

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

CATHERINE MADSON (EN 800866), a
Permanent Certificated Employee

Respondent.

OAH No. 2014100514

DECISION

Administrative Law Judge Angela Villegas (ALJ), State of California, Office of Administrative Hearings, heard this matter on September 1, 2015, in Los Angeles, California.¹

Mampre R. Pomakian, Associate General Counsel for the Los Angeles Unified School District (LAUSD), represented complainant.

Respondent and her attorney of record, Ronald C. Lapekas, declined to appear at the hearing.

Evidence was received, and the matter was submitted on September 1, 2015.

INTRODUCTION; SUMMARY OF ISSUES

Complainant seeks the dismissal of a tenured teacher, respondent Catherine Madson, on the following grounds:

- (1) unprofessional conduct (Ed. Code,² § 44932, subd. (a)(1));
- (2) immoral conduct (§§ 44932, subd. (a)(1), and 44939);

¹ Ordinarily, a three-member commission on professional competence (commission) would preside over this proceeding involving teacher dismissal. The parties, however, mutually waived their right to a commission, and the case was heard and decided by the ALJ alone. (See Factual Finding 6.)

² All further statutory references are to the Education Code, unless otherwise indicated.

- (3) evident unfitness for service (§ 44932, subd. (a)(5)); and
- (4) persistent violation of state laws or regulations for the governance of schools (§ 44932, subd. (a)(7)).

DENIAL OF PREHEARING MOTION TO DISMISS ACCUSATION

On August 17, 2015, respondent filed a motion to dismiss the Accusation; on August 21, 2015, complainant filed an opposition to the motion. On August 24, 2015, the ALJ heard oral argument on the motion, and on August 28, 2015, issued an order denying the motion. Rather than reproduce that order in its entirety in this decision, after the hearing, the ALJ marked the order as exhibit 104, and hereby includes it in the record of these proceedings.

MOTION TO AMEND TO CONFORM TO PROOF

At the close of the hearing, complainant moved to amend certain factual allegations of the Accusation to conform to proof. The motion was denied pursuant to section 44934, subdivision (d), and because of respondent's absence from the hearing. The ruling on the motion to amend did not affect the outcome of this proceeding.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Complainant Justo H. Avila, LAUSD's Chief Human Resources Officer, brought the Accusation in his official capacity. Respondent filed a Notice of Defense. This proceeding followed.
2. Respondent is a certificated employee of LAUSD, and worked as a history teacher at Washington Preparatory High School (School) from November 2005 to January 31, 2013, when she was removed from the classroom. At the times relevant to this case, the School's principal was Dr. Athaur Rahman "Todd" Ullah, and the assistant principals included Danny Kindle.
3. On August 12, 2014, complainant executed a Statement of Charges against respondent and presented it to LAUSD's governing board, which voted on August 26, 2014 to terminate respondent's employment.
4. On September 16, 2014, LAUSD gave respondent written notice of its intent to dismiss her, and served her with a copy of the Statement of Charges. On October 10, 2014, respondent timely demanded a hearing, which led to the issuance of the Accusation.

5. On November 8 and 10, 2014, by stipulation, the parties waived the “60-day rule” set forth in former section 44944, subdivision (a)(1),³ for commencing the hearing.

6. In a subsequent stipulation dated August 19, 2015, the parties waived the right to convene a commission (§ 44944, subd. (c)(1); former § 44944, subd. (b)(1)), agreed to have the matter heard by an ALJ alone, and set forth respondent’s withdrawal of her Notice of Defense, and her intention not to appear or present a defense at the administrative hearing.⁴ In the August 19, 2015 stipulation, the parties also agreed that LAUSD could present evidence at the hearing by way of affidavit or declaration without regard to the prior-notice requirements of Government Code section 11514.

Findings on the Allegations Against Respondent

7. The allegations of the Accusation/Statement of Charges⁵ concern events in respondent’s 10th-grade history classes on March 20, 2012; April 18, 2012; from the beginning of the 2012-2013 school year through October 26, 2012; and on January 31, 2013.

MARCH 20, 2012 INCIDENTS AND AFTERMATH

8. On March 20, 2012, the following events occurred.

(a) As alleged in paragraph 1(a) of the Accusation, respondent accused African-American students of failing to pay attention to a video, because the video’s subject matter was unrelated to African-American history, particularly slavery.

