondent indicated that the District’s procedure is that a school administrator is to call her in a crisis situation. Ms. Buck told respondent that the situation was escalating. Respondent instructed Ms. Buck to take the student to the classroom, and to call her back if Ms. Buck could not get the student back to the classroom. Respondent asserted that Ms. Buck did not call respondent back. Respondent claimed she then called the school, and there was no answer.

Respondent went to Carver, walked in to Ms. Buck’s classroom, and saw the student sitting calmly at the desk working on something. Respondent asked Ms. Buck “what happened?” Ms. Buck told respondent that she had the situation under control, and told respondent that she could leave. Respondent asked, “Are you sure you got it under control?” Ms. Buck replied, “Yes, everything is fine, please leave.” Respondent left, and upon returning to Norseman, Ms. Buck called respondent again and stated that the student drew a picture of her shooting someone.” Respondent returned to Carver, and saw that the student was calm. Respondent asked Ms. Buck if she felt threatened, and Ms. Buck said “Yes.” Respondent then asked the student a couple of questions, and the student responded that she “did not mean anything by it,” and that she was “just playing.” Respondent asked the student another five to eight questions, and did not determine that there was a threat. Respondent determined that the substitute administrator needed to call the parents and discuss the situation with them, to make sure that there were no guns in the home. The substitute did not want to go to the student’s home, and said that the vice principal would handle the situation the next morning. Respondent attempted to call Ms. Haley and Mr. Gill, but no one answered. Respondent thought, “We are way out of protocol here.” Respondent returned to Ms. Buck’s classroom, and learned that the student walked out and left. Respondent told Ms. Buck to call one of the District administrators, Kevin Torosian. Ms. Buck called him, but respondent did not know what was said. Respondent stated that “somehow it all came down on me that I didn’t do the threat assessment, and it’s like, I did talk to the girl. I wasn’t allowed to finish the process.” Respondent indicated that she, the vice principal, and another person went to the student’s house the next day, and resolved the situation.

85. The evidence established that respondent showed a lack of concern for site safety by her reluctance to return to Carver, by her failure to make a proper threat assessment, and by leaving Ms. Buck in a potentially threatening situation with the student. Respondent’s version of events was not credible.

Asking Carver RSP Teacher to Discuss Subtests She Did Not Administer in 2010

86. Ms. Buck asserted that respondent asked her to present and discuss the outcomes of subtests that she had not given to a particular student. Ms. Buck stated that the assessment was “rushed,” and that she was able to begin the academic portion of the test, but was not able to complete it. Respondent volunteered to finish the assessment, which consists of 20 different subtests. Ms. Buck completed only a portion of those tests. At the IEP meeting, respondent asked Ms. Buck to discuss the outcomes of the subtests that she had not given. At hearing, Ms. Buck stated that she did not feel that she had enough information to make that presentation, and was not knowledgeable to talk about the subtests.

87. Respondent asserted that she did the majority of assessments for Ms. Buck, and did not ask Ms. Buck to report on assessments she did not do. Respondent characterized Ms. Buck as being “very stressed,” and respondent was trying to help her. Respondent did not address the particular IEP meeting that Ms. Buck was referring to. Ms. Buck’s testimony was credible. As a first year teacher, Ms. Buck would not have had the experience in administering subtests that respondent had. Her complaint against respondent was valid, and respondent was non-responsive in addressing her complaint.

Asking Carver RSP Teacher to Use Consent Form from Another Student’s Record in 2010

88. The Special Education Information System (SEIS) is an online database that the District uses to manage its special education case load. Every special education student is identified in SEIS, with their individual IEP information and required forms. Consent forms containing the student’s information are generated by SEIS. Typically, an RSP teacher requests that a student be added to SEIS, the SEIS administrator then adds the student to the database, and a consent form is generated and given to the RSP teacher for the IEP meeting. It takes a few days to obtain a consent form from the SEIS administrator. At the IEP meeting, consent forms are then presented to the student’s parents or guardians so that they may complete the forms at the IEP meeting in order to provide consent for the assessment. Ms. Buck asserted that during one IEP meeting, respondent asked Ms. Buck to get a consent form for an assessment plan. Ms. Buck explained to respondent that it takes a few days, because she has to wait for the SEIS administrator to add the student to her caseload in SEIS. Respondent told Ms. Buck to print out a consent form from another student and change the name. Ms. Buck did so, and “whited out” the student’s name, and entered another student’s name. The parent signed the consent form at the IEP meeting. As a new teacher, Ms. Buck did not know that what she was doing was improper. Ms. Buck subsequently found out from the SEIS administrator that she was not to generate generic consent forms, and that a consent form is automatically generated when the student information is entered into SEIS. The following day, respondent wrote in an email to Ms. Buck that “downtown was in an uproar” over the consent form, and “we should keep it quiet.”

89. Respondent asserted that she was going to have the student's mother hand-write her consent without the consent form. Respondent was confused when Ms. Buck presented a completed consent form even though Ms. Buck told respondent that the SEIS administrator was busy and unavailable to produce one at the time. Respondent was in an awkward position because she knew other people had done this, but she did not want to teach Ms. Buck the wrong procedure in obtaining consent forms. Respondent decided to use the form anyway, and asserted that she told Ms. Buck that "this isn't what you usually do, but since you already created it, we will go ahead and use it." Respondent, however, denied that she told Ms. Buck to print out a consent form for another student and change the name. Her denial was not credible. As a first year teacher, Ms. Buck did not know the procedure for obtaining consent forms, and relied on respondent's direction. Ms. Buck's testimony was credible.

Changing Assessment Information Immediately Prior to IEP Meeting at Carver

90. In one instance during the 2010-2011 school year, respondent presented Ms. Buck with two assessment reports for one student. In the first report, the student did not qualify for special education services and the assessment report was given to Ms. Buck. Ms. Buck wrote an IEP report to reflect the conclusions in respondent's first assessment report. Approximately 30 minutes before the IEP meeting, respondent asked Ms. Buck to change her IEP report, because she [respondent] had made a mistake in the first assessment report, and had subsequently determined that the student in fact qualified for services in the area of math reasoning. Ms. Buck felt that there was too much to write in a half-hour, that she could not make the change, and that the meeting needed to be rescheduled. This change impacted the parents, the speech language pathologist, and the Spanish translator present at the meeting. Ms. Buck cancelled the meeting to revise the IEP report. The following day, Ms. Buck received an email from respondent stating that the second assessment report was a mistake, and that the student did not actually qualify for special education services.

91. Respondent asserted that she was not working in her usual work space at the school site. "Without realizing it," respondent used the wrong protocol to determine eligibility. On the day of the IEP meeting, respondent emailed Ms. Buck several times to print out the first report, not knowing that anything was wrong. Respondent felt that if she had been able to look at the protocol in the printed report, she would have seen immediately what she had done, but at that moment, she did not have the report in front of her, because her computer was in her car, and because Ms. Buck failed to print out the report for her. Respondent stated "luckily the parent did not show up because I would have had to stop everything and go out to the car, boot up, and print, to figure out what happened." Before leaving, respondent asserted that she told Ms. Buck not to change her IEP, and to allow respondent to "figure out what happened." Respondent emailed Ms. Buck the next morning that she corrected the report. Respondent's assertions were not credible. But for respondent asking Ms. Buck to change her IEP report, the IEP meeting would not have been cancelled. Respondent attempted to shift the blame for her failure to find her mistake on the assessment to Ms. Buck for failing to print out the report, and on her inaccessibility to her laptop because it was in her car. These assertions were not persuasive.

