

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
LOS ANGELES UNIFIED SCHOOL DISTRICT  
LOS ANGELES COUNTY, CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

JOHN SANDY CAMPBELL (EN 741840),  
A Permanent Certificated Employee,

Respondent.

OAH No.: 2017090802

**DECISION**

This matter was heard on February 28, 2018, March 1, 2018, March 5-9, 2018, and May 8-11, 2018, in Los Angeles, California, before the Commission on Professional Competence (Commission). The Commission included Daniel Ackerman, Kisha L. Williams and Nana Chin, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California.

The Los Angeles Unified School District (LAUSD/District) was represented by Susan Hyman, Esq. and Kelly Kim, Esq.

John Sandy Campbell (Respondent) was present throughout the proceedings and was represented by Tamra Smith, Esq.

Prior to the presentation of evidence, the parties brought several pre-trial motions. The ALJ considered and ruled on those motions as well as on motions made during the course of the hearing, as reflected on the record.

At the onset of the hearing, the District moved to amend the Statement of Charges by interlineation as follows: in paragraph 14, the May 25, 2015, date was amended to May 25, 2016, and the May 31 date was amended to May 31, 2016; in paragraph 15, the May 25, 2015, date was amended to May 25, 2016; and in paragraph 25, the October 30, 2016, date was amended to November 30, 2016. Respondent did not object and the Statement of Charges was so amended.

In order to protect the privacy of Respondent and minors in the case and to prevent the disclosure of confidential information, the ALJ issued a Protective Order placing Exhibits 26, 523, 535A, 536, 541, 542, 543, 545, 547, 661, 666 and 667 under seal after its use in

preparation of the Decision. These documents shall remain under seal and shall not be opened, except as provided by the Protective Order. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the document subject to the Protective Order provided that such document is protected from release to the public.

Counsel for the parties represented that they had redacted students' names in all exhibits so that students are identified only by first name and last initial.

During the course of the hearing, an Amended Joint Stipulation<sup>1</sup> was entered into by District and Respondent on March 2, 2018. The document is marked and entered into evidence as Exhibit 28.

The record was left open to allow the District and Respondent to submit written closing argument. The District's Closing Brief was timely received and was marked as Exhibit 29. Respondent's closing brief timely received and was marked as Exhibit 668.

The record was closed and the matter was submitted for decision on June 8, 2018.

The Commission considered the entire record in executive session. After due consideration of the entire record herein, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

## FACTUAL FINDINGS

### *Jurisdiction*

1. Respondent was, at all times relevant herein, a permanent certificated employee of the District assigned to Chavez Social Justice Humanitas Academy (Humanitas or SJHA), and worked as a Resource Specialist (RSP) Teacher during the 2015/16 and 2016/17 school years.

2. On August 22, 2017, the Assistant Chief Human Resources Officer, Jose R. Canto, Ed.D, signed the Statement of Charges in his official capacity. The Statement of Charges sought to immediately suspend Respondent and dismiss her from employment with the district on the grounds of immoral conduct, unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service, persistent violation or refusal to obey school and/or district rules, and willful refusal to perform regular assignments without reasonable cause.

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<sup>1</sup> The Stipulation incorrectly cites to OAH Case No. 2017090683, the case number assigned to Respondent's motion for immediate reversal of suspension (MIRS).

3. Respondent timely served a Notice of Defense, which Respondent amended on October 5, 2017.

*Chavez Social Justice Humanitas Academy*

4. Humanitas is a pilot school in the LAUSD system. Pursuant to the Memorandum of Understanding (MOU) between LAUSD and the United Teachers Los Angeles (UTLA), the working conditions in pilot schools must comply with all state and federal law and regulations but are generally exempt from Board Rules, District policies and the provisions of the LAUSD-UTLA collective bargaining agreement (CBA).

5. The provisions of the CBA which expressly apply to pilot schools include provisions related to the status of LAUSD employees who work in pilot schools, leaves (Article XII), reduction in force (Article XIII), evaluations and discipline (Article X and Article XXVII, Section 3.2), peer assistance and review (Article X-A), dues deduction (Article IV-A), safety (Article XXVIII), holidays (Article XVII), and UTLA rights (selected provisions of Article IV).

6. Article IX outlines the hours, determines the hours, duties, and work year, including the minimum on-site obligations of teachers. Pursuant to the MOU, Article IX is superseded by a pilot school's Elect-to-Work Agreement (EWA). Employees sign the agreement as a condition of working at a Pilot School.

7. When Respondent was hired, Humanitas was developing a full inclusion model of special education where students with disabilities receive their education within the regular classroom assisted by RSP teachers who would enter the classroom and provide support as needed.

8. During the 2015/2016 school year, Respondent was not formally assigned to a class but she had a caseload of students. During the 2016/2017, Respondent was assigned an advisory class.

9. For each of the students in her caseload, Respondent was required to obtain information and data in preparation for a team meeting to discuss and prepare the student's Individualized Education Program (IEP) pursuant to state and federal laws and in accordance with school district policies and procedures. Respondent was responsible for obtaining, collating, and reviewing information regarding the current services and supports being provided to the students, assessments, their levels of educational performance, and progress towards the goals and objectives under their IEPs. Completion of these special education tasks required Respondent to confer with the student's general education teachers and service providers. She was also required to notify school staff, service providers, the student's parents, and other mandatory participants of the date and location of the IEP team meeting where participants could discuss the pupil's special education program, determine necessary services and supports, and prepare and sign the IEP document. After or during the IEP team meeting, Respondent was required to prepare the IEP document for the student.

*2015/2016 School Year*

TARDIES, PARTIAL ABSENCES AND ABSENCES

10. Absences and leaves for pilot schools are governed by Article XII of the CBA.

11. Article XII, sections 12.0 - 12.10, outlines the circumstances when an employee is paid for a leave of absence due to illness. According to Section 12.7, “[w]hen an employee is absent under this section and such absence is properly verified, the employee will receive full normal pay up to the total of the employee’s full-pay illness.” Section 12.7 requires employees to certify the reason for the absence and authorizes the District to use whatever means reasonably necessary to verify any claimed illness before authorizing any compensation. Additionally, Section 12.7, requires employees who are absent from duty for more than five consecutive working days to submit a signed Certification/Request of Absence for Illness, Family Illness, New Child (Form 60.ILL) (Certification of Absence) completed by the attending physician or with an attached statement from the attending physician on letterhead. (Article XII, section 12.9)

12. Article XII, sections 14.0-14.1, outlines the circumstances when an employee is paid for a leave of absence due to personal necessity. Employees are required to “notify the immediate administrator at least five working days prior to the absence” (Section 14.0, subdivision (m)), to verify the nature of the necessity, and not to take more than six personal necessity absences a year.<sup>2</sup> (Article XII, section 14.1.)

13. The work conditions at the pilot school are governed by the school’s EWA which outlines the length of the instructional and work day, the amount of time or responsibilities an employee is required to render beyond the instructional day, and any additional required duty time outside the school year.

14. The EWA that was in place during the 2015/2016 school year at Humanitas states, in pertinent part:

I. Working Hours

A. The workday for SJHA teachers will begin one half hour before the start of school. This half hour is for each teacher to use as they would a conference period, but should also be kept available for VIP meetings, committee meetings, extra grade-level team meetings, etc.

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<sup>2</sup> If the personal necessity is taken to attend to the illness of the employee’s child, parent, or spouse, up to six additional days are allowed in a calendar year. (CBA, Article XII, Section 14.1, subsection (a)(1).)

B. Teachers can arrive late (between 8:00-8:30) six times per school year before an EWA compliance meeting is scheduled.

[¶] . . . [¶]

D. PD Fridays: All teachers will attend a faculty meeting after school once a week. These meetings are held on Fridays in lieu of the district's banked Tuesdays (to be clear, we have banked Fridays). These meetings will start 15 minutes after the end of the school day and last until 4:30. Tardiness and absences will be noted in a teacher's file.

- Three attendance infractions will result in an Elect-to-Work compliance meeting.
- Further attendance infractions will result in an unsatisfactory review.

E. The work year: SJHA is a traditional calendar school.

(Exhibit 4)

15. It was established by stipulation that Respondent was absent 12 school days during the period between September 2015, through March 16, 2016, as follows: October 21, 2015; October 28, 2015; November 9, 2015; December 14, 2015; January 13, 2016; February 1, 2016; February 3, 2016; February 4, 2016; February 8, 2016; February 26, 2016; March 4, 2016; and March 15, 2016.