(b) Respondent stated, “This always happens to me in this course every year,” and went on to explain that “Hispanics begin to fail this [class] because they don’t want to listen to the truth,” or words to that effect, as alleged in paragraph 1(b) of the Accusation.

(c) As alleged in paragraph 1(c) of the Accusation, respondent told her students, approximately half of whom were African-American and half of whom were

³ Effective January 1, 2015, the provisions of the Education Code governing teacher dismissal underwent a major revision, and many provisions were renumbered. Because this case was brought under the former statutory scheme, this decision will, when necessary, refer to the former sections.

⁴ The withdrawal of respondent’s Notice of Defense does not vitiate jurisdiction to proceed with the hearing. Under Government Code section 11506, subdivision (c), failure to file a notice of defense (or, by extension, the withdrawal of same) waives the respondent’s right to a hearing, “but the agency in its discretion may nevertheless grant a hearing.”

⁵ Further references will be to the Accusation only, but such references also encompass the Statement of Charges.

Latino, that “Hispanics” (Karina Rosa declaration (dec.) ¶ 9) did not know anything, and that the students were not going anywhere in life, would turn out to be “nobody” (*id.*), and would not go to college.

(d) Respondent told her students they would not be able to pass the California High School Exit Exam (CAHSEE), as alleged in paragraph 1(d) of the Accusation.

9. The evidence did not establish that on March 20, 2012, respondent “caused a student to leave her class in tears and refuse to return . . . because [respondent] always made the student feel bad with her racial comments about Mexicans and telling students that they would not succeed in life[,]” as alleged in paragraph 2 of the Accusation. The evidence did suggest that a student from respondent’s class cried in March 2012, but did not establish that it was because of respondent’s racially-charged or discouraging remarks.

10. On March 26, 2012, Dr. Ullah “conferenced” (testimony of Dr. Ullah) with respondent concerning the March 20, 2012 incidents.⁶ During the conference, respondent denied making racial remarks, and complained that, although her purse had been stolen twice, the administration had done nothing to “back [her] up[.]” (Ex. 18.) She also stated, “Students push me and curse me every day and I just take it” (*id.*), and voiced her belief that the students were trying to get her fired.

11. Dr. Ullah instructed respondent to “[p]rovide a climate that promotes fairness, caring, equity, and respect in your classroom and toward your students”; “always be respectful in your treatment of others”; “cease and desist from discriminatory remarks in your classroom”; refrain from suggesting “that students are not capable of achieving their goals and dreams”; and follow LAUSD’s policies, including the Code of Ethics, Code of Conduct with Students, and a resolution calling for the respectful treatment of all persons. (Ex. 18.)

APRIL 18, 2012 INCIDENT AND AFTERMATH

12. On April 18, 2012, five to eight students from respondent’s class left the classroom eight to nine minutes prior to the end of class. These facts, as established by the evidence, did not exactly correspond to the allegation of paragraph 3 of the Accusation that respondent “left five to eight students unsupervised in her classroom.” Nevertheless, respondent’s conduct as established by the evidence had the same result as the conduct alleged: namely, five to eight students whom respondent was responsible for supervising were without her supervision.

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⁶ This instance of conferencing was not pled in the Accusation.

13. After this incident, Dr. Ullah conferenced with respondent regarding her instructional performance and concerns over student safety.⁷ During the conference, respondent again complained that her purse had been stolen twice, and that the administration could not “offer [her] physical safety[,]” and stated her belief that the students were dangerous. (Ex. 21.)

14. Dr. Ullah provided respondent with the Stull Performance Indicators, on which her performance would be evaluated, and the California Standards for the Teaching Profession, along with materials to support her instructional performance. Dr. Ullah likewise gave respondent instructional directives, and warned her, “You are never to allow students to leave before the school dismissal bell as it jeopardizes safety of the student and the campus instructional program.” (Ex. 21.)

INCIDENTS DURING THE 2012-2013 SCHOOL YEAR, INCLUDING OCTOBER 26, 2012,
AND AFTERMATH

15. On unspecified dates from the beginning of the 2012-2013 school year through October 26, 2012, respondent told students they would fail her class; they were “crazy”; and she felt sorry for their parents, as alleged in paragraph 4 of the Accusation. (Exs. 48, 49, 50, and 51.)⁸

16. On October 26, 2012, the following events occurred.

(a) At the beginning of class, respondent chanted in a sing-song voice that she was “giving out referrals[,]”⁹ as alleged in paragraph 5 of the Accusation. (Testimony of Drelin Lester; exs. 46 and 68.)

