

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE
COMPTON UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

VELMA LANKSTER,
A Permanent Certificated Employee,

Respondent.

OAH No. 2014060382

DECISION

This matter was heard on April 25, 26, and 28, 2016, May 2, 2016, and August 1 and 2, 2016, in Los Angeles, California, before the Commission on Professional Competence (Commission). The Commission consisted of Carlton Campbell, Adrian Chiles and Eileen Cohn, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California.

The Compton Unified School District (the District) and was represented by Milton E. Foster, III, of Fagen, Friedman, and Fulfroost.

Velma Lankster (respondent) was represented by Richard Schwab, Shannon Trygstad, and Rosty Gore of Trygstad, Schwab & Trygstad. Richard Schwab appeared on behalf of respondent at the hearing during April and May 2016, and Shannon Trygstad and Rosty Gore appeared on her behalf on August 1 and August 2, 2016. Respondent did not appear at the hearing.

On June 16, 2015, the administrative law judge ruled on two motions *in limine*: The District's motion to limit discussion of previous lawsuits between the parties was denied without prejudice and the parties were ordered to meet and confer and develop a list of lawsuits relevant to the proceedings and respondent's defense. The respondent's motion *in limine* to strike paragraphs 18-21 of the Amended Accusation and the admission of the letter dated April 23, 2010, as a confidential settlement communication pursuant to Evidence Code section 1152 was denied; the letter and the date and place it was presented was not excluded, but the parties were ordered not to disclose confidential settlement communications at the hearing. In 2016 respondent also filed a motion for

immediate reversal of suspension (MIRS), OAH No. 2016020790, which was denied by Order of the administrative law judge dated March 21, 2016.

At the hearing, the parties presented further motions before the ALJ outside the presence of the panel which the ALJ considered and ruled on, as reflected in the record.

Oral and documentary evidence was received, and argument was heard. In lieu of respondent's hearing testimony, the parties stipulated to the admission as direct evidence of portions of respondent's deposition transcript, which the District read into the record. At the conclusion of the hearing, the record remained open for the District to submit the portions of the deposition transcript that were read into the record. On August 23, 2016, the District filed the transcript which was admitted as exhibit 57, and the record was closed. The matter was submitted for Decision on August 23, 2016.¹

The Commission on Professional Competence considered the matter in executive session on August 3 and 4, 2016, November 22, 2016, and November 29, 2016. After due consideration of the entire record herein, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

INTRODUCTION AND STATEMENT OF THE CASE

The District seeks to terminate respondent for conduct related to her failure to timely obtain English-language (EL) authorization or CLAD (Cross-cultural Language and Academic Development) certification, which it contends demonstrates that she is unfit to teach high school students. The District contends that it has met its burden of proof on all charges and causes in its Amended Accusation including: evident unfitness, dishonesty, immoral conduct, persistent violation or failure to abide by school rules or policies; and willful refusal to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the employing district.²

District charges respondent with inexcusable delay in obtaining her CLAD, and deceiving District in her attempts to obtain a waiver from enforcing its deadline, and in prevailing upon them to provide funding in the amount of \$4,000 so that she could obtain her CLAD through college-level instruction, instead of taking the statewide exam after attending low or no-cost exam preparation instruction hosted by the Los Angeles County Office of Education (LACOE). District contends that respondent's representation that its promise to pay for her college-level coursework was a lie, compounded by her presentation of letters she prepared or authorized, from a District administrator supposedly agreeing on behalf of the District to pay her \$4000 as part of a settlement of

¹ The ALJ marked for identification only the District's hearing brief (ALJ 1).

² This case was filed in 2014 and the 2014 California Education Code applied to the District's suspension of respondent. With the exception of the suspension appeal procedure, parties agreed to refer to the 2015 Education Code for this Decision.

an unrelated claim. The District administrator was no longer employed by the District at the time he purportedly prepared the letter, the letter was not consistent in format or language with any District settlement offer or agreement, nor was it within District protocol for a District administrator to enter into a settlement without District counsel.

Respondent maintains the District failed to meet its burden of proof on all charges, and disagrees with the District's characterization of her conduct. Respondent maintains that District failed to prove that she demonstrated a persistent violation of school rules or policies based on the scope of the charges in the Amended Accusation. Respondent disagrees with District's characterization of its directive to complete the CLAD by March 2014, as a strict deadline. Even assuming March 2014 was a hard deadline, respondent claims her conduct does not rise to the level of a persistent violation, because after District demanded that she complete her CLAD in July 2013, she endeavored to do so, and completed it in time for the 2014-2015 school year, albeit three-and-a-half months after the District's deadline.

Respondent maintains that District failed to meet its burden of proof on any charges or causes, including dishonest or immoral conduct, based upon her representation that a District administrator agreed on behalf of the District to pay her \$4000 to obtain her CLAD, or the letters she supplied to the teacher from the District administrator memorializing the agreement. Respondent maintains that she is often forgetful about the details of events, including the exact dates of meetings, and did not prepare the letter, but found it in her former and later disbarred counsel's files.

Based upon the Factual Findings and Legal Conclusions, the Commission finds that the District met its burden of proof on dishonesty, immorality and unfitness, but did not meet its burden of proof on persistent violation or failure to abide by school rules or policies, or willful refusal to perform regular assignments without reasonable cause. The Commission sustains the Amended Accusation, in part, and grants District's request to immediately suspend respondent without pay for immorality, and otherwise sustains District's suspension of respondent, grants District's request to dismiss respondent on dishonesty, immorality and evident unfitness for service, and denies the District's request to suspend or dismiss respondent on the ground of persistent violation or failure to abide by school rules or policies, or willful refusal to perform regular assignments without reasonable cause.

FACTUAL FINDINGS

Parties and Jurisdiction

1. The Statement of Charges and Amended Accusation (Accusation) was brought by Andrea Credille, in her official capacity as Senior Director of Human Resources for the District.

2. Respondent is a permanent certificated employee of the District. Her last classroom assignment was in a District high school as a physical education teacher.

3. On May 13, 2014, during a properly noticed meeting of the District's Governing Board of Education (Board), a duly signed and verified Notice of Proposed Intent to Immediately Suspend Without Pay and to Dismiss with Statement of Charges (Statement of Charges) was filed with and approved by the Board. On May 14, 2014, the District served via certified mail the Statement of Charges upon Respondent notifying Respondent of her immediate suspension and proposed dismissal. Respondent was immediately suspended and has remained on suspension since 2014.

4. The District filed and served an Amended Accusation dated September 14, 2014. In its Amended Accusation the District recommended respondent's dismissal from the District for the following legal causes under Education Code (Code): (1) evident unfitness for service; (2) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school employing respondent; (3) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district; (4) immoral conduct; and (5) dishonesty.

5. The parties have met pre-hearing jurisdictional requirements to proceed to hearing and jurisdiction exists for these proceedings.

Respondent's background

6. Respondent obtained undergraduate and graduate degrees and credentials which qualified her to teach high school physical education and science. Respondent obtained her Bachelor of Arts in physical education from Alabama State University in 1973, her Masters of Science in school management and administration from Pepperdine University in 1982, and a Doctorate in Education from Argosy University on May 12, 2014, with an emphasis on instructional leadership. Respondent obtained teaching credentials from the Department of Education for the State of Georgia in physical education and general science (1973) and health and physical education, general science K-12 and administration and supervision (1988).

7. Respondent had numerous teaching jobs in Alabama, Georgia and California, beginning in 1975. After teaching physical education, biology and chemistry in Alabama from 1973 through 1975, in 1976, respondent obtained a teaching credential from the California Department of Education in the area of physical education and a special authorization teaching credential to teach general science. Special authorization credentials are awarded where the teacher obtains enough coursework units in one subject to support eligibility in another subject. Respondent taught biology and chemistry in California for the Inglewood Unified School District from 1976 through 1985. Respondent also obtained an administrative service and clear credential from the State of

California. Respondent returned to Georgia to teach in 1988. In 1990 respondent returned to California and taught biology and chemistry at the Burbank Unified School District (1990), and middle school general science and a teacher special assignment (TSA) at Long Beach Unified School District (1990-1994).

8. Respondent began her teaching career with the District in September 1995.

8(A). She was a biology teacher at Compton High School until 2000, and during most of that time also worked as a coordinator for the gifted student program in the areas of math and science.

8(B). From fall 2000 through 2002 she worked as a physical education teacher at one District high school and then worked until 2004 as a general science teacher in a District middle school.

8(C). After a period of about three years of administrative leave, respondent returned to the District on modified duties/special accommodations and assisted the principal in several District schools with a variety of campus duties including detention hall, tardy sweeps and covering classes where a teacher was absent or delayed.