16. Humanitas maintains a sign-in book, a late log, and an off campus log. All certificated staff are required to sign in when they arrive at the school and sign out at the end of the day. Certificated staff are considered tardy if they arrive after 8:00 a.m. If they arrive after the instructional start time, it is considered to be a partial absence. SAA Jimenez is charged with monitoring the sign-in book and logs. The sign-in book is kept in the main office. After the 8:00 a.m. start time, the sign-in book is removed and replaced with the late log. The late log is left in the front until approximately 9:15 a.m. School Administrative Assistant Rebecca Jimenez (SAA Jimenez) is in charge of payroll at Humanitas and is the custodian of these records.

17. The sign-in book and Respondent's written statements established that Respondent had been either tardy or partially absent on 23 school days during the period between September 2015, through March 16, 2016.

18. On March 16, 2016, Assistant Principal Marike Aguilar (nee Marike Anderson Dam) (AP Aguilar) had an informal meeting with Respondent to address certain concerns, including Respondent's attendance. A conference was scheduled the following day to discuss these concerns in detail.

19. Respondent requested that it be rescheduled as Respondent's UTLA representative would not be available on the day of the conference. AP Aguilar rescheduled the conference to accommodate Respondent's request to March 29, 2016 at 4:30 p.m. On the day of the conference, however, AP Aguilar had a confrontation with Respondent regarding the conference where Respondent came "really close" to AP Aguilar and told her that she needed to change the time of the conference. When AP Aguilar advised Respondent that she would not be changing the time of the conference, Respondent stated that it would become a union matter. AP Aguilar acknowledged Respondent's statement and walked away, shaken by the encounter.

20. When Respondent did not attend the conference at the scheduled time, the conference was held in her absence and a summary of the administration's concerns (April 2016 Memorandum) was provided to Respondent. Details regarding Respondent's absences and tardiness were obtained from the sign-in book and late log maintained by SAA Jimenez.

21. In the April 2016 Memorandum, AP Aguilar advised Respondent that she had been absent on 12 occasions and had arrived late to work 30 times. AP Aguilar noted that her "frequent absences have a negative impact on parents, students and staff who have meetings scheduled with [her] on these days; students [she is] scheduled to support in class on these days; [and] students who would otherwise make use of the Learning Center" and directed Respondent to "report to work on time, every day, and work for the duration of [her] contract hours." (Exhibit 7D, LAUSD 138 and 139). AP Aguilar provided Respondent with Bulletin 1205.1-FMLA/California Family Rights Act Policy (FMLA forms), advising Respondent that absences due to illness or personal necessity are not protected unless they are covered by the Family Medical Leave Act (FMLA), and that, "if applicable, [Respondent was] to return the completed forms to [her] no later than Friday, April 8, 2016." (Exhibit 7D, LAUSD 138).

22. Copies of the LAUSD Employee Attendance Policy, LAUSD Employee Code of Ethics, the Humanitas policy for absence procedures, and the EWA were also provided to Respondent with the April 2016 Memorandum.

23. Respondent prepared and submitted a response to the April 2016 Memorandum (April 2016 Response) and addressed its many concerns. With respect to her attendance, Respondent admitted to the absences, stating that her absences had been due to either her or her children being ill. With respect to the late arrivals, Respondent stated that "over two-thirds of those tardies" was due to the LAUSD bus transportation running behind schedule. (Exhibit 7D, LAUSD 144 and Exhibit 562, JSC 202.) Respondent concluded by agreeing to follow the directives related to attendance, including, submitting verifications for her absences. (Exhibit 7D, LAUSD 151 and Exhibit 562, JSC 210-JSC 211.)

24. From March 29, 2016, until May 2, 2016, Respondent was late on six additional occasions and absent on seven additional days. Respondent did not complete and submit any FMLA forms to AP Aguilar during this period.

25. On May 3, 2016, AP Aguilar issued a second memorandum (May 2016 Memorandum) in absentia detailing a number of the administration's concerns, including the continued concern regarding Respondent's tardiness, partial absences and absences. The May 2016 Memorandum provided directives, assistance and guidance to Respondent in a number of areas, including her attendance. Included among the many directives were directives to the Respondent to report to work on time, every day, and work for the duration of her contract hours; to notify an administrator in advance of any absence from an event for which attendance is required by the EWA; and, if applicable, to submit the completed FMLA forms to her by Friday, May 6, 2016.

26. Respondent prepared and submitted a written response to the May 2016 Memorandum (May 2016 Response). With respect to her attendance, Respondent admitted to the absences, and provided explanations for those absences. With respect to the late arrivals, Respondent stated that "85% of tardies are attributed to LAUSD bus transportation picking my daughter up late for school. . ." (Exhibit 7C, LAUSD 132 and Exhibit 564, JSC 227.) Respondent further stated that LAUSD Transportation contacted her and that she is "confident that transportation will no longer be an issue. . ." (*Ibid.*) Respondent agreed to follow the directives related to attendance, including, submitting verifications for her absences but claimed that AP Aguilar had "no evidence" regarding the many concerns that were addressed in the May 2016 Memorandum. Respondent concluded the May 2016 Response by claiming that the valid concerns addressed in the memorandum, "border defamation of character. . . [and that] [i]f [AP Aguilar] continues to defame [her] character [Respondent] will escalate this matter posthaste." (Exhibit 7B, LAUSD 135 and Exhibit 564, JSC 235.)

27. From the May 3, 2016, memorandum until the June 3, 2016, Respondent was late on 11 additional occasions and absent on six additional days. Respondent did not complete and submit any FMLA forms to AP Aguilar during this period.

28. On June 3, 2016, Principal Jose L. Navarro (Principal Navarro) conducted a conference with Respondent to address the administration's continuing concerns and provided her with a memorandum of the meeting (June 2016 Memorandum). Included among those concerns were concerns related to Respondent's attendance. The memorandum was drafted with the assistance of SAA Jimenez who provided details regarding Respondent's attendance from attendance records. The memorandum provided directives, assistance and guidance to Respondent in a number of areas. Included among the directives were directives to report to work on time, every day, and work for the duration of her contract hours; to notify an administrator in advance of any absence from an event for which attendance is required by the EWA; and, if applicable, to submit the completed FMLA forms to her by Friday, June 10, 2016.

29. Respondent submitted a response to the June 2016 Memorandum (June 2016 Response). Respondent admitted to all the absences and all but one of the tardies. Respondent's explanation for her tardiness and absences included, having to route her daughter to school; finding out, while at work, that her adult son had been involved in a serious accident; and the death of an immediate family member.

30. From the June 3, 2016, conference, until the end of the school year on June 13, 2016, Respondent was late on three additional occasions and absent on three additional days. Respondent did not complete and submit any FMLA forms to AP Aguilar during this period.

31. Based on Findings 15, 24, 26-27, 29-30 above, it was established that during the 2015/2016 school year, Respondent was absent for 27 days as follows: October 21, 2015; October 28, 2015; November 9, 2015; December 14, 2015; January 13, 2016; February 1, 2016; February 3-4, 2016; February 8, 2016; February 26, 2016; March 4, 2016; March 15, 2016; April 5-6, 2016; April 11, 2016; April 26-28, 2016; May 5-6, 2016; May 16-17, 2016; May 26-27, 2016; June 8-9, 2016; and June 13, 2016. Respondent's absences following the April 2016 Memorandum constituted a violation of administrative directives that Respondent report to work on time, every day, and work for the duration of her contract hours and constitutes a willful refusal to perform a regular assignment without reasonable cause.

32. Based on Findings 16-17, 23-24, 26-27, 29-30 above, it was established that Respondent was either tardy or partially absent on 41 occasions. Parties stipulated that Respondent was either tardy or partially absent on 14 occasions. In addition to the stipulated dates, the District established that Respondent was either tardy or partially absent on 27 additional occasions: September 1-2, 2015; September 10, 2015; September 25, 2105; October 23, 2015; October 27, 2015; November 13, 2015; November 15, 2015; November 16, 2016; November 20, 2015; December 3, 2015; December 7, 2015; January 11-12, 2016;<sup>3</sup> January 20, 2016; January 22, 2016; January 29, 2016; February 1-19, 2016; February 22, 2016; February 29, 2016; March 2, 2016; March 10-11, 2016; March 14, 2016; March 30, 2016; April 4, 2016; April 7-8, 2016; April 15, 2016; April 18, 2016; April 20, 2018; May 2-4, 2016; May 10-12, 2016; May 18, 2016; May 20, 2016; May 24-25, 2016; May 31, 2016; June 1, 2016; June 6-7, 2016; and June 10, 2016. Respondent's tardiness and partial absences during the 2015/2016 school year constituted a violation of the EWA provision governing working hours. Respondent's continued tardiness and partial absences following the April 2016 Memorandum constituted a violation of administrative directives that Respondent report to work on time, every day, and work for the duration of her contract hours and constitutes a willful refusal to perform a regular assignment without reasonable cause.

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<sup>3</sup> During the month of January in 2016, Respondent signed in indicating that it was January 2015.