Asking Carver RSP Teacher to Set Up Appointments for Respondent in 2010

92. At the beginning of the 2010-2011 school year, Ms. Buck stated that respondent would call her to set up appointments between respondent and parents, and asked her to call parents to inquire about assessment surveys that respondent had sent them. Respondent also asked Ms. Buck to conduct interviews with parents based on surveys that the parents needed to complete. When the parents were not prompt in returning the surveys, respondent would ask Ms. Buck to call the parents, ask them questions from the survey, and turn in the survey so that the parent would not have to return it. Ms. Buck mentioned to her RIM that she made appointments, and contacted and interviewed parents. The RIM stated to Ms. Buck that she did not have to do these things for respondent.

93. Respondent denied that she made Ms. Buck make appointments for her. She was not credible in this regard. Her conduct was improper, in that she created extra work for the RSP teacher, which she should have performed herself.

Asking Carver RSP Teacher to Write a Behavior Support Plan on Day of IEP Meeting in 2010

94. Ms. Buck asserted that respondent asked her to write a behavior support plan for a student at the beginning of the 2010-2011 school year. Ms. Buck was working with her RIM one day, and the RIM saw that a particular student needed a behavior support plan that respondent asked Ms. Buck to write. The RIM told Ms. Buck that she was not qualified to write a behavior support plan, and that the psychologist needed to take care of it. Ms. Buck did not do anything further with regard to the behavior support plan. On the day of the IEP meeting, respondent approached Ms. Buck and asked her if everything was in order for the IEP. Ms. Buck responded that everything was ready except for the behavior support plan. Respondent asked Ms. Buck why the plan was not written, and Ms. Buck stated that it was not her responsibility to write the plan. Respondent proceeded to tell Ms. Buck that the plan needed to be completed, and that if Ms. Buck did not write the plan, Ms. Buck would get a bad reputation in the District. Ms. Buck felt extremely intimidated because she was not qualified to write a behavior support plan. Ms. Buck stated, “[N]obody wants to hear that you’re going to get a bad reputation and no one is going to want to work with you especially at the beginning of your career.” Respondent ultimately wrote the behavior support plan after this incident.

95. Respondent asserted that she made a request for help in writing a behavior support plan by sending an email to Monica Alvarez, the Vice Principal at Carver. According to respondent, Ms. Alvarez did not respond to her request. Respondent ultimately wrote the behavior support plan. She explained in another email to Ms. Alvarez that she did not meet or have an opportunity to observe the student. Respondent felt that no one was assisting her in completing the plan, and “it was just being laid at my door to do, which I thought was very odd because all of my other VP’s would gladly assist me with getting information and talking to teachers, and would have helped me write it.” Respondent denied

saying to Ms. Buck that she was going to get a bad reputation if she did not write the behavior support plan. Respondent's testimony was not credible, in that it was established that respondent asked Ms. Buck to write a behavior support plan, that this was not Ms. Buck's responsibility, and that respondent subsequently wrote the plan.

Complaints from Norseman

96. Kim Collins became the principal at Norseman in 2011. Prior to Norseman, Principal Collins was the principal at Anthony. Respondent was assigned to Norseman as a school psychologist in the 2010-2011 school year. During that year, Principal Collins complained to the District that respondent: (1) required frequent monitoring for follow-up; (2) struggled with relationships, rapport, and communication with general education staff; (3) made assumptions about a student having a "gang mentality" and that another student was a perfect "Phoenix¹⁷ kid;" and (4) did not consistently meet with particular students due to time concerns.

97. Behavior Support Plans. Principal Collins asked respondent to write a behavior support plan for a student before the winter break. Respondent did not write the plan because the student was expelled. Principal Collins asked respondent to write a behavior support plan for another student prior to the winter break, but the plan was not completed until March of the following year. In regards to another student, Principal Collins did not know whether the plan was completed. In another situation, respondent indicated to Principal Collins that she was not sure how to write a support plan related to behavior on the playground. Principal Collins was concerned, because a school psychologist is expected to know how to write, or seek resources to assist in writing, such a plan. Principal Collins stated that "ideally you want it as quickly as possible so you can put that plan into place to support the child in changing their behavior."

98. Lack of Follow Up. In another situation, Principal Collins asked respondent to make contact with the mental health provider of another student. Principal Collins could not recall whether contact was made by respondent. Under these circumstances, it was not established that respondent failed to follow up with the mental health provider.

99. Calling a Student a "Phoenix Kid" and Having a "Gang Mentality." The incident involving respondent calling a student a "Phoenix kid," and having a "gang mentality," was observed by a teacher, who reported the incident to Principal Collins. Respondent's comments caused Principal Collins concern, because she wanted Norseman to establish and maintain the practice of high expectations for all students, and respondent's comments did not serve to support the student or serve Norseman's diverse population.

100. Assumption that Student's Behavior Due to Classroom Structure. A Norseman teacher complained to Principal Collins that respondent made a comment regarding a female student's behavior that attributed the behavior to the structure provided

¹⁷ "Phoenix" is a day school in the District that specializes in behavior modification.

by the teacher in the classroom. However, Principal Collins observed the student to exhibit similar behaviors outside of the classroom. Therefore, she concluded that respondent's comments were unsupported.

101. At the end of the 2010-2011 school year, Principal Collins was offered to have respondent reassigned to a different school, and she accepted due to her concerns with respondent's unsatisfactory performance.

102. Respondent denied each of Ms. Collin's complaints, and asserted that Ms. Collins was "setting her up" to fail, in retaliation for leaving Anthony to work at Norseman. Respondent's testimony in this regard lacked credibility, and the evidence established the validity of Principal Collin's complaints as set forth in Findings 96, 98, and 99.

Lack of Collaboration with Speech Language Pathologist at Norseman in 2009

103. Linda Lefever, a Speech Language Pathologist for the District, complained to Principal Nunes in an email dated April 29, 2009, regarding respondent. Ms. Lefever stated that for the prior two years, she attempted to work with respondent in assessing and diagnosing new students who may qualify for speech treatment. Ms. Lefever further stated that respondent felt she was better qualified to make the determination whether students needed speech services. At times, respondent referred students for formal speech testing without allowing Ms. Lefever the opportunity to screen the student for formal testing. In addition, respondent made referrals for speech screening and testing at the last minute, right before a meeting, without allowing Ms. Lefever time to complete the process. Respondent also referred a student for formal testing after Ms. Lefever, the student's classroom teacher, and the RSP teacher all voiced their opinions that speech was not a problem. This type of unnecessary testing interfered with Ms. Lefever's ability to work with qualified students. Lastly, Ms. Lefever complained that respondent put off her own testing and referrals to speech until the end of the school year, causing a spike in Ms. Lefever's workload, which interfered with her ability to work with her present students. Ms. Lefever found it difficult to work with respondent, as respondent disregarded Ms. Lefever's expertise. Ms. Lefever's testimony was credible.

104. Respondent asserted that it was Ms. Haley that made her refer a particular student to speech, even when Ms. Lefever and the teacher determined that the student did not have any speech issues. Respondent stated, "It's not like I'm going to tell everybody that I work with that I am on a work plan." Respondent wanted to follow through with Ms. Haley's directive. Respondent did not address Ms. Lefever's other complaints about her.