(b) After the chant, respondent used the word “fuck” in front of the class, stating, “What the fuck are they going to do?” or words to that effect, as alleged in paragraph 6 of the Accusation. (Testimony of Drelin Lester; exs. 45, 47, 68, and 69.)

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⁷ This instance of conferencing is not pled in the Accusation.

⁸ The cited exhibits are unsworn student statements, which might have been vulnerable to a hearsay objection, but because respondent was not present, no objection was asserted. Under Government Code section 11513, subdivision (d), “[h]earsay 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.” (Emphasis supplied.) Since there was no objection, and no indication the students’ statements were unreliable, they formed the basis for this finding.

⁹ “Referral” means a referral to the Dean of Students for purposes of student discipline. (Testimony of Dr. Ullah.)

(c) Respondent ejected student S [REDACTED] R. from the class, pushing him away from her physically, as alleged in paragraph 5 of the Accusation. (Testimony of Drelin Lester; exs. 46-51, 54, and 68.)

17. On January 11, 2013, Dr. Ullah again conferenced with Respondent as a result of the October 26, 2012 incidents. (Ex. 24.) At the conference, respondent denied pushing S [REDACTED] R. and denied using the word “fuck.” Dr. Ullah warned respondent that it was inappropriate to “[p]ut your hands on a student and to push a student”; “use demeaning or derogatory language with students such as ‘fuck’”; and/or “call a student ‘crazy’ or any other demeaning term(s).” (*Id.*)

18. Dr. Ullah also provided respondent with copies of state and LAUSD regulations and policies on which all teachers, including respondent, had repeatedly received training. These were the California Standards for the Teaching Profession, and LAUSD’s resolution regarding respectful treatment of all persons; Code of Conduct with Students; Employee Code of Ethics; and Discipline Foundation Policy. Dr. Ullah also referred respondent to LAUSD’s Employee Assistance Program, in case she desired counseling.

19. In addition, Dr. Ullah directed respondent not to push students out of class; not to use demeaning or derogatory language, such as the word “fuck,” with them; to use appropriate discipline techniques; and to follow the LAUSD policies noted above, as well as the policy abolishing corporal punishment.

JANUARY 31, 2013 INCIDENT AND AFTERMATH

20. On January 31, 2013, after student T [REDACTED] P. left the classroom, respondent, believing he had stolen her keys or phone, chased him and tackled or grabbed him, and engaged in mutual pushing and shoving with him in the hallway and stairwell outside her classroom, as alleged in paragraph 8 of the Accusation. As a result of the altercation, T [REDACTED] P. sustained scratches to both of his arms, and another student, K [REDACTED] M., who had tried to intervene, sustained scratches to her chest, as alleged in paragraph 8 of the Accusation.

21. The evidence did not establish the antecedents to the January 31, 2013 altercation.

(a) The evidence did not establish that respondent “snatched a paper from the hands of student T [REDACTED] P.[.]” as alleged in paragraph 7 of the Accusation. There was evidence, in the form of unsworn student statements, that respondent snatched a paper away from another student, likely K [REDACTED] M. (Exs. 58, 61, and 63.)

(b) The evidence did not establish that respondent more likely than not “told [T [REDACTED] P.] to get out of the classroom,” as alleged in paragraph 7 of the Accusation. Three unsworn student statements (exs. 55, 56 and 63,¹⁰ and 58) indicated that respondent

¹⁰ Exhibits 56 and 63 are duplicates.

did so, but the testimony of Drelin Lester, and the declaration (§ 5) and statement (exs. 44 and 64)¹¹ of Tiyasha Watts, along with four other student statements (exs. 52, 61, 62, 64), indicated that T [REDACTED] P. simply “walked out” of the room.

(c) Likewise, the evidence did not establish that respondent “pushed [T [REDACTED] P.] into the hallway” outside the classroom, as alleged in paragraph 7 of the Accusation .

22. Following the January 31, 2013 incident, respondent was removed from the classroom and did not return. A police report was taken, but no criminal repercussions followed. On February 27, 2013, Dr. Ullah conferenced with respondent again. This time, respondent remained silent.