8(D). Respondent was assigned to a classroom during the 2011-2012 and 2012-2013 school year, but although the exact dates were not established, there was evidence that she was on administrative or other leave for at least a portion of the 2012-2013 school year. Respondent had other periods of administrative or other leave prior to July 2013, but these periods were not clearly established.

8(E). During the 2013-2014 school year respondent was not assigned to a classroom. Barring any need for special accommodations or modified duties, the District could assign respondent to teach science instead of physical education.

CLAD Credential

9. On July 28, 2014, after the end of the 2013-2014 school year, respondent was awarded a Cross-cultural Language and Academic Development (CLAD) credential, also referred to as English-language (EL) Authorization³. She enrolled in the University of Phoenix (Phoenix) in late 2013, early 2014, and completed the CLAD-credential course work on June 7, 2014. Respondent's CLAD credential was registered with the State of California on July 28, 2014.

10. The District is required to enforce the CLAD requirements based on federal and state law, and District-wide policies. CLAD certification is required of all California public school teachers as a result of federal and state law requiring public

³ These terms were used interchangeably by the parties and shall be used interchangeably in this decision.

school districts to ensure students not yet proficient in the English language (also referred to as English-language learners) are provided equal participation in its programs. The 2004 settlement between plaintiffs and *inter alia*, the California Department of Education, *Williams v. State of California* (County of San Francisco Superior Court, Case No. 312236), established, among other things, that the assignment of teachers who are not qualified to teach English-language learners, constituted a deprivation of basic educational necessities. School districts are required to ensure that English learners have equal access to all of the school's programs. (20 U.S.C. § 1703; *Governing Board of Ripon Unified School Dist. v. Commission on Professional Conduct* (2009) 177 Cal.App. 4th 1379, 1382-83.) All public school teachers who instruct English-language learners are required to have CLAD certification. (Code sections 44253 .1, 44253.4. and 44253.10.) As a public school district in California, the District is subject to monitoring and civil penalties if it assigns teachers who are not CLAD-certified to a class with English-language learners. (See e.g., Code §§ 44258.9 and 45037.) District Administrative Regulations 4112.22 and 4212.22 incorporate the state CLAD mandate. To be considered highly-qualified to teach a class with even one English-language learner, California teachers require CLAD certification.

11(A). The District has a large proportion of students who are classified as English-language learners.

11(B). District-wide, between the 2010-2011 school year and the 2012-2013 school year, the percentage of English-language learners was between 42 and 47.5 percent. During the 2013-2014 school year 49.77 percent of students were English-language learners. During the 2014-2014 school year, 50.89 percent were English-language learners.

11(C). Respondent was assigned to Compton High School. School-wide, the percentage of English-language learners from 2010 through the 2013-2014 school year remained above 23 percent: during the 2010-2011 school year 32 percent of students were English-language learners, during the 2011-2012 school year 29.15 percent of students were English-language learners; during the 2012-2013 school year about 26 percent were English-language learners. During the 2014-2015 school year 22 percent were English-language learners.

11(D). Respondent was assigned to eight physical education classes during the 2011-2012 school year students in respondent's classes during that time period were English-language learners. Respondent had a high percentage of English-language learners in each physical education class: 23, 26, 30, 34, 40, 41 and 45 percent. Respondent was assigned to eight physical education classes during the 2012-2013 school year:

11(E). Based upon her subject-matter teaching credentials in science respondent could be reassigned to teach science, which based on the English-language learning

profile of Compton High School, would also have a substantial number of English-language learners.

12(A). The District's expert witness Nichol Nicholson, taught courses related to teacher credentialing, and credibly testified and demonstrated her knowledge about CLAD. Nicholson possessed all the necessary educational and occupational qualifications to provide expert testimony. She is an experienced classroom teacher who obtained her CLAD and had personal experience in meeting the requirement to fulfill her CLAD within one year of notification in 2008. Nicholson possesses a doctorate and as a professor has taught courses in teacher credentialing at various Southern California universities and colleges, which include the required coursework for CLAD certification. Nicholson provided clear and credible testimony about the purpose of CLAD and the process of obtaining CLAD certification. She provided credible and reliable testimony about the importance of CLAD to English-language learners.

12(B). CLAD certification is required to mitigate the barriers to instruction English-language learners face in contrast to their English-language speaking peers, which manifest as high frustration, and low attention and motivation.

12(C). Nicholson described three methods for obtaining the CLAD. The first method is to take the necessary coursework as part of the undergraduate curriculum required for a Bachelor of Arts in teaching. This method was not available until after 2006; it was not available to respondent and other long-term teachers, who obtained their undergraduate degree well before the CLAD mandate.

12(D). The two remaining options available to respondent which are approved by the Commission for Teacher Credentialing (CTC) as Commission-approved California Teacher of English-learners (CTEL) programs accredited include: taking the statewide test preparation course such as that offered to the District's teachers by Los Angeles County Office of Education (LACOE), and then registering, taking and passing three sections of a challenging statewide exam; or completing a specialized college-level course of instruction, and obtaining CLAD certification upon successful completion of the course, without taking the statewide CTET exam (*see also* 5 California Code of Regulations, title 5, section 80015).

13. The cost of obtaining the CLAD through college-level coursework was never established, but from the totality of the evidence, including respondent's claim the District agreed to fund her coursework in the amount of \$4,000, the coursework route was much more expensive than attending LACOE's exam preparation program.

14(A). Sharlene Tipeni, District Credential Supervisor was responsible for conducting routine audits of District teachers' credential status to make sure they were in compliance with California laws governing teacher credentials, including CLAD credentials. Tipeni provided credible and straightforward testimony, taking care to base her responses on her clear recollection.

14(B). For several years, in August or September at the beginning of each school year, Tipeni, or District staff working with Ms. Tipeni, contacted respondent to confirm her CLAD certification status. Ms. Tipeni contacted respondent at her school and spoke with her personally in 2010. Respondent advised Ms. Tipeni that she had completed the requirements for the CLAD at California State University, Dominguez Hills (Dominguez Hills). During her 2011 yearly audit, Ms. Tipeni contacted respondent again about the status of her CLAD. Ms. Tipeni also personally met with respondent at her office and explained to her the state requirements for CLAD certification. Respondent again told Ms. Tipeni she completed her CLAD requirements at Dominguez Hills. Ms. Tipeni asked her to bring in the transcript, but respondent did not because she had not completed her CLAD at that time.

15. Respondent admitted she was aware of her need to obtain her CLAD. Respondent recalled being informed of the availability of District financing to take the CLAD coursework at a university, but did not recall any mandates. Respondent claimed she filled out the form, but when she approached the District personnel after the meeting (that same day) they informed her she would have to advance the funds and they would reimburse her. Respondent did not maintain the form or provide District with proof that she completed the coursework and request reimbursement. Respondent's representations she had obtained her CLAD were untrue. There was no evidence that she made any effort to obtain her CLAD prior to the 2013-2014 school year when the District delivered an ultimatum to obtain her CLAD, or be terminated.

16. Early in the annual auditing process, before the 2012-2013 school year, District staff invited respondent to apply for an emergency CLAD so that she would have a temporary certification while she was working toward completing her CLAD. Respondent did not go to the office to apply and pay the application fee, and respondent did not come to the office as recommended and apply. An emergency credential must be submitted by the District to the Commission for Teacher Credentialing (CTC) for its approval. According to Compton Education Association (CEA) representative, Rosemary Tapp, the District is required to make the application on behalf of the teacher, and the application is prepared at the District's offices.

17. On January 25, 2012, respondent attended a meeting specifically for District teachers who had not yet obtained their CLAD. At that meeting the attendees were advised of the CLAD requirements, the potential negative consequences to their continued employment if they fail to obtain the CLAD, specifically, that their jobs were in jeopardy, and they were provided information about options available for certification. During the meeting, the District provided the attendees with information concerning the CTEL program, including but not necessarily limited to, CTEL course offerings, schedules, and examination dates. Ms. Tipeni spoke directly with respondent at the side of the room and after respondent assured Ms. Tipeni again that she had completed her coursework at Dominguez Hills, Ms. Tipeni repeated her previous request to supply the transcripts so the District could submit them with an application to the Department of Education for respondent's CLAD certification.

18. Respondent never supplied the transcripts because respondent had never completed the required CLAD coursework at Dominguez Hills, or anywhere prior to June 2014. Respondent's representation to the District that she had completed coursework at Dominguez Hills was a lie.

19. After failing to receive any documentation from respondent, and completing a district-wide audit in summer 2013, Tipeni provided the Senior Director of Human Resources, Andrea Credille a list of personnel who were not in compliance with the CLAD requirement, including respondent.

20(A). Credille was hired by the District as Director of Human Resources in 2012, and possesses all necessary qualifications for her job. In addition to her tenure as an administrator Credille has substantial experience as a teacher and school principal in several school districts. In 2015 Credille was elevated to Senior Director of Human Resources. As Director of Human Resources she was responsible for ensuring that certified employees were properly credentialed and managed staff, including Tipeni, to assist her in fulfilling her obligation. Credille provided credible, clear and straightforward testimony about her responsibilities and interaction with respondent.