Complaints from Ericson

105. Karen Walker is the Principal at Ericson (Finding 6). On April 23, 2009, Principal Walker wrote to Ms. Pelligrino regarding respondent's unsatisfactory performance. Principal Walker provided a list of complaints compiled by Ericson staff and teachers that continued to be unresolved as of the date of Principal Walker's letter to Ms. Pelligrino:

- Testing/eligibility information for 3-year and initial evaluations are not presented in a timely manner to SPED teachers; therefore, the case managers do not have the necessary information to develop a draft IEP.
- New information is presented at the IEP without having shared this with the case manager prior to the IEP.
- At IEP meetings, [respondent] decides to do more testing with the premise that this will help the teacher (case manager) write appropriate goals.
- Parent questionnaires/rating scales are sent home at the last minute. For example, rating scales are sent home on a Friday for a meeting the following week when there is no school on Monday and [respondent] is bringing the results on the day of the IEP.
- A last minute rating scale is sent home in English to Spanish speaking parent.
- [Respondent] is not providing the parent with a signed assessment report at the time of the IEP meeting.

In addition, Principal Walker indicated that her teachers wanted strengths, weaknesses, and recommendations at least one week prior to the IEP meeting. The teachers wanted to know respondent's schedule and working hours so that they could reach her when she was not on site. There seemed to be days when respondent's latest schedule was not followed. Lastly, respondent's assessment reports were not completed and signed at the IEP meeting. Principal Walker requested to Ms. Pelligrino that a new school psychologist be reassigned to Ericson for the 2009-2010 school year.

At hearing, Principal Walker confirmed the complaints by her teachers and staff, which she shared with Ms. Pelligrino. Respondent did not address the specific complaints filed by Ericson's teachers and staff. She did, however, indicated that she provided a schedule and her contact information to the teachers. The complaints from Ericson were established.

Complaints from Homan

106. Suzanne Webster-Jones is the Principal at Homan (Finding 6), where respondent worked during the 2011-2012 school year. In early 2012, respondent entered a SPED classroom and asked the SPED aide questions about two students, since the SPED teacher was busy. Respondent also told the aide that a student's mother did not want her child to be with the teacher in the classroom. The aide reported to her supervisor that the aide felt uncomfortable with the situation, and the aide's supervisor, in turn, reported the incident to Ms. Webster-Jones. Ms. Webster-Jones told respondent that it was inappropriate to approach the aide to discuss issues and concerns regarding students or parents. Respondent was directed to communicate her concerns and questions with teachers, not the aides. Respondent admitted speaking to the aide about a student. The District established

that respondent engaged in inappropriate conduct when she spoke to the aide regarding issues concerning a student.

PERFORMANCE APPRAISALS

Performance Appraisal Form

107. The District utilizes a standard performance appraisal form, entitled “Administrative Management Performance Appraisal,” (performance appraisal), to evaluate most, if not all, of its supervisor and/or professional employees, including its school psychologists. The front page of the form identifies the employee, the evaluation period, the evaluator, and performance ratings. The remainder of the form consists of Standards 1 through 6, with an overall evaluation on the last page. The last page also contains the signatures/dates of the evaluatee and the evaluator, certifying that the evaluation has been discussed with the employee. The standards upon which the employee is evaluated are as follows:

Standard 1: Skillful Supervision and Evaluation¹⁸

The leader is expected to:

- 1.1 Clearly communicate expectations for the supervision and evaluation processes for all staff.
- 1.2 Skillfully supervise staff.
- 1.3 Document and evaluate performance of staff.
- 1.4 Adhere to all procedural timelines and contractual obligations.

Standard 2: Using Evidence to Improve Instruction

The leader is expected to:

- 2.1 Select appropriate achievement and process data.
- 2.2 Effectively analyze data.
- 2.3 Write the Single Plan for Student Achievement or Division/Department Improvement Action Plan that supports the analysis of data.
- 2.4 Implement and monitor the Single Plan for Student Achievement or Division/Department Improvement Action Plan.

Standard 3: Decision Making/Managing Change

The leader is expected to:

- 3.1 Utilize decision-making models to promote the instructional agenda.

¹⁸ Standard 1 was marked as “not applicable” in respondent’s 2008-2009 performance appraisal. After receiving training on the evaluation process, Ms. Pelligrino applied Standard 1 to respondent’s 2009-2010, 2010-2011, and 2011-2012 performance appraisals, because school psychologists are responsible as management to provide support to staff.

3.2 Demonstrate quality judgments during all decision-making processes.

Standard 4: Appropriately Allocating Resources (Time, Money, People, Materials, Facilities)

The leader is expected to:

- 4.1 Target funding to support District priorities and site goals listed in the Single plan for Student Achievement or Division/Department Improvement Action Plans.
- 4.2 Appropriately allocate all resources (time, money, people, materials, facilities) to maximize learning for all students.
- 4.3 Analyze fiscal data and subsequent expenditure of funds to ensure they address student needs.
- 4.4 Allocate resources to adequately support professional development.

Standard 5: Effective Communication

The leader is expected to:

- 5.1 Utilize effective and appropriate communication processes
- 5.2 Produce varied, high quality forms of communication to address of all stake holders
- 5.3 Use effective listening, writing, speaking, and non-verbal communication skills

Standard 6: Service to Sites

The leader is expected to:

- 6.1 Provide consistent, high quality service
- 6.2 Provide customer support and capacity-building
- 6.3 Respondent to school needs with differentiated support

108. All six standards may not necessarily apply to an employee's job duties and functions. If a standard does not apply, the evaluator will check the "Not-Applicable" box on the form. The performance appraisal form is a reliable and reasonable means of measuring an employee's work performance.

June 9, 2009 Performance Appraisal and Improvement Work Plan

109. Ms. Pelligrino completed a performance appraisal of respondent at the end of the 2008-2009 school year. Standard 1 was marked as "not applicable." Respondent met Standards 3 and 4. Respondent did not meet Standards 2, 5, and 6, which required an Improvement Work Plan. Under Standard 2, Ms. Pelligrino noted that respondent's reports would be reviewed by Ms. Haley to assist respondent with improving the quality of her assessments and report writing. Ms. Pelligrino also noted that respondent's report writing is "still an area of weakness," citing concerns in comprehensive testing, missing data, inconsistencies within the body of the report, synthesis of information, and inappropriate

referrals. Under Standard 3, a standard that respondent met, Ms. Pelligrino noted that one of respondent's strengths is that respondent has valuable expertise in the development of behavior support plans and is a good resource for staff. Under Standard 4, a standard that respondent met, Ms. Pelligrino did not provide any positive comments or note any areas of strength. Under Standard 5, Ms. Pelligrino noted that respondent would be assigned to the same school sites in the 2009-2010 school year. Respondent was to continue to work with staff in improving collaborative interactions, and to schedule site meetings in preparations for IEP meetings. Overall, respondent was rated as "Does Not Meet Standards/Improvement Work Plan Required."

110. Respondent's June 9, 2009 Improvement Work Plan required respondent to meet the following performance expectations: (1) follow legal timelines; (2) complete legally defensible psycho-educational assessments; and (3) communicate effectively with site personnel regarding testing schedule and other required duties. The strategies and action steps to improve respondent's performance were to have Ms. Haley continue to review respondent's assessment reports and to meet with Ms. Pelligrino and Ms. Haley twice a month to ensure compliance.

June 9, 2010 Performance Appraisal and Improvement Work Plan

111. Ms. Pelligrino completed a performance appraisal of respondent at the end of the 2009-2010 school year. Respondent met Standards 1, 3, 4, 5, and 6, but Ms. Pelligrino did not provide any positive comments or note any areas of strength. Respondent did not meet Standard 2. Overall, respondent was rated as "Does Not Meet Standards/Improvement Work Plan Required." Under Standard 2, Ms. Pelligrino noted that Ms. Haley was to continue reviewing respondent's assessment reports. Ms. Pelligrino noted as a weakness that synthesis of information continued to be inconsistent, and was a target of improvement.