## CERTIFICATIONS AND VERIFICATIONS

33. Article XII, Section 12.7 provides that when an employee is absent due to illness and “such absence is properly verified, the employee will receive full normal pay up to the total of the employee’s full-pay illness benefits.”

34. Pursuant Section 12.8 of Article XII of the CBA, “An employee who is absent shall be required to certify the reason for absence.”

35. Article XII, Section 14.1, subsection (d), requires that the employee “... verify the nature of such necessity. Such statement shall be filed with the appropriate administrator no less than five working days in advance of a religious holiday, court appearance or school visitation. . .”

36. Humanitas requires that certifications be submitted the next day the employee is back at work. Verifications, when required, are to be submitted along with the certification.

37. UTLA area representative Kim McLaughlin testified credibly at hearing. Ms. McLaughlin has been with UTLA for approximately eight years. As an area representative, Ms. McLaughlin works to enforce the contract, advise members on questions about the contract, organize at the schools, and represent members in contract disputes and conferences.

38. Ms. McLaughlin has represented Respondent at Humanitas, attending several conferences at the school with her, and filing two suspension appeals and a payroll grievance on her behalf.

39. According to Ms. McLaughlin, teachers are required to certify absences but there is no time period specified in the CBA as to when a teacher is to provide such certification. There is also no prohibition in the contract which would prevent a teacher from providing such certifications by facsimile or e-mail but Ms. McLaughlin did acknowledge that some schools do require original signatures. Physician certifications are required by the CBA when an employee has been absent for five days.

40. Ms. McLaughlin also testified that, although the CBA does not require certification forms for tardies, she is aware of occasions when employees have been required to submit such certifications when there have been issues related to attendance.

41. It was not established that Respondent failed to submit a Certification and/or Request for Absence for Non-Illness (Form No. 60. NON-ILL) or a Certification/Request for Absence for Illness (Form No. 60. ILL) (certification forms) for absences which took place between the period beginning with October 21, 2015 and ending on May 17, 2016. Though Section 12.8 of Article XII of the CBA requires employees to certify the reason for the absence, the District did not present any evidence of Respondent’s failure to submit the

proper certification forms for her absences during this period. None of the memoranda issued to Respondent during the 2015/2016 school indicate that Respondent failed to submit certifications for her absences or the dates on which those certifications were missing. The District also did not submit any testimonial evidence that Respondent was missing certification forms for her absences during the 2015/2016 school year and the days for which those certifications forms were missing. Though the October 2016 Notice of Satisfactory Act (October 2016 Notice) does allege the dates on which Respondent purportedly failed to submit certification forms for her absences, there was no testimony or evidence to establish how the dates were determined and cannot be used to establish these violations. Therefore, no probative evidence was presented on this allegation.

42. Absences due to illness and personal necessity need to be verified pursuant to Article XII, Section 12.7 and 14.1. In addition, Respondent was directed to verify her absences in each of the memoranda issued to Respondent during the 2015/2016 school year by the Humanitas' administration. Respondent agreed to follow the directive to verify her absences, her April 2016 Response, May 2016 Response and June 2016 Response. Despite this obligation to verify her absences, Respondent failed to provide Humanitas' administration with acceptable verifications for her absences of April 5-6, 2016; April 11, 2016; April 26-28, 2016; May 5-6, 2016; May 16-17, 2016; May 26-27, 2016; June 8-9, 2016; and June 13, 2016. Respondent's failure to provide verifications of her absences was a violation of her duties under CBA. Respondent's continued failure to submit acceptable verifications after being issued the April 2016 Memorandum constituted a violation of administrative directives provided to Respondent that she properly verify her absences in order to be paid.

43. The District alleged that, during the period between May 2, 2016, and June 6, 2016, Respondent failed to submit valid verifications for her partial absences of May 2, 2016, May 20, 2016, May 25, 2016 and June 6, 2016. Though it was established Respondent failed to submit valid verifications for her absences on May 2, 2016, and May 20, 2016, there was no probative evidence that would establish that Respondent failed to submit valid verifications for her partial absences of May 25, 2016, and June 6, 2016. Respondent's failure to submit acceptable verifications after being issued the April 2016 Memorandum constituted a violation of administrative directives that Respondent properly verify her absences in order to be paid.

44. No probative evidence was submitted which would prove that Respondent failed to submit acceptable verification and a certification form on the days she arrived late to work during the period between August 17, 2015, and June 13, 2016, or that such documentation was required for her late arrivals during this time period. The CBA and the EWA do not require certifications for tardies and the memoranda issued to Respondent during the 2015/2016 did not have any administrative directives requiring her to submit documentation.

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## CHAPERONE HOURS

45. Teachers in the 2015/2016 school year would be required to report their own chaperone hours on a Google sheet. Lead teacher Samantha Siegeler was responsible for monitoring the hours.

46. At a date not established by the record, Ms. Siegeler scheduled a meeting with Respondent for February 26, 2016, to discuss the chaperone requirement. The morning of the meeting, Respondent emailed administration to advise them that she would be taking a personal necessity day as she needed to go to court that morning.<sup>4</sup> (Exhibit 562, JSC 201.) Respondent, however, did not notify Ms. Siegeler that she would not be present for the meeting. Upon her return, Respondent did not make any attempt to reschedule the meeting until after Ms. Seigeler emailed her on February 29, 2016. (Exhibit 562, JSC 204.)

47. AP Aguilar emailed Respondent on March 9, 2016, regarding her chaperone hours, reminding her that though she was aware that she had completed chaperone hours with her various activities, it was important that they be documented. Respondent responded the same day, assuring AP Aguilar that she would update her form that weekend but did not do so. (Exhibit 562, JSC 203.)

48. AP Aguilar again addressed the 30 hour chaperone requirement with Respondent in her April 1, 2016, memorandum, noting that Respondent had not documented her chaperone hours, demonstrating no progress towards meeting the 30 hour chaperone requirement. AP Aguilar also noted that Respondent had failed to notify Ms. Siegeler that she would not be attending a September 26, 2016 meeting and incorrectly stated that Respondent had not responded to Ms. Siegeler's February 29, 2016 email. Respondent was directed to provide AP Aguilar with her plan to complete the 30-hour requirement by April 8, 2016.

49. In her April 2016 Response, Respondent agreed she had not documented her chaperone hours but noted that AP Aguilar was aware and had acknowledged Respondent's work with Girls Build LA. Respondent also incorrectly stated that she had been absent the day of her scheduled meeting due to illness<sup>5</sup> and provided evidence that she had responded promptly to Ms. Siegeler's February 29, 2016, email. Respondent notified AP Aguilar that she had updated the Google sheet and agreed to follow AP Aguilar's directive and provide her with a plan to complete the 30-hour requirement by April 8, 2016. (Exhibit 562, JSC 203, JSC 216.)

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<sup>4</sup> Pursuant to Article XII, Section 14.1, subdivision (d), an employee utilizing a personal necessity day is required to verify the necessity and file the statement with the appropriate administrator at least five working days in advance of the court appearance.

<sup>5</sup> Respondent submitted evidence of an email she had sent to administration on February 26, 2016, that she would taking a PN as she needed to go to court. (Exhibit 562, JSC 201.)

50. Concerns regarding Respondent's chaperone hours were again raised in the May 2016 memorandum. AP Aguilar noted that though Respondent had updated the Google sheet to show she had completed 12 hours and projected completing an additional seven hours, Respondent had not complied with the directive to provide her with a plan on how she intended on completing the remaining chaperone hour requirement. Respondent was again directed to provide AP Aguilar with a list of chaperone hours and her plan to complete the 30-hour requirement.

51. In her May 2016 response, Respondent did not provide the requested plan or explain her failure to follow the earlier directive. Respondent simply stated instead, "I have documented chaperone hours on the google form and will continue to do so in anticipation of completing 30 hours." (Exhibit 564, p. JSC 235.)

52. Principal Navarro again raised concerns regarding Respondent's chaperone hours in his June 3, 2016, memorandum, noting she had failed to follow a previous directive in which "... you were directed to provide Marike Aguilar, Assistant Principal with a list of chaperone hours you have completed so far and your plan to complete the 30-hour requirement. . . . As of May 27, 2017, you have only posted 12 hour completed on the Google doc. You failed to submit a plan to complete 30 chaperone hours to Ms. Aguilar." (Exhibit 7B, LAUSD 101.) Principal Navarro directed Respondent to provide him with a list of the chaperone hours that she had completed so far and her plan to complete the 30-hour requirement by June 6, 2016.