23. Dr. Ullah informed respondent again that “[i]t is inappropriate [to] put your hands on a student and to push a student[.]” and directed her not to do so. He also directed her not to push students out of class, not to use demeaning or derogatory language with students, to seek administrative assistance if the situation recurred, and to follow LAUSD policies with regard to the treatment of others, including students. (Ex. 26.)

OTHER MATTERS CONCERNING RESPONDENT’S CONDUCT

24. In addition to the matters alleged in the Accusation, the evidence also indicated respondent’s teaching methods were ineffective and failed to engage students, and that she frequently talked to herself during class, used profanity, and evicted students from the classroom.

25. Dr. Ullah perceived respondent, during his conferences with her, to be defensive, argumentative, and at times irrational. Dr. Ullah’s view, supported by respondent’s statements as recounted in conference memoranda (exs. 18, 21, and 24), was that respondent largely blamed the students for the things that went wrong in her classroom.

RESPONDENT’S VIOLATION OF LAUSD RULES AND REGULATIONS; IMPACT OF RESPONDENT’S BEHAVIOR

26. (a) The LAUSD faculty handbook in effect at the times relevant to this case (ex. 27) was provided to all teachers, including respondent, at the beginning of each school year.

(b) It directed teachers to help students develop respect for their own cultural heritage and that of others, “a sense of ethics and moral character in their decision-making process[.]” and “appropriate techniques for conflict resolution.” (*Id.* at p. 3.) Among the professional duties specified for teachers was “[s]upervising pupils both within and outside the classroom[.]” (*Id.* at p. 11.) Moreover, teachers were made “responsible for

¹¹ Exhibits 44 and 64 are duplicates.

the general conduct of pupils both inside the classroom and on the grounds. Discipline cases needing special attention should be referred to the dean's office." (*Id.* at p. 12.) Finally, teachers' roles and responsibilities included "model[ing] respectful communication, mature decision-making and life-long learning skills along with teaching the course content." (*Id.* at p. 46.)

(c) Respondent's conduct from March 2012 through January 2013, as described in Factual Findings 7 through 23, contravened these provisions of the handbook. In particular, respondent's attribution of poor classroom conduct or academic performance to students' ethnicities was disrespectful and showed poor judgment; her failure to keep students from leaving class exposed them and others to danger, as did her physical aggression toward students as a means of discipline. The impression created by respondent's conduct was one of disrespect, lawlessness, and immaturity in problem-solving.

27. The Stull Performance Indicators (ex. 29) are the criteria that guided performance evaluations of faculty at the School during the times relevant to this case. Those indicators included, under Classroom Performance, that the teacher "[m]odel[] and promote[] fairness, caring, equity and respect" (*id.*, ¶ 3(c)), and "maintain[] a safe learning environment." (*Id.*, ¶ 3(f).) Respondent's conduct did not accord with these Performance Indicators.

28. (a) LAUSD's Code of Conduct with Students (ex. 76), which had also been provided to respondent, prohibited "[m]aking statements, or comments, either directly or in the presence of student(s), which are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning." (*Id.*, ¶ 5.) Respondent's use of the word "fuck" in class was not age-appropriate or professional, and her attribution of poor classroom conduct or academic performance to students' ethnicities was both harassing and demeaning.

(b) The Code of Conduct with Students likewise prohibited "[t]ouching or having physical contact with a student(s) that is not age-appropriate or within the scope of the employee's/individual's responsibilities and/or duties." (*Id.*, ¶ 6.) Respondent's physical contact with S ■■■ R. and T ■■■ P. contravened this provision.

29. Effective October 15, 1984, LAUSD's Board of Education abolished corporal punishment. On July 5, 2012, LAUSD issued bulletin BUL-5747.0 reaffirming that abolition, and defining corporal punishment as "the intentional application of physical pain as a method of changing behavior." (Ex. 78.) Teachers were made aware of this policy, which respondent's physical confrontation with T ■■■ P. violated.

30. The California Standards for the Teaching Profession, issued by the California Commission on Teacher Credentialing, required that teachers "[e]stablish a climate that promotes fairness and respect[.]" (Ex. 81, Standard 4.) Respondent was made aware of this standard, yet her conduct failed to meet it.