20(B). As a result of her direction to Tipeni to conduct an audit in 2013, Credille identified several teachers, including respondent, who required CLAD, but who had not yet obtained it. Credille prepared a letter to each teacher, including respondent, notifying them to complete their CLAD requirement by March 1, 2014, or face termination at the end of the school year. She also met with each teacher, including respondent. Other than respondent, the list also included personnel that had been previously exempted from obtaining a CLAD, including an administrator and an adult education teacher.

20(C). Credille set the deadline as a District deadline. Despite state legislative mandates and district policies requiring CLAD, there was not a state-mandated deadline requiring the District to terminate teachers lacking CLAD certification.

20(D). Other (but not all) teachers on the list had obtained emergency certification after the notification to extend the time for them to get CLAD certification. One teacher retired instead of completing the CLAD. Credille did not know if respondent qualified for an emergency credential, but respondent never requested one, and she did not offer respondent one at this time.

20(E). Credille had several written communications with respondent and only one meeting in August 2013. Credille made it clear to respondent that her credential was required no later than March 1, 2014, or she would be terminated by the end of the 2013-2014 school year. Credille gave her information about test preparation with the Los Angeles County Office of Education.

21. Respondent assured Credille she would meet the deadline. Respondent attended CTET preparation courses in September 2013. Although she disputes the

number of credits she obtained, written documentation she provided District in November 2013, confirms that respondent had obtained 16 units to satisfy the CTEL, level one, before she determined that she could not complete the courses and pass the CTEL prior to March 2014.

22. Respondent provided conflicting, and irreconcilable testimony, about her understanding of the District's deadline to obtain her CLAD. Respondent did not keep a personal e-mail, or District e-mail, and she did not maintain a reliable home mailing address. Respondent primarily used her union's email to communicate with the District. Respondent did not get Credille's July 2013 letter until she checked her school mailbox in or about August 2013. There was much testimony regarding respondent's receipt of the District's many letters. Respondent's claims of not being supplied a computer or District e-mail account, or her insistence she updated District's mailing address, but District failed to update its files, did not undermine the District's burden of proof. The evidence established that respondent received all of District's notices and had ample opportunity to respond to the letters, and in fact did, despite her insistence she did not receive the letter to which she responded.

23. Respondent met with Credille in late August and was provided with a clear directive to get her CLAD by March 2014. Respondent testified that she understand the directive to mean she was required to complete her CLAD by the end of the 2013-2014 school year, not March 2014. Among other inconsistencies, respondent's testimony conflicted with her testimony that she was required to satisfy her CLAD through completion of college-level coursework, not CTEL, because the LACOE instructor advised her she could not complete the CTEL exam prior to the March 2014 deadline. It also conflicted with her February 2014 request to the District for a waiver.

24(A). In her February 2014 letter to Mr. Wu, respondent notified the District she was enrolled at Phoenix and expected to complete her CLAD courses on May 28, 2014. Respondent did not supply the District with any documentation confirming her enrollment or progress, until after the March 1, 2014 deadline and the District's notice of her suspension and termination in May 2014.

24(B). At her deposition, respondent offered that District was aware of her CLAD coursework at Phoenix because she was sitting in District offices during that time period and working on her CLAD. Respondent's testimony underscores her lack of candor in her relationship with the District. Respondent also received a doctorate degree in May 2014 so her reliance on the District staff's observation of her at work during the pendency of her doctorate degree was disingenuous.

Respondent's claim District agreed to pay her \$4000 for CLAD coursework

25. Respondent had financial difficulties; so much so that prior to the 2013-2014 school year the District staff gave her cash to help her pay for gas.

26. After Credille notified her to complete her CLAD in March 2014, respondent requested the District provide her an advance on her pay so she could pay for her coursework. On August 29, 2013, Credille notified respondent that it was her obligation to pay for her CLAD, and that District would not provide her a cash advance prior to the advances provided to all District teachers, including respondent, in September, and the salary payment paid to all District teachers in October.

27. Prior to the 2013-2014 school year, respondent did not press the District about her claim for payment for the CLAD. Respondent did not inform Credille during her meeting in August 2013 that the District agreed to pay for her CLAD in the amount of \$4,000. Rosemary Tapp, her union representative, did not recall respondent making any reference to payment for her CLAD prior to the 2013-2014 school year. Credille testified that respondent did not mention it in her face-to-face meeting with her.

28. In response to her August 29, 2013 letter, respondent also notified Credille that she had entered into a settlement agreement with District administrator, Alejandro M. Flores (Flores) in April 2010, where he committed on behalf of the District to pay \$4,000 for her to complete her CLAD. In November 2013, respondent represented that she and her attorney were in possession of a letter from Flores, where he agreed, on behalf of the District, to pay respondent for her CLAD. Respondent claimed that Flores agreed to pay her CLAD in 2010. In 2010 Flores was Senior Director of Human Resources. He was elevated to Assistant Superintendent for Human Resources in August 2010 and remained in that position until he left the District in early September 2012.

29(A). After her August 2013 meeting with Credille, respondent asserted District agreed to pay for her coursework as part of her settlement of a separate claim against the school district for repayment of accrued sick leave. In May 2011 respondent settled her claim that the school owed her \$50,000 for \$7,638.56. She released her attorney just prior to her entry of the settlement. Respondent's settlement of May 2011 followed the standard protocol for District settlements: the settlement agreement was prepared in a standard format by District's outside counsel and not as a letter from District staff; included a signature line for both parties; and once signed, was not effective until it was approved by the Board, which could take upwards of several weeks. The settlement agreement did not contain any reference to CLAD, or the District's intent to enter a separate agreement.

29(B). Respondent presented two letters to the District purportedly from Dr. Flores offering to pay her 4,000 dollars to obtain her CLAD. Persuasive testimony from credible District staff, including Flores, convincingly established that the letters were never prepared by anyone from the District, but were prepared by respondent using copies of District letterhead and even availing herself of a District timestamp (which would never have been placed on outgoing mail).

29(C). In a letter dated April 23, 2010, provided to the District during the 2013-2014 school year from Flores to respondent at her post office box, entitled "Settlnment

(sic) Agreement” Flores purportedly requires respondent to release her attorney and expedite a settlement, and represents that he will serve as her representative. He provides for a two-part settlement payment, due to the District’s “financial hardship”: settlement payment one is the \$7,638.56, and settlement payment two is the \$4,000 for any accredited college.

29(D). The letter dated October 23, 2012 purportedly from Flores, and provided to the District during 2014, sometime after the filing of the Accusation, memorialized discussions between respondent, Flores and other District staff, including Deborah Willard, Associate Superintendent of Business Services and Karen Frison, Interim Superintendent. The letter was never prepared or sent by District staff, or signed by Flores, although it appeared to contain a copy of his signature as Senior Director of Human Resources, a title he did not hold on the date the letter bears. At the time of the letter and the meetings and conversations memorialized therein, Flores, Willard and Frison were no longer with the District. Willard and Frison left in Summer 2012 and Flores left by early September 2012.

29(E). Based on the District’s policies or practices in place for settlement or negotiations of personnel disputes, staff would never personally prepare an offer of settlement or settlement agreement or take full responsibility for negotiating with the opposing party, including an unrepresented party. District has a consistent practice of retaining outside counsel for all legal matters, including litigation and settlement. The settlement agreements are always in writing and are drafted and finalized by legal counsel prior to signature. District personnel do not engage in settlement discussions, draft the terms of settlement agreements or enter into settlement agreements without the participation and direction of the District’s outside legal. Outside counsel prepares the agreements, prepares all responses to communication, and attends all settlement conferences. Outside counsel provide District staff with the contents of the cover letter and the settlement agreement. District staff scan the letters prepared by legal counsel, print them on District letterhead, and attached the counsel-prepared settlement agreement to the letter. A settlement offer is sent as a settlement agreement not as a letter. Once the parties agree to terms the settlement agreement, and execute the settlement agreement, the agreement is signed and then submitted to the Board for final approval, a process that can take several weeks.

29(F). Flores testified directly, and without any sign of hesitation or vested interest in the outcome of the dispute, he had not prepared either the 2010 or 2012 letters, and confirmed that the letters were inconsistent with the District’s practices as described above. Flores expressed no ill will toward respondent. He was one of the District staff that provided her a small amount of cash for gas.

29(G). Flores was not involved in the CLAD process, and did not know about the requirements or District practices. He conceded there was a possibility that if Tipini was not making progress convincing certain teachers to obtain their CLAD he may have mentioned something to all the teachers, including respondent, about CLAD certification.