112. Respondent's June 9, 2010 Improvement Work Plan required respondent meet the same performance expectations as the previous year (Finding 109). Respondent was directed to continue working with Ms. Haley, and to meet with Ms. Pelligrino and Ms. Haley twice a month. Ms. Pelligrino directed Ms. Haley to select up to five assessment reports quarterly, to check for quality and accuracy of respondent's assessment reports.

June 9, 2011 Performance Appraisal and Improvement Work Plan

113. Ms. Pelligrino completed a performance appraisal of respondent at the end of the 2010-2011 school year. Respondent met Standard 4, but did not meet Standards 1, 2, 3, 5, and 6. Overall, respondent was rated as "Does Not Meet Standards/Improvement Work Plan Required." Under Standard 1, respondent was to collaborate with SPED teachers and administrative staff on a monthly basis, by briefing them on current laws, policies, procedures, and timelines related to SPED. Respondent's weaknesses were identified as lack of clear communication on a regular basis to SPED and administrative staff, resulting in lack of consistent and cohesive services, and lack of adherence to SPED timelines.

Under Standard 2, respondent's weaknesses were identified as lack of coordination in discussing results from academic testing, no improvement in report writing, inconsistent synthesis of information, and inconsistent assessment results, making them suspect.

Under Standard 3, respondent's weaknesses were identified as suggesting to parents to seek medication for their child, making unilateral decisions without consulting site staff, and failing to engage others in her decisions. Respondent did not apologize for her mistakes, and blamed others.

Under Standard 4, Ms. Pelligrino noted under "Strengths" that respondent is capable of meeting the diverse student and parent needs related to each site. Ms. Pelligrino further noted that a challenge of this type of assignment is the management of respondent's time as a resource to each site." Suggested improvements were to keep an Outlook calendar of IEP meetings, inservices, and training. In addition, another suggested improvement was to create a professional development plan. Her weakness was identified as poor planning in multiple site assignments in order to provide equity and quality of service. Ms. Pelligrino did not provide an explanation as to why she provided suggested improvements even though respondent met this standard.

Under Standard 5, suggested improvements were to provide clear and direct communication to SPED and administrative staff regarding scheduling, updates on current assessments, triennial evaluations, behavioral interventions, and any other SPED programs. Respondent's weaknesses were continued lack of maintaining a collegial working relationship with site administrative staff, and inability to communicate in a positive manner with staff regarding best practice and student achievement. Respondent was reported to have been defensive and unwilling to look at alternative ways of solving a problem.

Under Standard 6, respondent's weakness was identified as lack of cooperative planning with RIM and SPED staff. Respondent continued to fail to communicate effectively with school site staff, causing staff anxiety and stress, which negatively impacted their job responsibilities. This led to a non-trusting, ineffective working relationship.

Ms. Pelligrino provided overall comments on respondent's performance, noting that several principals requested that respondent not be reassigned to their school site due to poor communication, lack of collaboration, and excluding the RIM from important communications with site stakeholders, creating an uncomfortable working environment. Respondent did not recognize her weaknesses. Even after working as a psychologist for 17 years, she continued to generate inaccurate and poorly written assessments. Respondent did not make a significant impact on quality of service or performance despite tremendous support by Ms. Haley.

114. Respondent's June 9, 2011 Improvement Work Plan set goals for respondent for each standard she did not meet. Under Standard 1, the performance expectation was to provide increased support to site SPED staff to meet timelines through a master calendar. Respondent was to develop a schedule of monthly collaboration meetings with SPED staff to

discuss IEP's, behavior plans, medical diagnoses, wellness plans, timelines, and student progress testing updates. Respondent was also required to maintain a communication log to document her support to SPED site team members. Under Standard 2, the performance expectation was to provide increased support to site SPED staff to meet the legal requirements for legally defensible reports, and the use of evidence and data to improve the instruction of individual students. Ms. Haley was to continue randomly selecting assessment reports for review for a minimum total of 20 reports. Respondent was to submit all of her assessment reports for the 2011-2012 school year to Ms. Pelligrino three days after the Initial/Triennial IEP meeting. Under Standard 3, the performance expectation was to provide increased support to site SPED staff to meet expectations which impacted quality of services. Respondent was to meet with RIM's and site SPED teams for planning meetings, developing strategies for student improvement, and other topics as identified. Under Standard 5, the performance expectation was to provide improved communication in a timely manner to all stakeholder groups. Respondent was to have eight meetings with the principal and Ms. Pelligrino regarding legal compliance, timelines, and other concerns. Under Standard 6, the performance expectation was to provide service to sites through collaboration, coordination, and effective communication. Respondent was to attend all SPED staff, planning, and department meetings, develop presentations to staff, provide training to certificated staff on behavioral needs, schedule eight meeting over the year with the principals and Ms. Pelligrino, and to provide an Outlook calendar to all of her assigned sites.

115. The June 9, 2011 Improvement Work Plan was by far the most detailed, comprehensive, instructive plan which set goals, performance expectations, and directives so that respondent could meet all of the standards needing improvement. Respondent's performance did not improve in 2008-2009 and 2009-2010, and in 2010-2011, her performance continued to decline, particularly in the areas of synthesis of test data, report writing, and communication and collaboration with others.

January 27, 2012 Performance Appraisal

116. Ms. Pelligrino completed a performance appraisal of respondent at the end of January 2012. Respondent met Standard 4, but did not meet Standards 1, 2, 3, 5, and 6. Overall, respondent was rated as "Does Not Meet Standards/Improvement Work Plan Required." Under Standard 1, Ms. Pelligrino noted that, while respondent complied with the expectations in the previous year's evaluation, respondent continued to demonstrate weaknesses in her assessment reports, including inaccurate results and significant errors. Under Standard 2, respondent's submitted reports continued to require significant corrections based on Ms. Haley's reviews. Respondent's weaknesses were continued lack of synthesis of information in her reports. Several examples were cited. Under Standard 3, respondent's weaknesses continued to be a lack of skills, knowledge, and ability to manage change and help site staff make decisions. Her assessment reports were still poorly written, the narratives did not match assessment tables, cut and paste errors showed other students' information, and assessments that were not performed were discussed. It was noted that Ms. Haley was expending an average of 10 hours per week supporting respondent, impacting her role as support for other staff. Despite the significant amount of support from Ms. Haley,

respondent showed minimal improvement. Under Standard 4, a standard that respondent met, Ms. Pelligrino did not note any areas of strength. Under Standard 5, respondent's report deficiencies impacted the IEP teams' decision-making. This was still a weakness that respondent did not improve upon. Under Standard 6, respondent continued to demonstrate a lack of skill, knowledge, qualifications, and commitment to provide high quality service as a school psychologist, despite her 17 years of experience. Ms. Haley indicated that respondent did not take the initiative to seek out the support that was offered. Overall, Ms. Pelligrino noted that respondent did not effectively fulfill the essential functions of her job.

April 27, 2012 Performance Appraisal

117. Ms. Pelligrino completed a performance appraisal of respondent at the end of April 2012. Respondent continued to fail to meet Standards 1, 2, 3, 5, and 6, based on the same reasons set forth in her previous performance appraisals. Her overall performance did not meet standards, nor did she meet the expectations in her last Improvement Work Plan. In a Letter of Reprimand dated November 9, 2011, respondent was directed to complete all of her assessment reports with no errors. Respondent was placed on a 90-day Notice of Unsatisfactory Performance on February 6, 2012. Her reports continued to contain inaccuracies, and put the District at risk for violation of the Individuals with Disabilities Education Act (IDEA) in providing FAPE for students meeting eligibility criteria for special education. Respondent did not make significant and consistent improvement during the 90-day period, despite extensive support from Ms. Haley. Respondent's reports over the four years were not legally defensible.