53. In Respondent's June 2016 Response, Respondent stated, "You wrote that I failed to follow a previous directive provided to me . . . in which I was directed to provide your chosen AP with a list of chaperone hours I planned to complete which is a 30 hour EWA requirement. . . . I saw no reason to provide a list . . . If the AP was interested in the information, she could have opened the document and read the list. . . ." (Exhibit 569, JSC 276-277.) In response to the directive, Respondent stated "I have completed the **30** required chaperone hours and stated that I had no knowledge who on staff would pro-rate meeting hours. To date I have projected **34 hours** on the online google form with those hours having been listed prior to this meeting date." (Exhibit 569, JSC 282.)

54. Respondent ultimately did not complete her required chaperone requirement for the 2015/2016 school year.

55. Principal Navarro conducted a conference during the new school year on August 31, 2016, to address Respondent's unchanged conduct during the 2016/2017 school year and to document the administration's concerns with Respondent's conduct during the 2015/2016 school year. A memorandum was issued summarizing the issues addressed and the directives issued during the meeting (August 2016 Memorandum).

56. It was noted in the August 2016 Memorandum that Respondent failed to complete the chaperone requirement, stating that she was misleading when she did the following: (1) Respondent claimed five chaperone hours for a GBLA event on September 29,

2016, that she did not attend. ChristiAnn Marron had attended this event. Additionally, the event had been held during school hours and was not an eligible event for chaperone hours. (2) Respondent claimed six chaperone hours for a GBLA event on October 27, 2016. The event took place on a school day and was not eligible to count towards chaperone hours. (3) Respondent claimed seven chaperone hours for a GBLA event on May 14, 2016. As Respondent had not timely submitted paperwork for the event, it did not receive Principal Navarro's approval and the event had been cancelled.

57. Humanitas's EWA during the 2015/2016 school year states in pertinent part:

IV. Extra-Curricular Activities

A. Teachers will chaperone activities beyond the school day (non-paid)

- Teachers must complete a minimum of 30 chaperoning "points" per school year.
- 1 point=1 hour of chaperoning
- 3-Day College Trip=20 points
- Club Advisor/Sponsor=15 points
- Club must not take place at same time as office hours
- Club must meet for an average of one hour per week
- Club sponsor must provide documentation of club meetings
- Points will be pro-rated based on club's length of existence

58. At the hearing, Respondent admitted that she read the EWA provision regarding chaperone activities but testified that she "overlooked" the provision which states that chaperone activities need to take place during non-paid time. Respondent, however, failed to take responsibility for her failure to complete her chaperone hours. Instead, Respondent blamed AP Aguilar for her misunderstanding of chaperone hours, claiming that AP Aguilar's March email caused her to believe that field trips would be counted towards her chaperone hour requirements, which eventually resulted in her not completing her chaperone hours in the 2015/2016 school year.

59. In addition, Respondent explained that she included the September 29, 2016 field trip on the Google sheet which had been attended by Ms. Marron because she had organized the field trip from start to finish. According to Respondent, she ended up not going on the field trip because AP Aguilar requested her to stay for an emergency IEP and she documented it properly in the Google sheet. Respondent provided no explanation as to why she included the cancelled May 14, 2016 event.

60. In the present instance, the EWA explicitly states, "[t]eachers will chaperone activities beyond the school day (non-paid)." Contrary to Respondent's contention, AP

Aguilar attempted to bring Respondent into compliance long before the end of the school year. Though Respondent initially agreed to provide AP Aguilar with a plan regarding her chaperone hours, she eventually refused to comply with the directive because she “saw no reason to provide the list.” (Exhibit 569, JSC 276-277.)

61. Based on Findings 45 through 60, Respondent failed to complete 30-hours of chaperone activities as required by the EWA. Additionally, Respondent attempted to take credit for unauthorized chaperone hours by documenting hours which took place during school hours, hours for an event she did not attend, and hours for an event which had been canceled. Respondent’s conduct constituted a willful refusal to follow administrative directives and perform her work obligations.

#### OTHER ALLEGATIONS OF MISCONDUCT

62. The District did not establish by a preponderance of the evidence that the interaction between Physical Education Ms. Saravia and AP Aguilar on May 24, 2016, constitutes grounds for discipline. In the June 2016 Memorandum, the incident involving Ms. Saravia and AP Aguilar was discussed and described as occurring at approximately 8:30 a.m. that morning. According to Respondent, Respondent did not have a conversation with Ms. Saravia on that day as she had arrived late that day and reported directly to her classroom. Respondent further noted that she had had a similar conversation with Ms. Saravia earlier in the school year but that it was in response to the complimentary statements made to her by Ms. Saravia. As Ms. Saravia did not testify regarding the meeting, there was insufficient evidence to establish that Respondent’s conduct warranted discipline.

63. The District did not establish by a preponderance of the evidence that Respondent’s conduct in altering the schedule of Steven Acevedo, Special Education assistant, constitutes grounds for discipline. Though Respondent admitted to making the change, Respondent testified that she made the change in order to accommodate an at-risk student and to encourage the student to remain in school. The District failed to present any evidence which would explain why making such a change was inappropriate.

64. The District did not establish by a preponderance of the evidence that Respondent failed to communicate the change to RSP ChristiAnn Marron, the classroom teacher and SAA Jimenez. Neither SAA Jimenez nor the classroom teacher testified regarding the change. Further, Respondent testified that RSP Marron had been aware of the change and that the change was reflected in Wellgent, the District-wide web-based software system used for online IEPs and tracking of related services, the day of the reassignment. As the District failed to submit the Wellgent documents which could contradict Respondent’s testimony, the District failed to establish Respondent failed to communicate the changes to all parties.

65. The District did not establish by that during the period commencing on April 19, 2016, and ending on April 20, 2016, Respondent scheduled IEP meetings for student R.C., student G.G. and G. C. but failed to inform an administrator, parents and IEP team

members within 10 days of the meeting. The District did not present any probative evidence regarding either G.G. or G.C. Testimony regarding R.C. was confused and was not sufficient to establish by a preponderance of evidence that Respondent did not timely notify IEP team members if the IEP meeting.

66. The District did not establish by a preponderance of that the interaction between Respondent and general education teacher Kaitlin Smith on April 15, 2016, constitutes grounds for discipline. According to Ms. Smith, she had been working with student J.A. on an assessment for her class and had taken the assessment to work on with the student later during her office hours. Respondent approached Ms. Smith and asked her to return the assessment in a manner which left her shaken. Respondent testified that she had also been working on the assessment with the student and had simply asked Ms. Smith for the assessment so they could continue working on it. Testimony from both Ms. Smith and Respondent were equally credible and therefore, it was not established by a preponderance of the evidence that Respondent's interaction with Ms. Smith was inappropriate.

67. The District did not establish that on or about April 15, 2016, Respondent failed to follow the regular service schedule for RT, an 11th grade student, by pulling her from her general education classroom and that Respondent failed to inform RT's teacher, Mr. Jacobs, of the purpose of her pulling the student from his classroom. No probative evidence was presented regarding this allegation.

68. Though the District established that Respondent sent an email to the English teacher Samantha Siegeler and History teacher Sasha Guzman stating that student E.F. was recovering from the flu, the District did not establish that her actions in sending the email warranted discipline. In her May 2016 Response, Respondent advised administration that she had sent the email in response to teacher complaints the student had been sleeping in class and that believed E.F. had been operating under "great strain" and should be given a chance to rest. (Exhibit 564, JSC 230-231.) At hearing, Respondent further clarified that the student had come to her and told her that he had not been able to sleep properly at night because his family became homeless, and that she provided him with a space to rest. The District failed to establish that Respondent's conduct in sending the email was inappropriate and grounds for discipline.

69. It was established that between January 13, 2016, and February 19, 2016, Respondent failed to complete the required Northwest Evaluation Association (NWEA) online training. Respondent had been notified to register for an NWEA account in order to begin training on January 15, 2016, after which time, she would have 27 school days to complete the training. Respondent admitted that she failed to complete this training in both her April 2016 Response (Exhibit 7D, LAUSD 146 and Exhibit 562, JSC 204) and her response to the Below Standard Evaluation dated May 4, 2016. Neither response, however, provided any explanation for her failure to complete the online training. Respondent's failure to complete the NWEA training constituted a willful failure to perform her work obligations.

70. The District did not establish by a preponderance of the evidence that Respondent failed to attend the required 9th and 12th grade level meetings during the period between February 1, 2016, and February 22, 2016. Teachers at Humanitas were required by the EWA to attend one grade level meeting a week. As Respondent was not assigned to a grade level, she was given the option of attending every week of attending either the 9th grade level meeting or the 12th grade level meeting. There was no evidence that Respondent would be required to attend both the 9th and the 12th grade level meetings in February 2016. Further, though Respondent missed the grade level meetings on February 1, 2016,, February 8, 2016,, and February 22, 2016,, there was no evidence presented that Respondent missed a grade level meeting during the week of February 15, 2016.