29(H). Flores never had any conversations with respondent about paying for the CLAD as described in the 2010 and 2012 letters and memorialized in respondent's letter to William Wu, Chief Officer Human Resource Management in February 2014. He never met with respondent to negotiate CLAD. Flores knew there was some problems with the business department in getting respondent's settlement money for the labor claim, but not CLAD. In his position, Flores never went through the process described by respondent to pay CLAD.

29(I). Flores always relied on outside counsel. He never would have agreed to be respondent's representative, as stated in the 2010 letter, and the letters, always prepared by "meticulous" outside counsel would never misspell the word settlement.

29(J). By September 28, 2012, a date respondent claims she met with Flores, he was no longer working for the District and had no obligation to complete work for the District after he left. Flores's signature on the 2010 and 2012 letters appeared to him to be identical in form, and contained the same 2010 title which he did not use after his promotion in August 2010. Flores rarely had the same signature. Flores did not write the letters purportedly signed by him.

29(K). Delphine Holliday, Senior Personnel Analyst, 25 years with the District, has worked on personnel matters with Flores, and was primarily responsible for preparing the correspondence and settlement agreements for distribution. Ms. Holliday was straightforward and answered without hesitation and, as with other District witnesses, was candid about the scope of her recollection. She demonstrated an extensive understanding of the process used for District settlements. She credibly and persuasively testified she never saw letters in the format and style of the 2010 and 2012 letters.

29(L). After respondent provided the District with the 2010 and 2012 letters, District staff did a thorough search of District files, including Flores's records, and did not find the letters.

Witness credibility

30(A). The Commission did not find respondent credible on any disputed matter. Respondent demonstrated a disturbing lack of honesty in her dealings with the District, on matters material to the charges. Whereas respondent's predicament as a cash-strapped, long-term teacher faced with the expenditure of personal funds to fulfill state mandates warrants sympathy, her wholesale deceit in service of her obligations, does not.

30(B). Respondent's deposition responses were questionable, given her selective memory, conflicting responses, and apparent attempts to obfuscate the facts, or argue with counsel. The evidence overwhelmingly demonstrated to the Commission, that respondent was not bound by the general rules of candor and honesty required of a certified employee of a public school district. With regard to her demeanor, and relying on her words alone from her deposition testimony, the Commission found respondent to

be lacking in candor and evasive in response to the District's clear and unambiguous questions.

30(C). The distribution of falsified letters from Flores confirming a settlement that never occurred was further compounded by respondent's attempt to distance her handiwork by stating she had not seen the letters until 2013-2014 school year or later. Respondent's attempt to legitimize the letters by claiming they were in her attorneys' file, or that one of the attorney's she retained had since been disbarred for an unknown reason, was unconvincing and not credible.

30(D). Clearly, the supposed representations of Flores contained in both the 2010 and 2012 letters, however wrong, could not have been contrived by anyone but respondent, who by her own words, had personal knowledge of the meetings.

30(E). Even assuming Flores was still employed by the District at the time the supposed meetings took place, it was the practice of the District to have counsel, not District, prepare settlements, the timing of the settlement did not account for the lag time for Board approval, and the format of the letters and awkward language was inconsistent with a professional cover letter or settlement agreements prepared by District or respondent's counsel.

31. The Commission determined the charges were supported by credible, candid and persuasive testimony of multiple and long-term District witnesses, and evidence contrary to their testimony mainly from respondent, was less credible and given less weight. District staff varied in their experience and recollection, but overall, their testimony was consistent on critical material points. Respondent's witness Rosemary Tapp did not provide material evidence to undermine the District's charges and its burden of proof. Her recollection that respondent was forgetful, did not explain away respondent's false narrative where she detailed specific dates and conversations.

Specific charges in the Accusation⁴

32. The District established charge 1 by a preponderance of the evidence:

Upon review of your credentialing files on or about July 24, 2013, the District discovered that you did not possess the necessary English Learner (EL) Authorization to teach students who are English learners as required by California law.

33. The District established charge 2 by a preponderance of the evidence.

⁴ The charges proven by a preponderance of the evidence also constitute factual findings upon which the Commission based its conclusions.

Specifically, as you are aware, state law requires all public school teachers who instruct students who are not fluent in English to hold an appropriate EL Authorization. A public school district is subject to monitoring and civil penalties if it assigns an English learner student to a teacher who has not been certified to teach English learners. A school district must also ensure that English learners have equal access to all of the school's programs. Moreover, as you should know, the District has English learner students in most or all of its classes, thus requiring teachers with appropriate EL Authorizations in most or all District classes.

34. The District established charge 3, by a preponderance of the evidence.

Accordingly, on July 24, 2013, the District's Senior Director of Human Resources, Ms. Andrea D. Credille, notified you that you did not possess the necessary EL certification required by California law. You were counseled that in compliance with the *Williams v. State of California* settlement in 2004, a teacher instructing EL students in a K-12 public school setting must hold an appropriate EL Authorization regardless of the number of second language students enrolled in its classes. You were also counseled that it was "imperative that you understand the seriousness" of the letter. In fact, you were expressly directed to obtain your EL Authorization by March 1, 2014, and that failure to obtain the authorization may result in your release from your teaching position and from the District at the close of the 2013-2014 school year. Similarly, you were directed to schedule an appointment with Ms. Credille during the week of August 19, 2013 to discuss the importance of obtaining the EL Authorization during the 2013-2014 school year.

35. The District established charge 4 by a preponderance of the evidence.

Despite the level of urgency expressed by the District and the District's clear directive to obtain your EL Authorization, you failed to provide the District with any documentation indicating that you had obtained your EL Authorization or that you had enrolled in EL coursework in order to obtain your authorization in July or August 2013.

36. District established charge 5 by a preponderance of the evidence.

Despite prior directives in July 2013, as described in detail below, during the 2013-2014 school year, you failed to obtain your EL Authorization as required by California law, District policies, and various District directives.

37. The District established charge 6 by a preponderance of the evidence.

On August 23, 2013, again Ms. Credille met with you to discuss the fact that you did not possess the required EL Authorization. Ms. Credille advised you that the EL certification is required regardless of the number of second language students enrolled in your class. Furthermore, during the meeting, Ms. Credille provided you with information from the Los Angeles County Office of Education (“LACOE”), including Bulletin No. 3625 regarding the Course for Teaching English Learners (“CTEL”). This information included the dates for the upcoming CTETL class and cost. During the meeting, you stated that you would have no problem completing these classes by March 1, 2014. Again, Ms. Credille emphasized that it was imperative that you understand the seriousness of your lack of appropriate EL Authorization and the deadline for you to obtain such authorization.

38. The District established charge 7 by a preponderance of the evidence.

On August 29, 2013, Ms. Credille once again directed you in writing, to obtain your EL Authorization by March 1, 2014. You were also informed that your failure to obtain the EL Authorization by March 1, 2014 would result in a release from your teaching position and/or from the District at the close of the 2013-2014 school year.

39. The District established charge 8 by a preponderance of the evidence.

On August 29, 2013, Ms. Credille also advised you that in response to your request, the District “does not pay for any educational programs” and that paying for your EL authorization was your responsibility as a professional and teacher. Furthermore, you were informed that with respect to your request of a cash advance, all teachers would receive an Earn Salary Advance on September 13, 2013 and that the

balance of your salary would be paid on October 1, 2013. You were informed that “no additional advances” would be given.

40. The District established charge 9 by a preponderance of the evidence.

Despite the repeated reminders and numerous directives, in August 2013, you failed to provide the District with either, documentation indicating that you had obtained your EL Authorization or that you had enrolled in EL coursework in order to obtain the required authorization prior to March 1, 2014.

41. The District established charge 10 by a preponderance of the evidence.

On October 23, 2013, Ms. Credille once again provided you with a written reminder that you did not possess the necessary EL Authorization to instruct students who are second language learners. You were again advised that under the *Williams v. State of California* settlement in 2004, a teacher instructing EL students in a K-12 public school must hold an appropriate EL Authorization. You were further informed that you needed to obtain your EL Authorization by March 1, 2014 and that failure to comply with this directive would result in your release from your teaching position and from the District. Furthermore, you were specifically directed to “submit all documentation of your EL Authorization coursework” directly to Ms. Credille’s secretary.

42. The District established charge 11 by a preponderance of the evidence.

On November 1, 2013, you provided the District with a letter from LACOE indicating that you had participated in CTEL classes and that you had completed 16 hours of CTEL 1 classes. However, despite the receipt of this information, you again failed to provide the District with evidence that you had completed all of the required coursework or obtained your EL Authorization in October 2013.

43. The District established charge 12 by a preponderance of the evidence.

On November 5, 2013, the District reminded you once again that you needed obtain the required EL Authorization by March 1, 2014.