Progressive Discipline

February 24, 2009 Conference Summary Performance Report

118. Ms. Pelligrino issued a conference summary report dated February 24, 2009, after the January 26, 2009 meeting with respondent and Principal Nunes, the principal at Norseman at the time. Principal Nunes' complaints concerning respondent are set forth in Finding 78. Ms. Pelligrino directed respondent to: calendar all of her assessments and IEP meetings; communicate with SPED staff prior to IEP meetings; contact Ms. Pelligrino for additional assistance; draft positive behavioral support plans; and discontinue attending Student Success Team (SST) meetings.

March 2, 2009 Improvement Work Plan

119. Ms. Pelligrino developed an Improvement Work Plan for respondent for the 2008-2009 school year, based on information provided by two school principals and their concerns with respondent. Ms. Pelligrino set forth performance expectations as follows: (1) follow legal timelines; (2) complete legally defensible psycho-educational assessments; and (3) communicate effectively with site personnel. Respondent was directed to continue to work with Ms. Haley, and to turn in her assessment reports for Ms. Haley's review two

weeks prior to a scheduled IEP meeting. Respondent was also directed to meet with Ms. Pelligrino two times a month for a status review.

May 11, 2009 Memo of Concern

120. Ms. Pelligrino wrote a Memo of Concern to respondent addressing her unsatisfactory performance relating to Standards 2, 3, 5, and 6 (Finding 106). Ms. Pelligrino cited Ms. Walker's complaints (Finding 104), and Ms. Walker's request that respondent not be assigned to Ericson for the 2009-2010 school year. Ms. Pelligrino also cited Principal Nunes' complaint regarding respondent's unsatisfactory performance. (Findings 77 to 78), the meeting of January 26, 2009 which resulted in a Conference Summary Performance Report (Finding 117), and Principal Nunes' request that respondent not be assigned to Norseman for the 2009-2010 school year. Also cited was Speech Language Pathologist Ms. Lefever's complaint (Finding 102) regarding respondent's lack of collaboration and unprofessional conduct. In summary, Ms. Pelligrino stated that she reviewed all of the reports submitted to Ms. Haley for review, and noted that respondent's reports continued to have poor quality, and that respondent did not meet the responsibilities and expectations of her job descriptions. Ms. Pelligrino noted Professional and Report Writing Concerns, set forth in Findings 12 to 67. Ms. Pelligrino concluded that respondent: violated the standards set forth in her performance appraisal; and violated Education Code section 56320, subdivision (f), stating that the student is to be assessed in all areas related to the suspected disability. She also concluded that respondent's conduct negatively impacted the District because SPED staff is not able to develop IEP reports in a timely manner, the poor quality of respondent's reports negatively impacts the students and puts the District in legal jeopardy of due process filings, and the parent is affected by not receiving a final signed assessment report at IEP meetings.

Respondent was directed to: (1) Complete assessments and provide results during scheduled meetings; (2) Address all areas of suspected disability prior to a parent signing a consent for assessment; (3) Refrain from telling a parent that it is their responsibility to seek out medication for their child before a referral is made to the special education team; (4) Submit draft assessments to Ms. Haley two weeks before IEP meetings and copy Ms. Pelligrino; (5) Submit draft assessments free of errors; and (6) Meet every two weeks with Ms. Pelligrino to review updated information provided by both Ericson and Norseman principals regarding communication and performance of job duties.

May 11, 2009 Written Statement of Concern

121. Ms. Pelligrino wrote to respondent regarding her response to a crisis situation at one of her assigned school sites. (Finding 82). The statement, dated May 11, 2009, indicated that Ms. Molano, an office manager with the District, called respondent to respond to the threat at Carver, and that respondent asked Ms. Molano to contact another psychologist. Ms. Pelligrino suggested that respondent review the "Department Crisis Response for School Sites." Respondent did not provide evidence that she did so.

June 9, 2011 Memo of Concern

122. Ms. Pelligrino issued a Memo of Concern to respondent to address her unsatisfactory performance and unprofessional conduct as it related to the Principals' request for reassignment from their school sites. Ms. Pelligrino cited the complaints from Carver. (Findings 82 to 94.) Principal Gonzalez requested that a new school psychologist be assigned to Carver for the 2011-2012 school year. Ms. Pelligrino cited the complaints from Norseman. (Findings 95 to 103). Lastly, Ms. Pelligrino cited Ms. Haley's concerns with respondent's assessment reports for 2010-2011. Respondent's conduct adversely affected the District, as mentioned previously. Respondent was provided the same directives as were set forth in her previous Memo of Concern, and additionally, respondent was to submit her assessment reports to Ms. Pelligrino no later than three days after the scheduled IEP meeting. Respondent was informed that failure to comply with these directives would result in a letter of reprimand placed in respondent's personnel file.

October 10, 2011 Self-Assessment/Progress Review

123. Respondent completed a Self-Assessment Form, which is a standard District form in which respondent evaluated her own performance under the six performance standards (Finding 106). Ms. Pelligrino also rated respondent under the six standards on the same form, on a scale from 1 (does not meet standard) to 4 (demonstrates expertise). Respondent was to rate herself on a scale of high (H), medium (M), and low (L). Respondent rated herself "H" in the following areas:

Standard 1

- 1.2.1: I use clear evidence to make statements, ask questions, and write evaluations.
- 1.2.2: I conduct regular informal observations of: classrooms; schools; employee work performance.
- 1.2.3: I communicate clearly about employee performance through: direct messages; use of active voice; correct use of grammar/conventions; and fluent writing.

Standard 2

- 2.1.2: I promote the use of multiple data sources to determine student achievement and process improvements.
- 2.2.1: I provide direction and vision to implement and maintain classroom-based progress monitoring assessments.
- 2.2.2: I ensure that relevant data are available and examined regularly to monitor progress and to adjust plans accordingly.

Standard 3

- 3.1.1: I am able to discern when to use a collaborative vs. a unilateral decision-making process.
- 3.1.2: I utilize a decision-making process that focuses on data gathering to engender appropriate judgments.
- 3.2.1: I utilize and foster the use of effective decision-making tools/processes to focus the work of all staff on written performance targets.
- 3.2.2: I engage others in quality decisions that stay made.

Standard 5

- 5.1.1: I state, restate and/or modify my message as the year progresses.
- 5.1.2: I utilize the appropriate communication medium, matching purpose and audience.
- 5.2.1: I demonstrate writing skills complete with clarity of purpose, focused message, relevance to audience, and other quality indicators, such as grammar, mechanics, spelling, and word choice.
- 5.3.1: I establish a clear, focused message centered on targeting academic improvement which is communicated in various formats and venues throughout the school year.
- 5.3.2: I demonstrate the art of presentation, complete with verbal, vocal, and visual delivery techniques.

Standard 6

- 6.2.1: I provide feedback in a timely and courteous manner.
- 6.2.2: I work to build the skills and ability of my audience so they have the capacity to complete the same task in the future.
- 6.3.1: I provide support appropriate to the needs of the specified site.
- 6.3.2: I communicate to sites the varied levels of support and service my department can provide.