31. On October 10, 1988, the LAUSD Board of Education enacted a resolution mandating that all employees “treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person on the basis of race, . . . color, . . . national origin, [or] immigration status.” (Ex. 82.) Respondent was also made aware of this resolution. Her attribution of poor classroom conduct or academic performance to students’ ethnicities violated it.

32. On March 27, 2007, LAUSD issued its Discipline Foundation Policy bulletin, no. BUL-3638.0, and respondent was made aware of it. Teacher responsibilities under the Discipline Foundation Policy included “[a]cknowledging and reinforcing appropriate student behavior[,]” while “[p]roviding corrective feedback and re-teaching the behavioral skill when misconduct occurs[,]” and “[r]eporting the behavior to the school administrator . . . for a student who engages in ongoing misconduct, despite appropriate interventions.” (Ex. 84, pp. 3-4.) Respondent’s conduct, as found above, especially her physical contact with S [REDACTED] R. and T [REDACTED] P., failed to fulfill these responsibilities.

33. The LAUSD Employee Code of Ethics, of which respondent was also made aware, required teachers to “[c]reate an environment of trust, respect and non-discrimination” (ex. 83, ¶ A(2)), follow LAUSD “policies, procedures and rules” (*id.*, ¶ A(5)), and “[m]aintain appropriate relationships with students”: i.e., “relationships [that] are positive, professional and non-exploitive.” (*Id.*, ¶ B(11).) Respondent’s conduct failed to create an environment of trust, respect, and non-discrimination; her physical contact with S [REDACTED] R. and T [REDACTED] P. was neither positive nor professional; and her conduct also violated the LAUSD policies, procedures and rules previously discussed.

34. In connection with respondent’s conduct on March 20, 2012, October 26, 2012, and January 31, 2013, administrators investigated by discussing the events with students, and having students write statements. On occasion, students had to be pulled from classes, including respondent’s and other teachers’, for these investigative purposes. As a result, students missed instructional time. In addition, respondent’s conduct endangered students’ physical and emotional well-being. The January 31, 2013 incident, which occurred outside respondent’s classroom, was also disruptive and required police involvement. Respondent’s behavior consistently alarmed, puzzled, dismayed, and confused her students. (Testimony of Drelin Lester and Sky Rice.)

35. Since respondent did not participate in the hearing, she did not present evidence of mitigating or extenuating circumstances, or of her rehabilitation since the incidents described above.

LEGAL CONCLUSIONS

1. Jurisdiction exists to proceed, despite respondent’s contention to the contrary in her Motion to Dismiss the Accusation. (§§ 44934; 44934; and 44944, subd. (d)(2); former

§§ 44934; 44939; and 44944, subd. (c)(2).) The reasons for denying respondent's Motion to Dismiss the Accusation are as stated in the ruling on that motion. (Ex. 104.)

2. Complainant had the burden to establish the matters alleged in the Accusation by a preponderance of the evidence. (*Gardner v. Com. on Prof. Competence* (1985) 164 Cal.App.3d 1035, 1038-1040.)

3. Complainant established that respondent should be dismissed from her teaching position with LAUSD, on grounds that she engaged in immoral conduct, showed evident unfitness for service, and persistently violated school regulations.

Unprofessional Conduct

4. Complainant established that respondent engaged in unprofessional conduct (§ 44932, subd. (a)(2); former § 44932, subd. (a)(1)), but did not establish that the unprofessional conduct constitutes cause for dismissal in this case.

5. "Unprofessional conduct" is that which violates the rules or ethical code of a profession, or is unbecoming of a member of a profession in good standing (*Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553 [overruled on other grounds, *Bekiaris v. Bd. of Education* (1972) 6 Cal.3d 575, 588, fn. 7]), and indicates unfitness to teach. (*Perez v. Com. on Prof. Competence* (1983) 149 Cal.App.3d 1167, 1174.)

6. Respondent's conduct on March 20, 2012, April 18, 2012, from the beginning of the 2012-2013 school year through October 26, 2012, and on January 31, 2013, was unbecoming of a teacher in good standing and violated school regulations, because it discouraged students, put them down, threatened them with arbitrary punishment, involved the use of profanity, and included inappropriate physical contact with students and the eviction of a student from class. (Factual Findings 8-20 and 26-33.) Moreover, since all of the conduct described above occurred during class and directly involved respondent's interaction with students, it reflected on her fitness to teach.