44. The District established charge 13 by a preponderance of the evidence.

On or about December 16, 2013, Ms. Credille advised you once again that pursuant to the requirements of California Education Code section 44253.1, all teachers servicing English learners are required to hold appropriate authorization as indicated in Ms. Credille's prior correspondence. Therefore, you were advised for the fifth time that you were still required to comply with the Education Code with respect to the mandatory EL Authorization. You were also advised that failure to comply would result in release from your teaching position and from the District at the end of the 2013-2014 school year. You were further advised that you could earn your EL Authorization by passing the CTEL exam or completing the Cross Cultural Language and Academic Development ("CLAD") CTEL course through a CTEL provider.

45. The District established charge 14 by a preponderance of the evidence, including respondent's failure to provide written evidence that she was working on her CLAD, other than the October 30, 2013 letter from LACOE, until after the District filed its accusation in May 2014.

Despite the District's numerous directives to obtain your EL Authorization as required by California law and the District's best efforts to provide you with sufficient opportunity to obtain your EL Authorization, between November 2013 and February 2014, you again failed to provide the District with evidence that you had obtained your EL Authorization. Furthermore, aside from the letter dated October 30, 2013 from LACOE, you failed to provide the District with other written evidence that you were continuing to work towards obtaining the EL Authorization.

46. The District established charge 15 by a preponderance of the evidence.

On February 13, 2014, you submitted a letter to the District acknowledging your receipt and understanding of the District's directives requiring you to obtain your EL Authorization by March 1, 2014.

47. The District established charge 16 by a preponderance of the evidence.

As you should know, by failing to obtain your EL Authorization between July 2013 and March 2014, your conduct has exposed the District to potential monitoring and civil penalties. While you were working on active duty, previously to dismissal charges, you were not Highly Qualified and therefore could not meet the specific needs of English Learner students. Therefore, you were not qualified to teach in the position of a certificated employee of the District.

48. The District established charge 17 by a preponderance of the evidence.

Additionally, by failing to obtain the required EL Authorization, your conduct may constitute a denial of equal access to the District's programs to students who are English learners. Moreover, your conduct violated District Administrative Regulations 4112.22 and 4212.22 requiring credential teachers who provide primary language instruction to meet the District's criteria for teacher proficiencies which have been approved by the California Department of Education and in compliance with California Education Code section 44253.10.

49. The District established charge 18 by a preponderance of the evidence.

To further compound your prior failures and omissions, you have made multiple misrepresentations to the District about an alleged settlement agreement between you and the District made in 2010 whereby the District through Alex Flores, former Assistant Superintendent, of Human Resources, agreed to pay you \$4,000 to obtain your CLAD and then failed to do so. Furthermore, you have submitted and/or prepared multiple fraudulent statements and/or documents to induce the District to pay you \$4,000 for your CLAD certification based on the alleged prior settlement agreement and further as justification for your failure to obtain your EL Authorization. However, there was never any agreement between the District and you to pay for \$4,000 for you to complete your CLAD. As you know, the only settlement agreement that was signed by you and approved by Board was executed in June 2011. This settlement agreement called for one payment in the amount of \$7,638.66 in settlement of multiple disputes between you and the District. There is no mention or identification of any

additional payments whatsoever including monies for completion of your CLAD.

50. The District established charge 19(a) regarding respondent's misrepresentations by a preponderance of the evidence.

Following your meeting on August 23, 2013, you came to the District office on or about August 29, 2013. The District had prepared a follow-up letter dated August 29, 2013 concerning the requirement that you obtain your EL Authorization by March 1, 2014. When Amparo-Briseno, administrative secretary in Human Resources, handed you this document and asked that you sign the acknowledgement, you refused to sign the acknowledgment. You stated that you and the District through Alex Flores, former Assistant Superintendent, of Human Resources, came to an agreement and signed a written agreement whereby the District allegedly agreed to pay you \$4,000 to obtain your CLAD. Moreover, under the acknowledgement section of the letter, you wrote a note which indicated that you had a settlement agreement with Mr. Flores to pay for your CLAD.

51. The District established charge 19(b) regarding respondent's misrepresentations by a preponderance of the evidence.

On or about November 6, 2013, you submitted a handwritten letter to the District in response to the District's correspondence dated October 23, 2013 reminding you of the directive to complete the EL Authorization by March 1, 2014. In your letter you state "I did inform you in person and in writing that my attorney and myself are in possession of the letter from Mr. Alejandro Flores" referring to the settlement agreement to pay for your CLAD to obtain your EL Authorization.

52. The District established charge 19(c) regarding respondent's misrepresentations by a preponderance of the evidence.

On or about December 2013, you requested that your attorney, Thomas Gillen, of Thomas Gillen & Associates, submit documents to the District on your behalf for the purposes of demonstrating the alleged prior settlement agreement and the District's obligation to pay you \$4,000 to

complete your CLAD. Among these documents was a letter dated April 23, 2010 purportedly from Mr. Flores to you whereby the District was offering to pay \$7,638.66 in settlement of your pending labor claim as well as \$4,000 to pay for you to obtain your CLAD. The District has investigated this letter and has determined that the letter is fraudulent. It was not created, sent or signed by Mr. Flores or anyone under his direction, authority or control, notwithstanding his signature on the document. Furthermore, this letter purports to be a settlement agreement. However, there was no actual settlement agreement attached to the letter, or place for you to sign, despite the letter, in section 5, stating that you could accept by signing the agreement.

53. The District established charge 19(d) by a preponderance of the evidence.

In or about February 2014, you prepared and submitted a six page letter to William Wu, Chief Human Resources Officer, dated February 13, 2014. This letter demanded a waiver to complete your CLAD credential due to the District's alleged failure to pay you \$4,000 pursuant to the settlement agreement. In this letter you describe, in detail, the alleged prior settlement agreement to pay for your CLAD. You further describe multiple meetings and conversations with Mr. Flores regarding the settlement agreement and follow-up requests for the \$4,000 for the District's failure to pay you these monies. Your letter was filled with false statements and mischaracterizations, specifically the following statements:

54. The District established charge 19(d)(i) regarding respondent's false statements and misrepresentations by a preponderance of the evidence.

On April 22, 2010, you met with Mr. Flores and entered into a legal agreement. You further state that you accepted the offer and compromise and further that Mr. Flores "signed documents" with your former attorney, W. Dozorsky and you to "include a supplement to provide a \$4,000 check to complete" your CLAD credential as part of a settlement offer and compromise to settle your labor claim. You further state that Mr. Flores "agreed to process the \$4,000 check and further stated that [you] would have the check within five to seven work days."

This is untrue as neither Mr. Flores nor or anyone under his direction, authority or control signed any documents with you or your attorney on April 22, 2010. Furthermore, neither Mr. Flores nor the District agreed to any settlement to provide you with \$4,000 to complete your CLAD credentials.

55. The District established charge 19(d)(ii) regarding respondent's false statements misrepresentations by a preponderance of the evidence.

On September 28, 2012, I met with Mr. Flores in person, and informed him that I was in the process of applying to a university to complete the CLAD certification and I needed a check to start the application process [.] Mr. Flores assured me that he would start getting the signatures required to process the check. On that day, Mr. Flores stated that I would have the check within the next 3 days. I never received the check from Mr. Flores.

This entire encounter is false. There was no settlement agreement to provide you with \$4,000 to complete your CLAD. Furthermore, Mr. Flores did not assure you that he would process your check for CLAD. Finally, Mr. Flores' last day with the District was September 12, 2012, more than two weeks before this alleged meeting.

56. The District established charge 19(d)(iii) regarding respondent's misrepresentations by a preponderance of the evidence.

On October 2, 2012, I reported back to Mr. Flores, I met with Mr. Flores in person, Mr. Flores stated, he did not have all of the signatures on the check and he would let me know as soon as the check get (sic) all of the signatures. I never received the supplemental payment of the lawsuit to the pay the tuition for to complete the CLAD credential.

Again, this meeting with Mr. Flores did not, and could not have occurred.

57. The District established charge 19(d)(iv) regarding respondent's misrepresentations by a preponderance of the evidence.

I further explained to Ms. Credille, this situation involves “SPECIAL CIRCUMSTANCES” whereby Mr. Flores did not comply with the legal settlement agreement to give me the \$4,000 check; therefore as an entity of the settlement agreement, a legal expert is required to assess my legal responsibilities to complete the CLAD certificate without the \$4,000 check from Mr. Flores, in which he agreed that I would have the check to pay the university within five to seven business days.

58(A). The District established charge 19(e) that respondent presented a fraudulent document to the District, sometime in 2014, in an attempt to establish the District agreed to pay \$4000 for her EL Authorization and to excuse respondent from obtaining her EL Authorization and the consequences of being released from employment if she fails to do so, by a preponderance of the evidence, and District personnel investigated the document and found it to be false and contained numerous misrepresentations. As a result of the administrative law judge’s order regarding a pre-trial motion *in limine*, the parties were barred from presenting evidence regarding confidential settlement communications, including the details of a proposed settlement, but not the 2012 letter.