71. The District established by a preponderance of the evidence that Respondent's conduct on March 14, 2016, at a 9th grade level team meeting constituted grounds for discipline. Respondent's behavior during the meeting was witnessed by AP Aguilar who documented her observations in the April 2016 Memorandum. According to AP Aguilar, she witnessed Respondent arrive at approximately 4:15 p.m. for the 9th grade level team meeting that began at 3:50 p.m. When Respondent arrived, she sat on the opposite side of the room, did not participate in the team discussion and left before the meeting had concluded.

72. According to Respondent, her reason for arriving late to the meeting was that a student had rushed in needing to print SAT scores to submit to colleges. Respondent permitted to the student to print her scores and then went to the meeting when she was finished. Respondent testified that when she arrived at the meeting, she sat opposite the teachers because she had the flu, and she did not want to infect anyone. Respondent admitted that she did not participate in the discussion because of her condition, "I was there but I was obviously checked out." Additionally, during this time, Respondent felt that the 9th grade level team was not receptive to her ideas and that she was being silenced. The 9th grade level team would not implement changes that did not come from administration. Respondent subsequently left the 9th grade level meeting at 4:45 p.m. which she contends was the time she was told by Lead Teacher Lourdes Lizzaraga that the meeting ended.

73. Though Respondent testified that she had been recently ill, Respondent had not taken any absences for her own illness for the entire month preceding this meeting.<sup>6</sup> Additionally, AP Aguilar's observation of Respondent's conduct at the meeting was similar to what was described by a number of other teachers, including Assistant Principal Jeff Austin, Ms. Smith and Ms. Sasha Guzman, in their testimony regarding their observations of her behavior. Respondent's conduct at the meeting constituted a willful refusal to perform work obligations without reasonable cause.

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<sup>6</sup> Additionally, though she had been tardy the day of the meeting, her reason for the tardiness was due to a combination of traffic and the LAUSD bus being nine minutes late. The following day, Respondent took absence, however, her stated reason for the absence was due to the illness of her daughter.

74. The District has alleged that Respondent's failure to hold an IEP meeting for R.C., a student in her caseload, on March 10, 2016 constitutes a ground for discipline. According to the evidence presented, Respondent received an email from AP Aguilar on March 10, 2016, wherein AP Aguilar advised her that the parent had consented to hold the IEP in his absence. Though the April 2016 Memorandum suggests that the IEP had not been held for at least seven days following this communication, Respondent testified that the team was assembled for the IEP meeting five days after the email. There was no evidence that would suggest that this was an undue delay. Based on the forgoing, the District has failed to establish that Respondent's failure to hold the IEP meeting for the student on March 10, 2016, constitutes grounds for discipline.

*SJHA Annual Retreat Training*

75. The Humanitas EWA's provision regarding Working Hours states, "All teachers shall attend our SJHA annual retreat." (Exhibit 4.)

76. According to Respondent, she did not attend the retreat as her uncle passed away suddenly on May 29, 2016, and was buried on June 11, 2016. Respondent opted instead to stay with her family.

77. Principal Navarro testified that he first received notification that Respondent would not be attending on the second day of the retreat.

78. Respondent admitted at hearing that though the Certificate of Absence was purportedly signed on June 10, 2016, but that the date was in error and she submitted the document sometime after she took leave. Respondent had used a preprinted Certificate of Absence and neglected to change to date on the Certificate.

79. Respondent felt that it was not necessary to submit a Certification of Absence as the school was not in session. According to Respondent, she felt that her absence was a "moot point" because the District was not in session. In her mind, annual retreat was a "three day vacation."

80. Under Article XII, section 9.0, "[a]n employee is entitled to paid leave/absence from the District not to exceed three days, on account of the death of a member of the employee's immediate family if acceptable proof of the death and relationship is provided and leave/absence commences within ten calendar days of the death." The immediate family is defined as "the employee's: (a) Spouse or ... cohabitant who is the equivalent of a spouse (b) Parent... (c) Grandparent ... (d) Child ... (e) Grandchild ... (f) Brother (g) Sister (G) Any relative living in the employee's immediate household."

81. Article XII, Section 14.0, subsection (a), however, permits an employee to use personal necessity leaves due to the "[d]eath of a close friend or relative not included in the definition of immediate family." Section 14.1, however, requires the employee to verify the

nature of the necessity and generally limits the number of personal necessity absences in one school year to six days.

82. Article XII, Section 17.0, limits the occasions which a permanent employee may take unpaid personal leave for a specific personal reason satisfactory to the District.

83. In the present instance, though Respondent considers Humanitas's annual retreat to be a "three day vacation," it is, in fact, a function required by the EWA, which Respondent signed and agreed to in accepting the position at Humanitas.

84. Additionally, Respondent was not entitled to claim bereavement leave due to the death of her uncle. Respondent's uncle was not an immediate family member as defined under Article XII, section 9.0. Article XII further requires that bereavement be taken within ten calendar days of the death. In this case, Respondent attempted to take bereavement leave from June 13, 2016, until June 16, 2016. As her uncle passed on May 29, 2016, her leave commenced more than ten calendar days of the death and was therefore outside the time permitted for bereavement leave.

85. There was no similar conditions attached to the use of personal necessity leave (either paid or unpaid) for the death of a family member.

86. Respondent, however, provided no explanation for why she failed to either request or notify Humanitas administration that she would be taking such leave until the second day of the retreat.

87. Based on Findings 75 through 86, Respondent's conduct in failing to attend the required SJHA Summer Retreat training was in violation of the District's rules and constituted a willful refusal to perform a regular assignment without reasonable cause.

#### *Notice of Unsatisfactory Act*

88. On October 5, 2016, a Notice of Unsatisfactory Act was approved by the District. A conference regarding the notice was held with Respondent on October 18, 2016.

89. The Notice recommended that Respondent be suspended for eight days.

#### *2016/2017 School Year*

90. Principal Navarro conducted a second conference during the new school year on October 4, 2016 to address the administration's concerns regarding Respondent conduct in the 2016/2017 school year. Present at the conference was both Principal Dana Neill and UTLA representative Kim McLaughlin.

91. Included among the items discussed was the concern regarding Respondent's attendance. Since the start of the 2016/2017 school year, it was noted that Respondent had

been absent five days, partially absent nine times, and tardy on 12 occasions. Respondent had not completed and submitted any FMLA forms to Humanitas administration during this period.

92. Also addressed was Respondent's failure to attend the Back to School Night on September 1, 2016, and her failure to attend the Awards Night on September 8, 2016.

93. Respondent was provided with a memorandum that day (October 2016 Memorandum) which provided directives, assistance and guidance to Respondent in a number of areas, including her attendance. During the conference, Respondent was "reminded . . . that absences due to illness or personal necessity are not protected unless they are covered by the Family Medical Leave Act (FMLA). . ." and was directed to "provide acceptable verification in addition to the Certification of Illness/Non-Illness forms for every absence and/or tardy . . . Additionally this applies to the times you arrive late." (Exhibit 8E, LAUSD 74 and LAUSD 75.) Respondent was again provided with FMLA forms and advised to return the completed forms to Principal Navarro by October 9, 2016, if they were applicable.

94. Respondent subsequently submitted a response to the October 2016 Memorandum (October 2016 Response). In it, Respondent admitted that she had been absent and tardy on a number of occasions but requested that she be provided with logs and the certification and verification forms she provided the school.

95. With respect to her failure to attend the Back to School Night and Awards Night, Respondent responded that she had been ill and unable to attend both the events.

96. Though Respondent emailed Principal Navarro and AP Aguilar shortly before the September 1, 2016 Back to School event, she does not appear to have submitted any certification or verification forms submitted for her absence that evening. Further, it appears that Respondent was able to return to work the following day.

97. With respect to the Awards Night, which was held on September 8, 2016, Respondent did not notify administration that she would not be present that night. She had been at work that same morning. Respondent did take a sick day the following day on September 9, 2016, however, Respondent did not send an email to administration until 10:46 a.m. that day. (Exhibit 528.) Respondent had apparently drafted the email at 5:00 a.m. that morning but, for whatever reason, it had not been sent to Humanitas. (Exhibit 529.) Respondent did not, however, provide administration with either a certification or verification of that absence.

98. Respondent's failure to attend the Back to School Night and Awards Night constitutes a willful refusal to perform regular assignments without reasonable cause.

99. Following the October 4, 2016 conference until the next conference on November 15, 2016, Respondent was absent an additional five days, partially absent an

additional five times, and tardy on 11 additional occasions. Respondent did not complete and submit any FMLA forms to Principal Navarro during this period.