7. Nevertheless, it was not established that respondent was given notice of her unsatisfactory conduct in time to give her a chance to cure it. The Accusation and complainant's exhibit list refer to a Notice of Unsatisfactory Acts dated March 27, 2014, but no such notice was actually presented at the hearing, and even if it had been, March 27, 2014 was more than a year after respondent had been removed from the classroom. (Factual Findings 2 and 22.)

8. LAUSD's failure to provide respondent with timely notice of her unsatisfactory acts and an opportunity to cure is fatal to the unprofessional conduct claim. (§ 44938, subd. (a); former § 44938, subd. (a); *Woodland Joint Unified School Dist. v. Com. on Prof. Competence* (1992) 2 Cal.App.4th 1429 (Woodland), 1446; *Tarquin v. Com. on Prof. Competence* (1978) 84 Cal.App.3d 251, 257-259.)

Immoral Conduct

9. Complainant established that respondent engaged in immoral conduct (§§ 44932, subd. (a)(1); 44939).

10. “Immoral conduct” includes conduct hostile to the welfare of the general public, conduct that is willful, flagrant, or shameless, and conduct showing moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare. (*Bd. of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal. App.2d 808, 811.)

11. Respondent’s physical aggression toward S ■■■ R., and especially T ■■■ P., was immoral, because it was contrary to public welfare, demonstrated utter inconsideration of good order, and reflected indifference to the opinions of anyone else. (Factual Finding 20.) Again, respondent’s conduct occurred in class, in front of students, and involved students, leaving no doubt that it was related to her fitness to teach.

Evident Unfitness for Service

12. Complainant established respondent’s evident unfitness for service (§ 44932, subd. (a)(6); former § 44932, subd. (a)(5)).

13. A teacher displaying “evident unfitness for service” is one who is “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. Unlike unprofessional conduct, evident unfitness for service 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, supra*, 2 Cal.App.4th at p. 1444 [footnote omitted; internal quotation marks omitted].)

14. Respondent’s conduct on March 20, 2012, April 18, 2012, during the beginning of the 2012-2013 school year, on October 26, 2012, and on January 31, 2013, taken as a whole, reflects a persistent failure to modulate her behavior with students or employ appropriate means of motivation and discipline. (Factual Findings 8, 12, 15, 16, and 20.) Respondent’s inappropriate conduct, including the use of physical coercion, continued despite warnings to her that it must stop (Factual Findings 8 and 10-20), indicating that she was temperamentally unable or unwilling to correct her behavior. Accordingly, respondent’s conduct indicates she is unfit to teach.

15. Moreover, although some of the conduct supporting this charge was verbal in nature, cause for discipline nevertheless exists despite respondent’s free-expression rights, because LAUSD may, at least to a degree, regulate respondent’s speech on the job. (*Garcetti v. Ceballos* (2006) 547 U.S. 410, 421 (*Garcetti*); *Kaye v. Bd. of Trustees of San Diego County Public Law Library* (2009) 179 Cal.App.4th 48, 56-59 (*Kaye*).)

Persistent Violation of School Regulations

16. Complainant established respondent's "[p]ersistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her." (§ 44932, subd. (a)(8); former § 44932, subd. (a)(7).)

17. A teacher may be dismissed under this provision for continuous or repeated disobedience of applicable rules and regulations, or behavior motivated by an attitude of continuing insubordination; a single instance of disobedience is insufficient. (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.)

18. Respondent's conduct on March 20, 2012, April 18, 2012, during the beginning of the 2012-2013 school year, on October 26, 2012, and on January 31, 2013, repeatedly violated state and LAUSD regulations, as set forth in Factual Findings 26 through 33. Respondent's violations endured over a period lasting almost two years, and occurred despite admonitions to desist. (Factual Findings 8-34.) Accordingly, respondent persistently violated, or refused to obey, school regulations.

Respondent's Conduct Constituting Cause for Dismissal Was Substantially Related to Her Fitness to Teach

19. Respondent's immoral conduct, evident unfitness to teach, and persistent violations of school regulations are substantially related to the qualifications, functions, and duties of a teacher. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*), 229-230.)

20. (a) Respondent's conduct adversely affected her students and fellow teachers to a serious degree. (*Morrison, supra*, at p. 229.)