On July 21, 2014, while the District was engaged in good faith negotiations to resolve your failure to obtain your EL authorization, you through your present counsel passed a fraudulent document to induce the District to pay your attorney fees and/or \$4,000 to pay for your CLAD certification. Specifically, your attorney provided counsel for the District with a copy of a letter dated October 23, 2012 which purported to be signed by former Assistant Superintendent of Human Resources, Alejandro Flores. Your counsel stated he recently obtained the letter from you. This was the first time the letter was presented to the District in this matter. Among other things, this letter purports to demonstrate that the District did enter into a settlement agreement with you to pay \$4,000 for your CLAD and then failed to comply with the settlement agreement. This letter further attempts to excuse you from your failure to obtain your EL Authorization and moreover states that you would not be terminated as a result of such failure due to the District's failure to comply with the alleged settlement agreement.

Thereafter, counsel for the District forwarded the letter to the District. In reliance of the fraudulent letter, the District's administration considered and agreed to

further engage in settlement negotiations. This included the potential payment of \$4,000 to pay the expenses associated with your CLAD certification and your potential return to work with the District. The District subsequently investigated the October 23, 2012 letter and determined that it was fraudulent and contained numerous misrepresentations including but not limited to the following statements and alleged actions/commitments on the part of the District:

58(B). At hearing, the District established that the letter was provided to them sometime in 2014, after the letter to Mr. Wu, but failed to establish the exact date of the disclosure or whether counsel presented the document during settlement discussions. Whether respondent's attorney provided the letter on her behalf during settlement was not established by the evidence introduced at hearing, but also was not essential to the District's burden of proof regarding its accusation of respondent's immoral conduct or dishonesty.

58(C). As a consequence of the ALJ's order on the motion *in limine* barring the parties' disclosure of the contents of confidential settlement communications, District could not present any evidence of discussions with respondent's counsel during settlement discussions regarding the document or the terms of the proposed settlement.

58(D). The District was also barred from introducing evidence from confidential settlement communications to prove its reliance upon the fraudulent document to provide respondent funds; however, based upon the District's decision to proceed to hearing and the absence of a settlement, the District did not provide respondent funds.

59. The District established charge 19 (e)(i), 19(e)(ii), 19(e)(iii), 19(e)(iv), 19(e)(v) and 19(e)(vi) by a preponderance of the evidence.

The District subsequently investigated the October 23, 2012 letter and determined that it was fraudulent and contained numerous misrepresentations including, but not limited to, the following statements and alleged actions/commitments on the part of the District:

i. On today, I met with Ms. Frison and Ms. Deborah Willard, Associate Superintendent, of Business and Administrative Services, to discuss your concerns of possible termination.

ii. Please be advised that your settlement agreement and release check [in the amount of \$4,000]

did receive all of the necessary signatures, to complete the processing of your settlement agreement and release check on today October 23, 2012.

iii. Your settlement agreement and release check was sent today to payroll for final processing.

iv. Your check will be available for you to pick up in my office within 3 to 5 business days.

v. You may inform your attorney, Thomas Gillen and Associates, that my office has taken care of all legal responsibilities to provide you with the 4,000.00 settlement agreement and release payment, to pay for your CLAD credential, and you will not be terminated from your employment as a tenured teacher.

vi. Your employment . . . [was] . . . protected under this settlement agreement and release. In compliance with this settlement agreement and release; as long as you are enrolled in an accredited university completing courses in the CLAD credential program, your employment will not be terminated.

Neither Flores nor anyone under his direction, authority or control created, prepared, sent or signed this letter, notwithstanding his alleged signature on the document. Furthermore, aside from the fact that the Governing Board did not approve a settlement agreement to pay \$4,000 for you to obtain your CLAD, all of the identified administrators were incorrect. Mr. Frison and Ms. Willard were not employed by the District on October 23, 2012; they left the District in the summer 2012. Similarly, Mr. Flores was no longer employed by the District on October 23, 2012.

60. The District established charge 20(a), 20(b), 20(c), 20(d), 20(e) and 20(f) by a preponderance of the evidence.

In addition to the above-described misconduct, you were dishonest and misleading during your deposition in this matter. On September 10 and 15, 2014, the District took your deposition. Despite being under oath, you made multiple false statement and misrepresentations during your

deposition which included but were not limited to the following:

a. You stated that you did not receive the letter dated October 23, 201[2] from the District reminding you about your responsibility to complete your EL Authorization prior to March 1, 2014. You made this statement despite your November 6, 2013 letter clearly identifying that it is in response to the District's October 23, 201[2] letter. When questioned on this issue, you stated that your November 6, 2013 letter was in response to the initial correspondence from the District regarding your ELL Authorization sent in August 2013.

b. You stated that during the August 23, 2013 meeting with Ms. Credille, she did not emphasize the March 1, 2014 deadline to complete your EL Authorization. Ms. Credille told you the March 1, 2014 date was a "projected date" by which the District "would like to see it completed." You testified that Ms. Credille "specifically stated that you need to have it completed before school starts in the fall." This is untrue. Ms. Credille told you both during the August 23, 2013 meeting and subsequently in multiple correspondence that the deadline to complete your EL Authorization was March 1, 2014.

c. You testified that you met with Mr. Flores on April 22, 2010, as provided in your letter dated, February 13, 2014 and that he agreed to pay you \$4,000 for your tuition for CLAD. There was no agreement to pay you \$4,000 for your CLAD credential.

d. You further testified that you met with Mr. Flores on September 28, 2012 and October 2, 2012, as provided in your letter dated, February 13, 2014. You described these meetings and the alleged discussions that took place regarding the District's agreement to pay you \$4,000 for your CLAD and its failure to do so. These meetings did not occur.

e. You testified that you met with Delphine Holliday, administrative assistant of Human Resources

June 8, 2011. You stated that she provided you with a settlement agreement which did not identify the \$4,000 for your CLAD. You described an alleged conversation between you and Ms. Holliday regarding the \$4,000 for your CLAD and the settlement agreement. You stated that you told Ms. Holliday that you needed to see Mr. Flores because the \$4,000 payment was not included in the settlement. You testified that she told you that Mr. Flores said to sign the agreement even though the amount was incorrect. Ms. Holliday did not tell you that Mr. Flores said to sign the settlement agreement even though it was incorrect.

f. You testified that you spoke with Tony Gaines, former secretary of CEA [Compton Education Association], who told you that Ms. Holliday contacted Ms. Gaines and told her she was trying to get you some money. You stated that Ms. Gaines spoke with Ms. Holliday who gave her the specific words for you to write in your May 10, 2011 letter. Again this testimony is false.

61. The District established charge 21 by a preponderance of the evidence.

Your conduct was fraudulent, deceiving, and below the standards of ethics and integrity expected of all District teachers. You have completely undermined the District's trust in your honesty, judgment, and ability to serve as a role model for the students of the District and its community.

LEGAL CONCLUSIONS

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The “burden of proof” means the obligation of a party, if he or she is to prevail on a particular fact, to establish by evidence a requisite degree of belief or conviction concerning such fact. (*Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The burden of proof in this proceeding is thus on District to prove the charging allegations.

2. The standard of proof in this proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040; Evid. Code, § 115.) “The phrase ‘preponderance of evidence’ is

usually defined in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’ (BAJI (8th ed.), No. 2.60.)” (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

3. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in Code section 44932 subdivision (a),⁵ and 44939 are established. In this case, the District recommends respondent’s dismissal for the following causes: (1) evident unfitness for service (Code section 44932, subdivision (a)(5); (3) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school employing respondent (Code section 44932, subdivision (a)(7)); (4) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district (Code section 44939); (4) immoral conduct (code section 44932, subdivision (a) (1); and(5) dishonesty (Code section 44932, subdivision (a)(3).

4. The governing board of a school district may suspend a permanent certificated employee without pay pursuant to Code section 44934 for one or more of the causes enumerated Code section 44932. This action was filed in 2014. Under the 2014 and 2015 Code the District may immediately suspend a certificated employee for District’s charges without pay for immoral conduct and willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the District (Code section 44939). As set forth below, the District satisfied its burden to sustain respondent’s suspension.

Witness credibility

5. It is settled that the trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible

⁵ Code section 44932 was amended effective January 1, 2015. While there were no substantive changes to any of the subdivisions relied upon by the District for discipline, many of the subdivisions were renumbered and thus may vary from the operative pleading.

witness may constitute substantial evidence,” including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, at 1052.)

6. The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. That the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative. (*Hutchinson v. Contractors’ State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal.295, 304.)