Respondent rated herself as “M” under all the other standards. In contrast, Ms. Pelligrino rated respondent a “1” in the above-listed areas where respondent rated herself as an “H.” The District clearly disagreed with respondent’s perception of her work performance, particularly in the areas of writing, analysis, and communication. The District established that respondent was deficient in these areas over the four-year review period.

October 20, 2011 Memo re: Preparation for October 27, 2011 Meeting

124. Ms. Pelligrino wrote to respondent, informing her of a meeting with Cyndy Quintana, Administrator for Human Resources/Labor Relations for the District. Respondent was asked to be prepared to discuss her June 9, 2011 Improvement Work Plan, her Outlook calendar, accountability logs, and 2011-2012 school year assessment reports. Ms. Pelligrino

also scheduled monthly meeting dates for respondent to meet with her site principals, as well as meeting dates for respondent to meet with Ms. Pelligrino.

October 27, 2011 and November 9, 2011 Improvement Work Plan

125. The October 27, 2011 Improvement Work Plan mirrored the June 9, 2011 plan. The plan was signed and dated by respondent and Ms. Pelligrino on October 27, 2011. On the October 27, 2011 plan, Ms. Pelligrino made hand-written notations for clarification, such as, “will provide logs every 2 weeks beginning Nov. 18 to principal and V.P. and copy to SP.” On November 9, 2011, Ms. Pelligrino revisited the October 27, 2011 plan, and made the same hand-written notation on a copy of the October 27, 2011 plan, and initialed and dated the notation “11/9/11.”

November 9, 2011 Letter of Reprimand

126. Ms. Pelligrino issued a November 9, 2011 Letter of Reprimand to respondent, related to respondent’s assessment report for Student 55. Ms. Pelligrino noted the errors found by Ms. Haley with Student 55’s assessment report (Finding 50), and how the report negatively impacted the District. Respondent was directed to complete all of her assessment reports with no errors in any of the areas identified in Ms. Haley’s summary table. Respondent’s failure to comply with the directive would result in further disciplinary action. Respondent signed and dated the Letter of Reprimand on November 9, 2011, and was provided a copy of the District’s Best Practices on Report Writing and a PowerPoint presentation dated September 16, 2011.

February 6, 2012 90-Day Notice of Unsatisfactory Performance

127. Ms. Quintana, Administrator for Human Resources/Labor Relations for the District, issued a 90-Day Notice of Unsatisfactory Performance to respondent on February 6, 2011. The notice specified the nature of respondent’s unsatisfactory performance by describing specific instances where respondent was to correct deficiencies in her report writing or her performance at her assigned school sites. Respondent was informed of her unsatisfactory performance as set forth in the Education Code, and that her conduct would also be deemed to constitute Evidence Unfitness for Service, and other violations of the Education Code. Ms. Quintana set forth the chronology of disciplinary and performance appraisal documents issued to respondent, starting with the January 26, 2009 Conference Summary Performance Report, and ending with the January 27, 2012 performance appraisal. In an effort for the District to assist respondent in overcoming the deficiencies in her performance, respondent was expected to comply with the following directives:

- Write accurate and complete reports.
- Ensure appropriate, legally compliant assessments are administered to students.

- Complete all assessments within legal timelines.
- Ensure communication clearly with appropriate stakeholders and fully understand responsibilities relating to the assessment and provision of services to students.
- Use appropriate assessment tools and conduct assessments in a legally compliant manner.
- Continue to submit all assessment reports to the SELPA Director and Lead Psychologist five days prior to IEP meetings.
- Maintain master schedule for all IEP meetings.
- Maintain a communication log to document support provided to SPED site team members.
- Meet with RIM and site SPED team for planning meetings, developing strategies for student improvement, and other related topics.
- Ensure follow-through with all communication to parents, students, and staff members in a timely manner.

February 17, 2012 District Observation Log

128. The District Observation Log is a chart that tracked respondent's compliance with the directives set forth in the 90-day notice. The observation log was completed on February 17, 2012 by Ms. Pelligrino. She noted that in two report reviews by Ms. Haley, respondent made one extreme error by failing to mark the assessment plan for social emotional assessment, and made six medium errors in another student's report. She also noted that respondent did not consistently meet the essential functions of the job description. The observation log was signed and dated by respondent and Ms. Pelligrino on February 17, 2012.

February 23, 2012 District Observation Log

129. The observation log was completed on February 23, 2012 by Ms. Pelligrino. She noted that respondent was to follow the directive to submit her reports in a "period of time" that would allow for corrections to be made before the scheduled IEP meeting. Respondent was also admonished by Homan's principal that it was inappropriate to approach an instructional aide to discuss issues and concerns regarding the students or parents. Respondent was directed to communicate her concerns and questions to the teachers, not the aides. The observation log was signed and dated by respondent and Ms. Pelligrino on February 23, 2012.

March 5, 2012 District Observation Log

130. The observation log was completed on March 5, 2012 by Ms. Pelligrino. She and respondent reviewed the Improvement Work Plan and all directives in the 90-Day Notice of Unsatisfactory Performance. The observation log was signed and dated by respondent and Ms. Pelligrino on March 5, 2012.

March 16, 2012 District Observation Log

131. The observation log was completed on March 16, 2012 by Ms. Pelligrino. She noted that two out of four assessment reports “were not accurate, appropriate and legally compliant.” In addition, respondent provided inaccurate assessment results and interpretation, and unsubstantiated claims without appropriate assessments resulting in non-compliance and assessments that were legally indefensible. The observation log was signed and dated by respondent and Ms. Pelligrino on March 16, 2012.

March 22, 2012 District Observation Log

132. The observation log was completed on March 22, 2012 by Ms. Pelligrino. She and respondent reviewed the Improvement Work Plan and all directives in the 90-Day Notice of Unsatisfactory Performance. The observation log was signed and dated by respondent and Ms. Pelligrino on March 22, 2012.

March 30, 2012 District Observation Log

133. The observation log was completed on March 30, 2012 by Ms. Pelligrino. She again noted that she reviewed the Improvement Work Plan and all directives in the 90-Day Notice of Unsatisfactory Performance with respondent. The observation log was signed and dated by respondent and Ms. Pelligrino on March 30, 2012.

April 13, 2012 District Observation Log

134. The observation log was completed on April 13, 2012 by Ms. Pelligrino. She noted that an assessment report completed by respondent was not accurate, appropriate, or legally compliant. The report had the wrong student name in two areas, unreadable sentences where words were missing, and test result descriptors that differed from those provided in the test table. These errors resulted in incorrect information being provided to the parent and IEP team. She again noted that she reviewed the Improvement Work Plan and all directives in the 90-Day Notice of Unsatisfactory Performance with respondent. The observation log was signed and dated by respondent and Ms. Pelligrino on April 13, 2012.

April 20, 2012 District Observation Log

135. The observation log was completed on April 20, 2012 by Ms. Pelligrino. She noted that two assessment reports completed by respondent were not accurate, appropriate or

legally compliant. In one report, respondent qualified the student as SLD, but did not list SLD as an assessment area, or include qualifying criteria. The narrative did not clearly define the student's ability level, math reasoning narrative scores were incorrect, and respondent did not rule out intellectual disability (ID), which was a previous area of qualification criteria. In the other report, numerous sentences were difficult to understand, and the WJIII and GORT4 results were not addressed in the report. As a result, the parent and IEP team received incorrect information. Furthermore, inaccurate assessment results and interpretation, and unsubstantiated claims resulted in non-compliance, and the assessments are not legally defensible. In addition, inaccurate assessments resulted in inappropriate goals and objectives for the students' educational progress. The observation log was signed and dated by respondent and Ms. Pelligrino on April 20, 2012.