(b) Respondent's negative remarks about her students' potential for success and their ethnic backgrounds were discouraging and demeaning. (Factual Finding 8 and 15.) Respondent's failure to stop students from leaving her class early endangered them and others. (Factual Finding 12.) It also undermined good order and respect, as did her use of profanity in class and her threat of arbitrary punishment. (Factual Finding 16.) Respondent's displays of physical aggression toward students endangered them physically and alarmed them. (Factual Findings 16, 20, and 34.) The need for investigation into respondent's conduct disrupted instructional time, and respondent's students were left bewildered by her conduct. (Factual Finding 34.)

21. Respondent's conduct occurred recently, during 2012 and 2013, which was less than seven years into her teaching career at the School. (Factual Findings 2 and 8-23.) (*Morrison, supra*, at p. 229.) Moreover, her displays of physical aggression escalated over that time period. (Factual Findings 16 and 20.)

22. Respondent's conduct was aggravated by its persistent and repeated nature, and by the cruelty embodied in much of it. (Factual Findings 8-23.) (*Morrison, supra*, at p. 229.) Some extenuating circumstances appeared: for example, respondent's claim that her purse had been stolen twice, and that she had been physically threatened and bullied by students. (Factual Findings 10 and 13.) Nevertheless, respondent's response to those circumstances was immature and made the situation worse rather than better. Moreover, it was not clear that the bad things that had happened to respondent in the past involved the same group, or groups, of students on whom she visited her uncalled-for behavior.

23. (a) The motivations for respondent's conduct were not always clear. (See *Morrison, supra*, at p. 229 [identifying as a factor to be considered "the praiseworthiness or blameworthiness of the motives resulting in the conduct"].)

(b) It was possible that some of respondent's conduct could have had a praiseworthy motive, but even if it did, her behavior still showed insensitivity and poor judgment, and it was not understood as positive. (Factual Findings 8-20 and 34.)

(c) Moreover, there could have been no praiseworthy motive for respondent's use of profanity in class on October 26, 2012, or for her physical aggression toward T ■■■ P. on January 31, 2013. (Factual Findings 16 and 20.) Respondent's motivation in the latter instance was her belief that T ■■■ P. had stolen her keys. (Factual Finding 20.) But especially in a school setting, it was wholly inappropriate for respondent to resort to self-help and physical violence, particularly considering that she was not being physically threatened. (Factual Findings 20 and 21.) On the contrary, respondent was the aggressor. (*Id.*)

24. Given the repeated nature of respondent's conduct (Factual Findings 8-20) and the absence of any showing of rehabilitation (Factual Finding 35), the likelihood of recurrence is high. (*Morrison, supra*, at p. 229.)

25. Although some of the conduct constituting cause for dismissal was verbal (Factual Findings 8 and 15), there is little concern that imposing discipline will "inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers." (*Morrison, supra*, at p. 229.) As already noted, *Garcetti* and *Kaye, supra*, both decided after *Morrison*, indicate that some "chilling" is permissible in public employment, and in the public schools, it is important that teachers recognize their students' sensitivity and avoid hurtful and profane language.

26. All of these factors, considered together, strongly indicate that respondent is no longer fit for her position as an LAUSD teacher.

Dismissal Is Appropriate

27. Section 44944, subdivision (d)(1), and former section 44944, subdivision (c)(1), provide that the only options available to a commission (or in this case, to the ALJ),

are dismissal or non-dismissal.¹² The commission (or here, the ALJ) has no power to impose probation or other lesser sanctions. (§ 44944, subd. (d)(3); former § 44944, subd. (c)(3).)

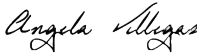
28. In this case, the Accusation seeks to have respondent “dismissed from her employment as a permanent certificated employee” of LAUSD. (Accusation, prayer ¶ 2.) Suspension is not sought. Hence, the only available options are either to dismiss respondent or retain her.

29. Given complainant’s establishment of three causes for dismissal, and the absence of any showing of rehabilitation or other countervailing considerations, the appropriate consequence for respondent’s conduct is dismissal from her teaching position.

ORDER

Respondent Catherine Madson shall forthwith be terminated as a certificated employee of the Los Angeles Unified School District.

Dated: September 10, 2015

DocuSigned by:

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ANGELA VILLEGAS
Administrative Law Judge
Office of Administrative Hearings

¹² Suspension is also an option, but only when the complainant expressly seeks suspension. (§ 44944, subd. (d)(3); former § 44944, subd. (c)(3).)