100. On November 15, 2016, Principal Navarro conducted a conference with Respondent to address the administration's continuing concerns. Among those concerns was the ongoing concern regarding Respondent's attendance. Respondent was provided with two memoranda of the meeting. The first (November 2016 Memorandum) primarily addressed the administration's concerns related to Respondent's attendance, the second (November 2016 Memorandum of Unprofessional Conduct) addressed the administration's concerns regarding Respondent's conduct in managing the IEPs of students in her caseload and her interactions with other staff. Along with the November 2016 Memorandum, Respondent was provided with the FMLA forms and advised that, if applicable, she was to return the completed forms to Principal Navarro by October 9, 2016.

101. Following the November 15, 2016 conference until the January 31, 2017 conference, Respondent was absent an additional five days, partially absent an additional four times, and tardy on six additional occasions. Respondent did not complete and submit any FMLA forms to Principal Navarro during this period.

102. On January 31, 2017, Principal Navarro scheduled a conference with Respondent. Due to Respondent's illness, Respondent requested that the meeting be held in her absence. The items addressed included the ongoing concern regarding Respondent's attendance. The memorandum of the meeting (January 2017 Memorandum) was provided to Respondent with directives, assistance and guidance to Respondent in a number of areas, including her attendance. Along with the memorandum, Respondent was provided with the FMLA forms and advised that, if applicable, she was to return the completed forms to Principal Navarro by February 6, 2017.

103. Following the January 31, 2017 conference until the March 8, 2017 conference, Respondent was absent an additional six days, partially absent an additional five times, and tardy on four additional occasions.

104. On March 8, 2017, Principal Navarro scheduled a conference with Respondent. Due to Respondent's illness, Respondent requested that the meeting was held in her absence. The items addressed included the ongoing concern regarding Respondent's attendance. The memorandum of the meeting (March 2017 Memorandum) was provided to the Respondent with directives, assistance and guidance to Respondent in a number of areas, including her attendance. The memorandum noted that Respondent submitted the completed FMLA forms on February 9, 2017.

105. Parties stipulated that Respondent was absent for a total of six days during the period between August 15, 2016 and ending on February 24, 2017 as follows: August 15, 2016; September 9, 2016; September 22, 2016; January 18, 2017; and February 23-24, 2017.

106. Respondent's certifications and emails established that Respondent was absent an additional 10 days as follows: August 26, 2016; September 19, 2016;<sup>7</sup> October 10, 2016; January 23, 2017; February 9, 2017; February 17, 2017; and February 21-24, 2017.

Respondent's Time Cards established that Respondent was absent on October 25, 2016; October 28, 2016; November 2, 2016; November 7, 2016; December 12, 2016; January 9, 2017; January 12, 2017; January 17, 2017; and January 26, 2017.

107. Respondent's time cards established that Respondent was also absent on nine other occasions as follows: October 25, 2016; October 28, 2016; November 2, 2016; November 7, 2016; December 12, 2016; January 9, 2017; January 12, 2017; January 17, 2017; and January 26, 2017.

108. Based on the forgoing, Respondent was absent 25 days in the 2016/2017 school year between August 15, 2016, and March 7, 2017. Respondent's continued absences during the 2016/2017 school year constituted a willful refusal to perform regular assignments without reasonable cause.

#### CERTIFICATIONS AND VERIFICATIONS

109. Following issuance of the August 2016 Memorandum, Respondent was given a directive to "provide acceptable verification in addition to the Certification of illness/non-illness forms for every absence and/or tardy in order to be paid . . ." (Exhibit 7A, LAUSD 96.) In Respondent's response to the August 2016 Memorandum (August 2016 Response), Respondent agreed to follow the directives. (Exhibit 574, JSC 753.)

110. Ms. McLaughlin's testimony established such directives were not onerous or outside what could be expected when an employee has been counseled regarding attendance. As this directive was in response to ongoing concerns regarding Respondent's attendance, Respondent could appropriately be directed to submit verifications for her tardiness.

111. This directive was reiterated in the October 2016 Memorandum, which listed the dates for which the administration had not received verifications and certifications. In the October 2016 Response, Respondent claimed that she had "provided verification of all illness, and personal necessity absences when applicable." (Exhibit 574, JSC 751.) No copies of these verifications were submitted at hearing.

112. The October 2016 Memorandum, November 2016 Memorandum, January 2017 Memorandum, and March 2017 Memorandum list the dates for which Respondent failed to submit the verifications and certifications. These dates were determined with the assistance of SAA Jimenez, utilizing the attendance records that were maintained by SAA

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<sup>7</sup> Respondent was absent on September 19, 2016, due to a medical appointment, missing her appointment with Principal Navarro. Respondent, however, did not notify Principal Navarro that she would be absent on that date until 8:28 p.m. on September 18, 2016. (Exhibit 531.)

Jimenez in the course of her employment. Each of these memoranda also reiterated the directive that Respondent provide verifications and certifications for all her tardies and absences.

113. Respondent testified that she became aware that there may be an issue regarding her certification forms which prompted her to start making copies of these forms before they were submitted to Humanitas after June 10, 2016. Further, Respondent was aware that there was an issue regarding her verifications as her lack of verifications were documented in the August 2016 Memorandum. The dates for which Respondent failed to submit proper verifications are listed in the August 2016 Memorandum. These dates were determined by Principal Navarro, with the assistance of SAA Jimenez, by review of the documentation submitted by Respondent to the school in connection with her absences. Despite these concerns, Respondent did not submit any of the verifications for many tardies and absences during the 2016/2017 school year at hearing.

114. Based on the forgoing, it was established that, during the period between August 26, 2016, and ending February 24, 2017, Respondent failed to submit certifications forms for the absences on September 9, 2016; September 22, 2016; October 10, 2016; October 30, 2016; November 7, 2016; January 9, 2017; January 17, 2017; and January 26, 2017. Respondent's failure to submit certifications forms for these dates constitutes a willful refusal to perform regular assignments without reasonable cause.

115. There was, however, no probative evidence to show that Respondent failed to submit a certification for her absence on August 26, 2016.

116. Additionally, Respondent established that she submitted certification form for her absence of January 18, 2017, on January 24, 2017; and submitted a certification form for her absences of February 23, 2017 and February 24, 2017, on March 1, 2017. (Exhibit 538 and 547.)

117. During the period between August 26, 2016, and ending February 24, 2017,<sup>8</sup> Respondent failed to provide Humanitas administration with acceptable verifications for her absences on September 9, 2016; September 22, 2016; October 10, 2016; October 25, 2016; October 30, 2016; November 7, 2016; November 30, 2016; January 9, 2017; January 12, 2017; January 17, 2017; January 18, 2017; and January 26, 2017. Respondent's failure to submit acceptable verifications for these dates constitute a willful refusal to perform regular assignments without reasonable cause.

118. The District did not establish that Respondent failed to provide a verification for her absence on August 26, 2016.

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<sup>8</sup> Dates in the memoranda that were not alleged by the District in its Statement of Charges were not considered.

119. Additionally, though Respondent did submit verification for her absence on February 23, 2017 and February 24, 2017, the verification was inconsistent with the certification she submitted regarding her absences. According to the certification submitted on March 1, 2017, Respondent requested two days leave due to the illness of her daughter. However, the doctor's note she submitted excusing her from work for those days, lists Respondent as the patient. Absences due to illnesses are categorized differently than personal necessity days which are used to provide care for family members. Respondent's submission of these documents constituted a willful failure to follow the administrative directive to complete all District forms, including Certifications of absence forms, truthfully and accurately at all times.

120. During the period between August 26, 2016, and ending February 24, 2017, Respondent failed to provide Humanitas administration with acceptable verifications for her partial absences on August 16, 2016; August 19, 2016; August 25, 2016; August 29, 2016; September 8, 2016; September 23, 2016; September 28, 2016; October 4, 2016; October 7, 2016; October 18, 2016; November 4, 2016; December 9, 2016; December 14, 2016; December 16, 2016; and January 23, 2017. Respondent's failure to provide acceptable verifications for her partial absences on these dates constituted a willful failure of Respondent to follow the administrative directive to provide acceptable verifications of every absence.

121. The District did not establish that Respondent failed to provide verifications for her partial absences on September 15, 2016, and September 29, 2016.

122. During the period between August 26, 2016, and ending February 24, 2017, Respondent failed to provide Humanitas verification for her tardies on the following dates: August 19, 2016; August 31, 2016; September 1, 2016; September 7, 2016; September 12-14, 2016; September 16, 2016; September 20, 2016; September 21, 2016; September 26, 2016; September 27, 2016; September 30, 2016; October 5, 2016; October 11, 2016; October 13, 2016; October 17, 2016; October 19, 2016; October 21, 2016; October 27, 2016; October 31, 2016; November 4, 2016; November 9, 2016; November 10, 2016; November 14, 2016; November 17, 2016; December 5, 2016; December 7, 2016; December 9, 2016; January 19, 2017; January 20, 2017; January 25, 2017; January 30, 2017; February 1, 2017; February 3, 2017; February 6, 2017; February 16, 2017; February 27, 2017; February 28, 2017; March 1, 2017 and March 2, 2017. Respondent's failure to provide acceptable verifications for her tardies on these dates constituted a willful failure of Respondent to follow the administrative directive to provide acceptable verifications of every absence.