7(A). The Commission found respondent’s testimony unreliable, evasive, and dishonest on all material points, when compared with conflicting and highly credible and persuasive testimony of District employees and supporting exhibits. The Commission overwhelmingly found respondent’s version of events unbelievable. Respondent is a highly educated individual and as such her professed lack of understanding of the District’s written demand that she obtain her CLAD by March 2014, was not believable. It was uncontroverted that respondent was cash-strapped; District staff gave her gas money. However, respondent’s financial situation did not excuse her dishonesty or elevate her credibility. Respondent’s testimony on every point material to the Amended Accusation was less credible than that of District personnel whose testimony was characterized by their straightforward demeanor and candor demonstrated by their effort to provide precise responses based upon their clear recollection of events.

7(B). The Commission did not find respondent credible on any material points affecting the District’s causes for discipline. Commission’s consideration of respondent’s credibility affected the evidentiary findings related to the charges and causes, and is an aggravating factor under the *Morrison* factors below.

Persistent violation of laws or reasonable regulations

8. The District failed to prove by a preponderance of the evidence for dismissal for persistent violation 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 of Education or the District pursuant to Education Code section 44932, subdivision (a)(8) is warranted. As set forth above, the District proved by a preponderance of the evidence the charges related to this cause. Nevertheless, the decisional law provides a narrow definition of persistent and due to the scope of the charges in the Amended Accusation, which, with the exception of charges 9 and 14, factual findings 40 and 45, appear to be limited to the 2013-2014 school year, the District failed to provide convincing support for permanently discharging respondent, or suspending her beyond the date of her CLAD certification based on this cause.

9. Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) In order for a teacher to be terminated under Education Code section 44932(a)(8), for violations of law or school rules, the violations must be either “persistent” or “motivated by an attitude of continuous insubordination.” (*Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81 (*Seaman*).) “The word ‘persistent’ is defined by lexicographers as ‘refusing to relent; continuing, especially in the face of opposition ... stubborn; persevering ... constantly repeated.’ And, in the judicial decisions of this, as well as other states, the word has been interpreted to mean ‘continuing or constant.’” (*Id.* at p. 82.) It is the persistent disregard of school rules that the subdivision is designed to regulate.” (*Id.*)

10. The subdivision pertains to unintentional as well as intentional transgressions, and hence the legislature, apparently to allow opportunity for correction, has decreed that a single violation is not sufficient to warrant dismissal. (*Seaman, supra*, 28 Cal.App.3d at p. 84.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. “Persistence, in the sense intended, is referable to past conduct. The Legislature undoubtedly intended that opportunity for correction be available and refrained from providing for dismissal for a single violation of regulations, or until repeated violations could be considered persistent.” (*Midway School Dist. v. Kern County v. Griffeath (Midway)* (1946) 29 Cal. App. 13, 19. In *Midway* the Court of Appeal upheld the trial court’s determination that a teacher’s one instance of misconduct, his absence for a hunting trip, instead of his stated reason of illness, was not grounds for dismissal for persistent violation, unprofessional conduct or dishonesty, in view of his frank admissions and slight deception, and history.

11. The District failed to meet its burden of proof by a preponderance of the evidence that respondent’s failure to abide by state and school directives to complete her CLAD established a persistent violation of school rules under the governing decisional law because the charges as pleaded focused on the obligation of respondent to complete her CLAD after the District sent her written notification in July 2013, along with several other teachers.

12. Respondent objected to the admission of any evidence of District’s earlier efforts to encourage respondent to complete her CLAD. The Amended Accusation appears to encompass District’s many notifications and warnings to respondent prior to March 2014, particularly causes 9 and 14; factual findings 40 and 45. The evidence of these warnings was also made relevant by respondent’s admission as part of her defense, which was found to be a lie, that her delay in obtaining her CLAD was due to her reliance on funding from the District promised to her in 2010, and also memorialized in 2010 and 2012 letters.

13. Nevertheless, in reviewing the totality of the Amended Accusation, despite past warnings, the District’s cause of a persistent violation was limited to respondent’s failure to obtain her CLAD by March 2014, from the time of its first written notification

in July 2013. Further, as set forth below, even assuming the District's notification to respondent in years prior to the 2013-2014 school year was part of the charge, it constituted one continuing violation of the state and District CLAD requirement, but not any District mandate to complete the requirement by a date certain.

14(A). The District and respondent both claim *Governing Board of Ripon Unified School Dist. v. Commission on Professional Conduct (Messick)* (2009) 177 Cal.App.4th 1379, 1382-83, supports their respective positions. *Messick* is not controlling because the Court of Appeal never reached the issue of whether the evidence supported teacher Messick's dismissal based upon the charge of persistent violation or refusal to obey the district regulation, or other causes, including unprofessional conduct and evident unfitness for service. (*Ibid.*, p. 1384-5.) In *Messick*, the so-named music teacher refused to sign the commitment or obtain the training for her CLAD, negotiated between the school district and the teacher's union. Teacher Messick was the only teacher in the school district who refused to take the training. On January 26, 2006, the school initiated termination proceedings pursuant to the Code for, among other things, persistent violation of or refusal to obey the school law of the state or reasonable regulations prescribed by the Board of Education or the governing board of the District. The administrative law judge granted respondent's motion to dismiss before hearing any evidence, on the ground that the school district lacked authority to impose the CLAD requirement on teacher Messick.

14(B). In *Messick*, the Court of Appeal affirmed the school district's successful writ to the Superior Court confirming its authority as a school district to impose a requirement for CLAD certification. *Messick* affirmed that a teacher's failure to obtain a CLAD is grounds for termination under the charges authorized by the Code, and authorized the school district to proceed with termination proceedings against a tenured music teacher for, among other charges, her persistent refusal to comply with the District's requirement by refusing to become certified (*Ibid.*, pp. 1386-1388.) The Court rejected teacher Messick's contention that the new condition of a CLAD requirement which was incorporated into the school district's English-language learner plan, was preempted by the teacher credentialing law because it conflicted with the teacher's life credential, or otherwise violated state statutes. In *Messick*, the school district developed its English-language learner plan in response to an audit by the Department of Education which found the District out of compliance for the previous year because the District had assigned English-language learners to classes taught by teachers who had not obtained their CLAD certification. (*Ibid.*) In response the school district required all certified teachers to sign a written commitment agreeing to obtain the certification and further entered into an agreement with the teacher's union requiring teachers who did not obtain certification by the end of 2005 to resign or be terminated. The District also agreed to fund training through the county office of education and provide teachers with a \$400 stipend.

14(C). In affirming the school district's authority to mandate CLAD, the Court of Appeal underscored the importance of the state mandate and the "dilemma" school

districts face when dealing with teachers in respondent's situation, who were licensed before the statewide CLAD requirement, but are nevertheless now not deemed qualified under state legislative mandates to teach English-language learners. According to the Court of Appeal, if the teacher refuses to get certified, the school district's only options are to deny the student the opportunity to take Messick's class or risk sanctions if the student is assigned to her class. The Court of Appeal also rejected Messick's argument that no student was denied access to music education and the termination was an anticipated harm. The Court of Appeal found the legislative intent to provide appropriate instruction to English-language learners so strong as to require CLAD to prepare for English-language learner needs. (*Id.*, p. 1387, citing Code § 44253.1)

14(D). Here, the charges establish that respondent failed to comply with the District's mandate of July 2013 to complete her CLAD no later than March 1, 2014. The state and District requirement was long-standing, evidenced by the meetings and numerous conversations District staff had with respondent over the years. However, the District's Amended Accusation primarily focuses on the narrow time-line after the District issued a demand to respondent and other certified personnel to complete their CLAD by a date certain. Setting aside respondent's dishonesty and immorality, and her evident unfitness to teach arising from her fixed personality, which is addressed in other causes, her conduct in obtaining her CLAD during the 2013-2014 school year does not establish a persistent violation of school rules, or insubordination. Respondent committed one violation by failing to complete her CLAD by the District deadline of March 2014. District's many letters and prompts to respondent beginning in July 2013 to complete her CLAD by a date-certain, and their distrust of her representations, based upon her past promises, however valid, do not establish multiple violations under the applicable decisional law. Respondent may have not provided documentary assurance to the District about her enrollment and progress at Phoenix until after the Accusation was filed, but she obtained her CLAD, albeit 3.5 months later than the District's deadline.

15. Evidence of respondent's interactions with the District prior to the 2013-2014 school year, referenced in causes 9 and 14, are relevant to demonstrate her fixed character and constitute aggravating factors in the Commission's consideration of the *Morrison* factors below

Immoral conduct and dishonesty

16. The District met its burden of proof by a preponderance of the evidence that the charges support respondent's suspension and dismissal for immoral conduct and dishonesty within the meaning of Code sections 44932, subdivisions (a)(1) and (a)(4). The District asserted that charges 18-21 supported immoral and dishonest conduct. Based upon the evidence, respondent's dishonest conduct was also immoral.