Summary of District Observation Logs

136. Ms. Pelligrino's concern, based on the District's Observation Logs, was that there had been extensive support provided to respondent since 2008, and respondent was still submitting non-compliant assessment reports. There was much more extensive support provided to respondent by the lead psychologist than any other school psychologist in the District.

Charges Established

137. Based on the District's compelling and credible evidence: the assessment report reviews by Ms. Haley documenting numerous errors that continued over the course of four years; complaints from the principals at Norseman, Ericson, Carver, and Homan; complaints from site staff; and progressive discipline imposed by the District without significant improvement by respondent; the charges of unsatisfactory performance were established.

District's Efforts to Support Respondent

138. The District made diligent efforts to support respondent to correct her unsatisfactory performance, beginning in the 2008-2009 school year, when Ms. Haley began reviewing respondent's assessment reports, and providing detailed comments on errors, inaccuracies, and inconsistencies in her reports. The District began to meet and work with respondent five months into the 2008-2009 school year, to address Principal Nunes' concerns with respondent's backlog and lack of communication. The directives were to assist respondent in improving her performance. From there, respondent was issued a series of Performance Appraisals, Improvement Work Plans, Memos and Written Statements of Concern. They all came with directives and lead psychologist support to assist respondent with her performance. Admittedly, Ms. Pelligrino did not follow up with respondent when she directed respondent to meet with her two times a month for status reviews, beginning in March 2009. However, it was respondent's ultimate responsibility to follow this directive. Finally, on October 20, 2011, Ms. Pelligrino scheduled monthly meetings with respondent, since respondent did not follow the previous March 2, 2009 directive to meet

with Ms. Pelligrino twice a month, nor did respondent avail herself of Ms. Haley's availability to provide her additional support. Ms. Haley expended over 450 hours over four years, dedicated to respondent's reviews and support. Ms. Haley provided positive comments where warranted, but respondent was not consistent in those areas, and continued to commit repeated errors.

139. Respondent was asked at hearing whether one of her duties was to communicate and advise the school administrator, school staff, and other special education specialties regarding the application of federal and state laws in the assessment process to ensure compliance. In all of the testimony she provided where she performed those duties, respondent stated that she performed those duties, "very well, I might add." This is indicative of respondent's failure to acknowledge the repeated and serious errors in her reports, and to minimize or disregard Ms. Haley's comments. Respondent felt that none of her errors was extreme, that Ms. Haley was adding unnecessary additional work to her already overwhelming workload, and that the performance standards that applied to her did not apply to any other psychologists. However, the District's standards are set forth in the employee performance appraisal form. Ms. Haley used best practices to review respondent's reports. Ms. Haley was reviewing the report of nine other District psychologists, whose reports did not require intensive review over a period of four years.

Respondent's Failure to Improve Her Work Performance

140. Respondent's medical condition of adrenal insufficiency was treated, and her doctor expected respondent to improve her functioning in four to six months. (Finding 69.) Respondent also suffered from sinus infections, and had two sinus surgeries, with the last one occurring in September 2010. Respondent's performance did not improve after her hormone replacement therapy, or after her two surgeries. While respondent's medical condition may have affected the quality of her reports, respondent asserted that her reports greatly improved after 2008-2009. In fact, Ms. Haley noted those areas in respondent's reports that were acceptable or well done. However, extreme errors persisted in 2010, 2011 and 2012, despite ample opportunities for improvement and remediation. In addition, respondent failed to follow the directives of Ms. Pelligrino from 2009 to 2012.

Impact of Respondent's Conduct

141. Three of the principals at respondent's four assigned school sites¹⁹ – Norseman, Carver, and Ericson – complained to the District about respondent's lack of communication and collaboration, unprofessional conduct, and unsatisfactory performance. As a result, the principals did not want respondent returning to their schools the following school year. Respondent's conduct affected site SPED teachers, and site administrators in a negative manner. Respondent's assessment reports could not be trusted for accuracy, thus parents could not make informed decisions about their child. Respondent's poor

¹⁹ Respondent was also assigned to Homan, but the principal there did not request reassignment of respondent.

performance placed the District at risk of providing unwarranted special education services or vice versa. Denial of services where a student actually qualified is a denial of FAPE.

Fitness as School Psychologist

142. 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 his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” The *Morrison* court identified the following factors to be considered in determining whether a teacher’s conduct indicates unfitness 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 impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.) Similarly, the Court of Appeals in *Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560, stated:

Our high court in *Board of Education v. Jack M.* (1977) 19 Cal.3d 691, delineates the process to be considered in determining fitness. This opinion upheld the standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his conduct but also these factors are analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers and students relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct.

Courts have suggested that “fitness to teach” is a question of ultimate fact.²⁰ The fitness criteria are applied to the facts of this case, as set forth below.

Likelihood of adverse effect on students or fellow teachers

143. Respondent’s conduct adversely affected students and teachers. Her incomplete, inaccurate, and incorrect reports impeded the conduct of IEP meetings. Her lack

²⁰ *Board of Education v. Commission on Professional Competence*, *supra*, 102 Cal.App.3d 555, 560-561, citing *Board of Education v. Jack M.*, *supra*, 19 Cal.3d 691, 698, fn. 3.

of communication and collaboration with site staff caused them to experience stress, discomfort, and concern, and prevented them from performing their own job duties.

Degree of expected adversity

144. Respondent's conduct directly impacted the IEP process for numerous special education students, thereby jeopardizing the District's ability to provide a free appropriate public education to these students as required by law. Curriculum and planning for special education students are tied to assessment data; when respondent failed to do her job in a professional and competent manner, it impeded the ability of special education teachers and RIM's to do their jobs. Respondent's conduct also put the District at risk for litigation from parents, as well as sanction under state and federal law for failure to comply with mandatory timelines for completion of assessments.

Proximity in time of respondent's conduct

145. Respondent's conduct was recent, having taken place during the school years 2008-2009, 2009-2010, 2010-2011, and 2011-2012. The conduct continued without remediation up to the time the District issued the Charges.

Extenuating or aggravating circumstances

146. In 2008 and 2009, respondent suffered from medical problems related to her sinuses resulting in two surgeries, and her adrenal insufficiency, causing extreme fatigue. In addition, she took medication that allowed her to sleep, and the side effects impeded her ability to focus. However, respondent did not provide verifiable medical information to the District to document a need for accommodation of a medical condition.

147. Respondent submitted seven letters of recommendation, considered to the extent permitted by Government Code section 11513, subdivision (d).²¹ While the letters speak highly of respondent's professionalism, timely assessments, support and dedication to students, good working relationships with site staff, and leadership, none of the letters indicated any knowledge of the contents of respondent's assessment reports for the period from 2008 to 2012, the complaints from the principals at respondent's assigned school sites, or respondent's failure to improve her work performance. Therefore, the letters are given little weight.

148. On December 14, 2011, Deena Ravicchio, another school psychologist for the District, wrote an email to Ms. Haley expressing her concerns about respondent's assessment reports that Ms. Ravicchio received and read regarding students previously assessed by respondent. Ms. Ravicchio's email is also considered to the extent permitted by Government

²¹ Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Code section 11513, subdivision (d). Ms. Ravicchio wrote that she read numerous reports by respondent where the summary and eligibility criteria did not match with the assessment results. Other reports indicated that respondent administered certain tests, but did not include them in the body of the report or report scores, however, in the summary, respondent discussed performance on the tests that were not administered. Ms. Ravicchio noted a definite pattern of mistakes. Ms. Ravicchio noted that teachers commented that the students they teach do not seem like the same students identified in respondent's reports. Ms. Ravicchio's assessments of the students previously assessed by respondent almost always revealed an entirely different eligibility profile, including learning strengths and weaknesses. Ms. Ravicchio's letter is given great weight, because her concerns match those of Ms. Haley's regarding respondent's assessment reports, and is considered as a factor in aggravation.