#### OTHER ALLEGATIONS OF MISCONDUCT

123. It was not established that Respondent's conduct on September 12, 2016, in refusing to remove an accommodation of Total Physical Response (TPR) for a student during his IEP was grounds for discipline. The student, S.P., had come to LAUSD from a different school district with an IEP which included TPR as a strategy. LAUSD policy for handling out of district IEPs is to simply transfer the information and to implement it. A new IEP is

not to be designed or developed until additional information is obtained about the student. In the present instance, the District did not present any evidence that TPR was an inappropriate accommodation which would deviate from District policy.

124. It was not established that on September 26, 2016, when the IEP for student S.P., was reconvened, Respondent was disrespectful to Jeff Austin, a member of the IEP team. At hearing, Mr. Austin was not able to recall the specific details of the incident. Additionally, no other IEP team members testified to observing this conduct.

125. It was established that on September 13, 2016 IEP meeting for student N.L., IEP team agreed to take a 10 minute recess as AP Aguilar had to confirm some information. Despite the fact that all team members agreed to the recess, Respondent either reconvened or attempted to reconvene the meeting in AP Aguilar's absence.

126. The District did not establish that Respondent conducted herself inappropriately during the September 16, 2016, Special Education department meeting where the IEP master schedule was being discussed. There was no probative evidence regarding this allegation.

127. The evidence did not establish by a preponderance of the evidence that on September 16, 2016, Respondent acted inappropriately towards SAA Jimenez.

128. The evidence did not establish by a preponderance of the evidence that during the August 31, 2016 conference with Principal Navarro and SAA Jimenez, Respondent acted inappropriately towards SAA Jimenez.

129. The District did not establish that Respondent conducted herself inappropriately during the September 20, 2016, 11th grade team level meeting. There was no probative evidence presented regarding this allegation.

130. On September 30, 2016, during a meeting with Lead Teacher Siegeler and Instructional coach Paul Payne to discuss co-teaching models, Respondent failed to participate in the meeting, pushing back documents Mr. Payne provided and stating that she knew the models. According to Respondent, she did not participate in the meeting because she did not feel that Ms. Siegeler's class was a class that was appropriate for co-teaching.

131. The District did not establish that Respondent acted inappropriately on September 30, 2016, when communicating with AP Aguilar about rescheduling an IEP meeting so an administrative designee would be available. There was no probative evidence presented regarding this allegation.

132. The District established that during the period commencing on October 10, 2016, and ending on October 17, 2016, Respondent failed to submit a draft IEP prior to M.C.'s scheduled meeting. Ms. Siegeler testified that due to the lack of a draft IEP, IEP meeting took considerably longer and had to be reconvened multiple times.

133. The District did not establish that Respondent failed to have drafted an IEP with math goals as there was no probative evidence regarding the lack of math goals. Teacher Siegeler is an English teacher and did not testify that the delays and multiple meetings were due to a lack of math goals.

134. The District has alleged that on October 14, 2016, Respondent failed to provide an academic assessment result to school psychologist Maria Yocum so that she could complete a comprehensive assessment in time for an IEP for student H.F. At hearing, Ms. Yocum could not recall if there had been a delay in receiving an assessment from Respondent or if Respondent had even attended H.F.'s IEP meeting. Ms. Yocum appeared to be disinclined to provide any information regarding her interactions with Respondent. What little information that was provided was extremely cursory and lacked any substance. As such, no probative evidence was submitted regarding this allegation.

135. The District failed to prove by a preponderance of the evidence that on October 17, 2016, Respondent failed to arrange for substitute coverage and arrange language translation for H.F.'s IEP meeting

136. On October 11, 2016, Respondent failed to arrange substitute coverage for teachers attending the meeting. Respondent did not send notifications to J.R.'s teachers, AP Aguilar and Principal Navarro of the need for coverage until the day before the IEP, which resulted in one teacher of J.R.'s teachers being unable to attend. Respondent failed to include SAA Jimenez in the email which resulted in SAA Jimenez have to find appropriate substitutes the day of the IEP.

137. Following the notification, Ms. Siegeler emailed Respondent several times to propose they meet or to provide feedback. Respondent did not respond and provide Ms. Siegeler a draft IEP until 7:25 p.m.

138. Respondent testified that Ms. Siegeler recommended one-on-one support services for student J.R. One-on-one support services are also referred to as Behavior Intervention Implementation (BII) service. Ms. Siegeler, however, denied that she had recommended one-on-one support for the student. She credibly testified that the first time she heard about such a support for J.R. was during the meeting. As the other members of the IEP team disagreed with Respondent's recommendation for a one-on-one, the meeting became extremely contentious, resulting in an IEP that took 3.5 hours. Ms. Siegeler's testimony at hearing is consistent with what was documented in the summary of the conference of unprofessional conduct held with Respondent on November 15, 2016.

#### *Notice of Unsatisfactory Act*

139. On March 13, 2017, a Notice of Unsatisfactory Act was approved by the District. A conference regarding the notice was held with Respondent on May 5, 2017.

140. The Notice recommended that Respondent be dismissed from LAUSD.

### *Impact of Respondent's Attendance on Students*

141. The evidence established that Respondent generally keeps abreast of and implements research-based techniques proven to benefit children with special needs.

142. However, the evidence also established that Respondent's poor attendance record hampered her ability to apply those techniques for the benefits of her students.

143. As stated in the Humanitas EWA, the workday for Humanitas teachers begins one half hour before the instructional day. This half hour is generally intended to be used as a conference period. By failing to arrive at the start of the workday, Respondent was not available for students to meet with her prior to the instructional day.

144. Robert Tostado is a teacher at Humanitas. Mr. Tostada testified very credibly regarding his experience with Respondent during the 2016/2017 School Year. That year, Respondent was assigned an 11th grade advisory class. Mr. Tostado's role was to provide support for the class. His original role, however, ended up expanding and he ended up acting as a substitute on the occasions Respondent was not present. As Respondent was routinely not present, which required others to cover for her, the children in her advisory class did not receive the same experience as other children at the school.

145. Witness Ira Long, a resource specialist teacher at 75th Street Elementary, was highly complimentary of Respondent's abilities, but noted that if a resource specialist is not present for the child, it is a problem. According to Mr. Long, "for most special ed students it's maintaining routine" that is key.

### *Interactions with Humanitas Staff*

146. According to Principal Navarro, he had pulled a number of strings to be allowed to hire Respondent as a resource specialist as she had a previous Below-Standards evaluation at 75th Elementary School. Humanitas had recently lost its resource specialist when she had been offered a promotion at another location and Principal Navarro believed Respondent to be the perfect fit to help shape the special education department at Humanitas. Hired at the same time with Respondent was a District intern, ChristiAnn Marron.

147. However, despite being aware that most of the teachers at Humanitas had a limited understanding of the special education system, Respondent did little to educate her peers regarding the process. For example, AP Aguilar had requested Respondent give IEP team members a 10 day notice of IEP meetings. Respondent would send notifications to parties through the Welligent system despite knowing that AP Aguilar had little knowledge of the special education system and was unfamiliar with the system.

148. Respondent appears to have had particular animosity towards AP Aguilar. When AP Aguilar would attempt to counsel Respondent regarding the concerns Humanitas had regarding her conduct, Respondent failed to acknowledge any wrongdoing. Her

responsive memoranda, in particular, would focus on errors she perceived AP Aguilar to be making, rather than following administration's directives.

## LEGAL CONCLUSIONS

### *Jurisdiction*

1. The Commission has jurisdiction to proceed in this matter under Education Code section 44944. (Factual Findings 1 through 3.)

### *Burden and Standard of Proof*

2. In this case, the District has the burden of proving the allegations of the Charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

### *Statutory Grounds for Dismissal*

3. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in Education Code section 44932, subdivision (a), or Education Code section 44939 is established. In the Statement of Charges, the District alleged five of those causes: immoral conduct, dishonesty, evident unfitness for service, persistent violation of school laws or regulations, and willful refusal to perform regular assignments without reasonable cause. (Factual Finding 5.) The definitions of some of those causes have been further elucidated by the courts and by the legislature.