149. A number of witnesses testified on respondent's behalf. Leslie Cox was respondent's RIM at Carver in the 2008-2009 school year, and at Ericson and Norseman in the 2009-2010 and 2010-2011 school years. Joanne McCarthy was an RSP at Norseman during the 2008-2009 school year. Janet Trosper was the RIM at Ericson in the 2011-2012 school year. Irene Ramirez is an RSP at Columbia Elementary School, and worked with respondent in the past. Marilyn Silva, a special education teacher, worked with respondent at Carver for six or seven years. Paula Martin is a school nurse, and worked with respondent at Norseman and Ericson over the past four years. Ms. Martin found it unusual that respondent was gathering her own health histories for her assessment reports, because Ms. Martin did not like respondent doing her job. Ms. Martin testified that she and respondent "bashed heads a little" with regard to the health histories, but overall, their professional relationship was collaborative. All of respondent's witnesses spoke highly of her ability to communicate and collaborate with them. All spoke highly about respondent's abilities as a school psychologist. None of respondent's witnesses received complaints about respondent. No school psychologists testified on respondent's behalf. Despite the high praise given to respondent by her witnesses, none of them had any direct knowledge of the concerns with continued errors in respondent's assessment reports over the four-year period, the District's efforts to support respondent, or the progressive discipline imposed. In this regard, their testimony is given little weight.

Praiseworthiness or blameworthiness of respondent's motives

150. To the extent that respondent contended her conduct should be excused because of a medical condition, respondent did not support this contention with competent medical evidence.

151. Respondent's motives were to complete her work competently. However, her failure to accept responsibility for her shortcomings and make improvements was not praiseworthy.

Likelihood of recurrence of the conduct

152. It is extremely likely that respondent's unsatisfactory performance would continue unabated if she returned to her position as a school psychologist. There was no evidence to suggest that the factors contributing to her unsatisfactory performance have been addressed or resolved by respondent, or that she is capable of making the changes necessary to perform in a competent manner.

The district contended that respondent's actions are evidence of a character trait that is not amenable to change, and which irreparably impairs her ability to perform as a school psychologist. This contention is persuasive, for the reasons set forth above.

Impact on constitutional rights

153. Respondent's conduct does not implicate the exercise of constitutional rights.

Effects of notoriety and publicity

154. The evidence did not establish that notoriety or publicity were important factors in this case.

Disruption of the educational process

155. There was clear evidence that respondent's conduct and the poor quality of her assessment reports disrupted the educational process of the special education students at Norseman, Ericson, Carver, and Homan. Furthermore, respondent impaired her relationship with site staff and administrators such that they did not want her returning to their schools as a school psychologist.

Conclusion

156. Based upon the foregoing criteria, the evidence established that respondent is unfit to continue in her position as a school psychologist for the District.

Evident Unfitness for Service

157. As set forth in the Findings, and particularly Finding 152, respondent has been given ample opportunity to improve her performance over the past four years. She has refused to avail herself of resources to assist her, and resolutely maintained that she was performing in a competent manner, despite overwhelming evidence to the contrary. Her complete lack of insight into the problems caused by her conduct, and her inability to improve despite the support and guidance of her supervisors, demonstrated a fixed character trait that cannot be ameliorated, and an evident unfitness for service as a school psychologist with the District.

LEGAL CONCLUSIONS

1. A school district that seeks to dismiss a permanent certificated employee from its employment bears the burden of proof, and the standard of proof is by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1040; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.)

Grounds for Dismissal were Established

2. Section 44932, subdivision (a), provides in pertinent part that no permanent employee shall be dismissed by a school district except for one or more of the following causes, including for ... (4) unsatisfactory performance, and (5) evident unfitness for service.

Unsatisfactory Performance

3. There is no case law that defines the term “unsatisfactory performance,” formerly known as incompetence, as applied in the context of a certificated employee dismissal proceeding. Therefore, in accordance with the rationale in *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 [held the phrase “unprofessional conduct,” as used in the Education Code, is to be construed according to its common and approved usage, having regard for the context in which the Legislature used it. (Ed. Code, § 10; 23 Cal.Jur., § 122, p. 745.)], the phrase “unsatisfactory performance” shall be construed according to its common usage, in the context of the school environment, i.e., the expected conduct, requirements and duties of the position of school psychologist.

4. As set forth in Findings 12 to 67 (assessment report errors); 77 to 106 (complaints from site administrators); 107 to 117 (performance appraisals); and 118 to 136 (progressive discipline), respondent’s performance as a school psychologist was unsatisfactory. As set forth in Findings 142 through 156, respondent’s conduct was directly related to her fitness as a school psychologist, thereby establishing grounds for dismissal pursuant to section 44932, subdivision (a)(4).

Evident Unfitness for Service

5. A charge of evident unfitness for service requires proof that the teacher is “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. ... [It] connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Woodland Joint Unified School Dist, v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) The *Morrison* criteria must be analyzed as a threshold matter to determine if the conduct indicates unfitness for service. (*Id.* at p. 1445.) If the *Morrison* criteria are met, the next step is to determine if the teacher’s unfitness is “‘evident’; i.e., whether the offensive conduct is caused by a defect in temperament.” (*Ibid.*)

6. As set forth in Findings 12 to 67, and 77 to 106, respondent's conduct demonstrated evident unfitness for service. As was noted in Findings 107 to 117, and 118 to 136, the District gave respondent numerous memos of concern, directives, and lead psychologist support, in an effort to allow respondent to correct her conduct; likewise, as set forth in Findings 138 and 139, the District made efforts to work with respondent to help her improve her performance. As set forth in Findings 142 through 156, respondent's conduct was directly related to her fitness as a school psychologist. As particularly set forth in Findings 143, 144, 146, 146, 152, and 155, respondent's conduct was not amenable to correction, and was instead the result of a defect in temperament. Thus, grounds for dismissal were established pursuant to section 44932, subdivision (a)(5).

Other Matters were not Established

7. Except as otherwise set forth in this Decision, any and all remaining charges and defenses asserted in this matter are determined not to be established by sufficient evidence or law.

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ORDER

Dismissal

The decision by the Fresno Unified School District to dismiss respondent Linda Ross-Smith from her position as a school psychologist with the District is affirmed.

Respondent Linda Ross-Smith is hereby dismissed from her position as a certificated employee of the Fresno Unified School District, effective on the date of this Decision.

DATED:

DANETTE C. BROWN, Chair
Commission on Professional Competence

REBECCA E. STRONG, Member
Commission on Professional Competence

Based upon my review of the evidence, the District has not established that Respondent Linda Ross-Smith should be terminated as a certificated employee with the District based upon Unsatisfactory Performance in violation of Education Code section 44932, subdivision (a)(4), and Evident Unfitness for Service in violation of Education Code section 44932, subdivision (a)(5). Furthermore, it is the intent of the Legislature that governing boards establish a uniform system of evaluation and assessment of the performance of all certificated personnel within each school district and that an objective evaluation and assessment will be uniform throughout the district. This clearly did not happen for the respondent who was evaluated far differently than her peers noted by major review of her assessments and the changing of the use of the evaluation report. I respectfully dissent.

VICTORIA R. STOTTS, Member
Commission on Professional Competence