### IMMORAL CONDUCT

4. "Immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness, or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

### UNPROFESSIONAL CONDUCT

5. "Unprofessional conduct," as used in section 44932, subdivision (a)(1), is conduct that violates the rules or ethical code of a profession or that is unbecoming a member of a profession in good standing. (*Board of Ed. of City of Los Angeles v. Swan* (1953) 41

Cal.2d 546, 553 overruled on other grounds by *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575.) The conduct in question, to amount to unprofessional conduct, must demonstrate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

#### DISHONESTY

6. “Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As phrased by the court in *Alsup v. State*, 91 Tex. Cr. 224, ‘dishonesty denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.’” (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717.)

#### UNSATISFACTORY PERFORMANCE

7. “Unsatisfactory performance” is not defined in Education Code section 44932, subdivision (a)(4), but the term is not intended to encompass any of the other causes for dismissal specified in section 44932. (Ed. Code, § 44938, subd. (c).) “Unsatisfactory performance” generally denotes a failure to meet reasonable teaching standards. School districts establish requirements for all teachers concerning fundamental duties such as attendance, adherence to adopted curriculum and methodology, presentation of classroom instruction, engagement of students, and professional development. These requirements serve as the standards by which teaching performance is measured. (See *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

#### EVIDENT UNFITNESS FOR SERVICE

8. Evident unfitness for service is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) “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.” (*Id.*)

#### PERSISTENT VIOLATION OF SCHOOL LAWS OR REGULATIONS

9. To establish cause for discipline based on the violation of school rules, there must be a “showing of intentional and continual refusal to cooperate.” (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) The violation must be persistent or “motivated by an attitude of continuous insubordination.” (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317 (*Bourland*)).

WILLFUL REFUSAL TO PERFORM REGULAR ASSIGNMENTS WITHOUT REASONABLE CAUSE

10. The plain meaning of this cause for dismissal under Education Code section 44939, subdivision (b), applies. (See *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 556 [teacher who declined to accept teaching assignments subject to dismissal].)

*The Morrison Factors*

11. To determine whether there is cause for dismissal under section 44932, subdivision (a), based on immoral conduct or evident unfitness for service as alleged here, the Commission must evaluate whether the teacher's alleged misconduct demonstrates the teacher's unfitness for service using factors that the Supreme Court enunciated in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230 (*Morrison*).

12. The *Morrison* factors are: the likelihood that the conduct had or may have an adverse effect on students or fellow teachers; the degree of the adverse effect; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of recurrence of the questioned conduct; and 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.<sup>9</sup>

13. The *Morrison* 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 students, school employees, or others who might be affected by his actions as a teacher." (*Id.*, at p. 235; see also *Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland*, *supra*, 4 Cal.App.4th at pp. 1444-1445; *Bourland*, *supra*, 174 Cal.App.3d at p. 321.)

14. Not all *Morrison* factors need be present for the *Morrison* test to be satisfied. (*Governing Bd. v. Haar* (1994) 28 Cal.App.4th 369.) Nor must the *Morrison* analysis be conducted on each individual fact established; it may be applied to the accumulated facts established collectively. (*Woodland*, *supra*, 2 Cal.App.4th at p. 1457.)

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<sup>9</sup> There is no reason to apply the *Morrison* factors to analyze causes for dismissal for persistent violation of laws and regulations (*Morrison*, *supra*, 1 Cal.3d at pp. 227-230), or for willful refusal to perform regular assignments without reasonable cause. It may be presumed that such conduct is related to fitness to teach.

## *Analysis*

15. In the Statement of Charges, the District alleged seven of those causes: immoral conduct, unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service, persistent violation of school laws or regulations, and willful refusal to perform regular assignments without reasonable cause. The Commission examined each charged act to determine whether it was proven. For each charged act proven, the Commission considered whether the act supported one or more of the statutory bases for dismissal as alleged, and applied the *Morrison* factors where appropriate.

16. The District argues that Respondent's conduct with fellow teachers and staff and falsifying records was immoral and dishonest, pointing to three separate incidents, as follows:

a. The District alleges that Respondent falsely claimed that her January 23, 2017, absence was for an IEP meeting for her daughter. This allegation, which was not alleged in the Statement of Charges, however, was not proven. As demonstrated by the March 9, 2017 letter from Clover Avenue, Respondent had, in fact, attended an IEP on that date. (Exhibit 540, JSC 043.)

b. The District has also argued that Respondent's failure to complete the 30 chaperone hours constituted immoral and dishonest conduct. Though the District did prove that Respondent failed to complete her 30 chaperone hours, the District's allegation that this failure constituted "immoral conduct" is nonsensical. It was also established that Respondent claimed credit for items which ultimately did not count towards her chaperone hours, however, the District failed to show that Respondent had been dishonest for doing so. For example, though Respondent claimed credit for a field trip she did not attend, Respondent testified that she felt she could appropriately claim credit for the trip as she spent time planning the trip and the only reason she did not go on the trip was in order to attend an emergency IEP meeting. Respondent further documented that Ms. Marron had attended the field trip in her place.

c. The District has also claimed that Respondent's failure to attend the June 2016 summer retreat constituted immoral and dishonest conduct. According to Respondent, she did not attend the retreat as she wanted to spend time with her family after her uncle's passing. The District did not present any evidence which would contradict that statement. The fact that Respondent did not know the limitations on the use of bereavement leave and attempted to use that leave does not constitute either immoral or dishonest conduct.

17. Finally, though it was established that Respondent had difficult relationships with some of the staff and administration, it cannot be said having difficult relationships with staff and administration, without more, is immoral or dishonest in nature.

18. Cause therefore does not exist to dismiss Respondent from her employment pursuant to Education Code section 44932, subdivision (a)(1), Education Code section 44939, and Education Code section 44932, subdivision (a)(4).)

19. Cause for dismissal of Respondent exists under Education Code section 44932, subdivision (a)(1), based on unprofessional conduct, as set forth in Factual Findings 4 through 40, 42 through 43, 45 through 60, 69, 71 through 73, 75 through 114, 117, 119 through 120, 122, 125, 132, 136 through 140, 142 through 145, and Legal Conclusions 2, 5, 11 through 15.

20. Cause for dismissal of Respondent does not exist under Education Code section 44932, subdivision (a)(4), based on unsatisfactory performance, as set forth in Factual Findings 4 through 40, 42 through 43, 45 through 60, 69, 71 through 73, 75 through 114, 117, 119 through 120, 122, 125, 132, 136 through 140, 142 through 145, and Legal Conclusions 2, 7, 11 through 15.

21. Cause for dismissal of Respondent exists under Education Code section 44932, subdivision (a)(5), based on evident unfitness for service, as set forth in Factual Findings 4 through 40, 42 through 43, 45 through 60, 69, 71 through 73, 75 through 114, 117, 119 through 120, 122, 125, 132, 136 through 140, 142 through 145, and Legal Conclusions 2, 8, 11 through 15.

22. Cause for dismissal of Respondent exists under Education Code section 44932, subdivision (a)(7), based on persistent violations of or refusal to obey reasonable regulations prescribed for the government of the public schools by the governing board of the school district employing her, as set forth in Factual Findings 4 through 40, 42 through 43, 45 through 60, 69, 71 through 73, 75 through 114, 117, 119 through 120, 122, 125, 132, 136 through 140, 142 through 145, and Legal Conclusions 2, 9, 11 through 15.

23. Cause for dismissal of Respondent exists under Education Code section 44939, based on willful refusal to perform regular assignments without reasonable cause, as set forth in Factual Findings 4 through 40, 42 through 43, 45 through 60, 69, 71 through 73, 75 through 114, 117, 119 through 120, 122, 125, 132, 136 through 140, 142 through 145, and Legal Conclusions 2, 10 through 15.

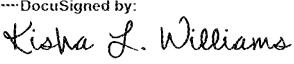
24. Even where, as here, a school district has established cause for dismissal, the Commission has broad discretion to determine whether dismissal is warranted. (*Fontana, supra*, 45 Cal.3d at pp. 220-222.) “The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citing *Fontana*.] ‘[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.’ [Citation].” (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343-344.)

25. Dismissal is warranted in this case in order to protect students and others from the adverse consequences of Respondent's actions in view of the persistent and serious nature of Respondent's misconduct and in order to protect students and others from the likelihood that Respondent will continue to engage in similar conduct in the future.

## ORDER

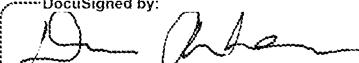
The dismissal of Respondent John Sandy Campbell from employment with the Los Unified School District is sustained.

September 14, 2018  
DATED: \_\_\_\_\_

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Kisha L. Williams  
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Kisha L. Williams  
Commission Member

September 14, 2018  
DATED: \_\_\_\_\_

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Daniel Ackerman  
Commission Member

September 14, 2018  
DATED: \_\_\_\_\_

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Nana Chin  
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NANA CHIN  
Administrative Law Judge  
Office of Administrative Hearings