17. The term "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 (*Weiland*).) It is sometimes used as synonymous with “dishonesty” or a high degree of unfairness. (*Ibid.*) Immoral conduct can be construed according to common usage. “The term ‘immoral’ has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but “includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.” (*Id.*)

18. A teacher is held to a high standard of morality. A teacher is a role model for students, as noted by several courts:

The calling (of a teacher) is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher’s selection and retention.

(*Weiland, supra*, 179 Cal. App. 2d at p.811-812, citing *Goldsmith v. Board of Education* (1924) 66 Cal.App. 157, 168.)

There are certain professions which impose upon persons attracted to them responsibilities and limitations on freedom of action which do not exist in regard to other callings. Public officials such as judges, policemen and schoolteachers fall into such a category.

As between a teacher and his student, “(a)n important part of the education . . . is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept.” (*Johnson v. Taft School Dist.*, 19 Cal.App.2d 405, 408, 65 P.2d 912.) And as our Supreme Court said in *Board of Education v. Swan*, 41 Cal.2d 546, at 552, 261 P.2d 261, at 265, “A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words

and actions are likely to be followed by the (students) coming under [his] care and protection.”

(*Board of Trustees v. Stubblefield* (1971) 16 Cal.App.3d 820, 824-825; see also *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463-1464.)

19. The Commission found overwhelming evidence of respondent’s deceit. “Public service provides no hiding place for the dishonest and those lacking integrity.” (*Brewer v. Department of Motor Vehicles* (1979) 93 Cal.App.3d 358, 364.) Dishonesty also suggests a deceitful disposition. (*Gee v. California State Personnel Bd.* (1970) 5 Cal.App.3d 713, 718-19.) Dishonesty “connotes a disposition to deceive” (*Midway School District v. Griffeath* (1946) 29 Cal.2d 13, 18. The definitions of “dishonest” and “dishonesty” (Webster’s Seventh New Collegiate Dict. (1969) p. 239), include references to willfulness, intent and fraud such that it may be reasonably concluded that there can be no dishonesty where there is no intent to deceive.

20. The Commission found respondent’s dishonest conduct also to be immoral. Respondent, a highly educated individual, was unconvincing in her attempts to reinterpret the District’s mandate to complete her CLAD. The narrative respondent developed about Flores’s promise to be her representative made no sense and was an audacious storyline wholly inconsistent with the truth. Respondent’s unabashed insistence that she was promised funding for her CLAD based on representations from District administrators was not supported by, among other evidence, the uncontroverted evidence that the very administrators that made the promises in 2012 were no longer at the District. Flores had left the District prior to the date respondent represented she met with him and purportedly prepared the letter. Flores had no further responsibility to the District after he departed. Flores relied completely on his District’s outside counsel to prepare legal correspondence and all settlement agreements and settlement agreements were not final until they were approved by the Board of Education. Both the 2010 and 2012 letters purportedly from Flores were inconsistent with any legal documentation, including settlement agreements, customarily prepared by District’s legal counsel and distributed by the District. Settlement agreements were not final until approved by the Board, and there was no evidence that the process for finalizing these patently falsified settlement letters was initiated or completed. The letters were not written by Flores or on his behalf by anyone from the District or representing the District and were not found in the District’s records. Clearly the letters were written by respondent or at her direction based upon her purported personal knowledge of the representations made to her.

21. The veracity of respondent’s narrative about the District’s promise to pay her college tuition to obtain her CLAD certification did not withstand examination of credible District testimony of respondent’s representations to them that she in fact had obtained her CLAD from Dominguez Hills when contacted in previous years. Respondent’s belated disclosure was conveniently and suspiciously timed to obtain a waiver from the District’s deadline. After respondent assured Cordille that she could

timely obtain her certification, she attended CTET preparation, where she claimed she learned she could not. Her purported understanding that the deadline was the end of the 2013-2014 school year, but she did not complete the college curriculum and receive her certification until July 2014, past the District-imposed deadline of March 2014, and after the end of the 2013-2014 school year.

22. Based upon the totality of the evidence provided, the Commission determined respondent fabricated letters to support her false narrative of the District's promise to pay for her to obtain her CLAD by completing college coursework, rather than passing the state exam. Respondent's narrative was profoundly dishonest, self-serving, and immoral. She made promises she did not keep, and then attempted to change the terms of the promises she made on a matter of critical importance to students, the District and the State of California.

23. In aggravation, respondent engaged in a pattern and practice of immoral conduct and deceit with the District which evidenced a fixed personality trait. Credible District staff testified of their repeated attempts to confirm respondent's CLAD. By her own fraudulent letters, respondent acknowledged she understood she needed to complete her CLAD since the time she entered into an unrelated settlement agreement with the District. Respondent persisted in perpetrating a lie to the District that she obtained her CLAD, when she had not. When given a final deadline, respondent created a false narrative of an agreement so that she could obtain a waiver of time and payment for her CLAD.

Willful refusal to perform regular assignments without reasonable cause

24(A). The District failed to establish by a preponderance of the evidence that respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district within the meaning of Code section 44939, subdivision (b). Other than the CLAD, the District provided no evidence that respondent failed to teach "regular assignments" during any year she was assigned to a classroom.

24(B). As set forth in the factual findings, the CLAD requirement arises from the presumption codified in federal and state law, and District policies, that English-language learners are educationally disadvantaged when their teachers are not specially-trained, and the District has a high percentage of English-language learners. As *Messick, supra*, 177 Cal.App. 4th at p. 1387, explains, English-language learners and the school district were harmed by respondent's failure to obtain her CLAD prior to July 2014. The teaching of the school curriculum suffers without CLAD certification. Based upon state law and district rules and regulations respondent was not qualified to teach in a District classroom until she obtained her CLAD in July 2014.

24(C). Nevertheless, it was the District's option to mandate CLAD certification as a condition of its classroom teachers' employment, and District did not do so until the

2013-2014 school year. The District elected to place respondent in a classroom during the 2011-2012 and 2012-2013 school years, despite her lack of qualifications to teach English-language learners without a CLAD. Respondent was on leave or otherwise assigned to administrative duties, and there was no evidence that she was assigned to a classroom for all of the 2013-2014 school year when she was mandated to obtain her CLAD.

24(D). Accordingly, the District may have had rules and regulations affirming the state mandate to obtain a CLAD, but the evidence did not establish that it applied them until it set the March 2014 deadline for its teachers, or that failure to obtain the CLAD before the District mandated the CLAD constituted a willful refusal to perform school assignments without reasonable cause. Respondent obtained her CLAD certification after the deadline but before the 2014-2015 school year commenced. Respondent's delay in obtaining her CLAD did not satisfy District's burden of proof on this cause.

Evident unfitness for service

25. The District established by a preponderance of the evidence evident unfitness for service within the meaning of Code section 44932, subdivision (a)(6).

26. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland, supra*, 2 Cal.App.4th at p. 1444.) "'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." (*Ibid.*)

27. In this case, as set forth in the factual findings and the legal conclusions above, respondent possesses a fixed character of deceit, a trait rendering her unfit for service as a teacher of high school students. The Commission's determination of respondent's fixed character remains unchanged after the application of the *Morrison* factors below.

Analysis of the Morrison Factors

28. The Commission finds that respondent's immoral and dishonest conduct relates to her fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. The *Morrison* analysis applies to causes for discipline involving unprofessional or immoral conduct, as well as evident unfitness to teach. (*Id.* at p. 227-230.) Not all "*Morrison* factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC Unified School Dist. v. Haar*, (1994) 28 Cal.App.4th 369, 384.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.) In this case, the Commission finds as follows:

(a). The likelihood the conduct may adversely affect students or fellow teachers. There was ample evidence of adverse effects on the school district as a whole. Respondent's profound deception regarding her CLAD reflected a fixed personality trait. Respondent's willingness to lie about District's agreement was not an isolated or small matter. Respondent's conduct reflected a pattern and practice of deceit which began years before with her misrepresentation that she had satisfied her CLAD at Dominguez Hills, and continued with her misrepresentations at her deposition. Respondent misrepresentations regarding CLAD were directly related to a matter of student, school district and public concern.

(b). The proximity or remoteness in time of the conduct. The conduct occurred recently, during the 2013-2014 school year and afterward through 2014.

(c). The type of teaching certificate held by the party involved. Respondent's credentials allow her to work with high school students, but the evidence established that due to her immoral and dishonest conduct she was not temperamentally suited to work with students of any age.

(d). The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. Respondent presented no mitigating facts that explained or justified her dishonest and immoral actions. Respondent's financial situation did not excuse her deceit. Aggravating circumstances were established, namely, that respondent made ongoing misrepresentations regarding the status of her CLAD. Respondent's attempt to obtain public funds for her CLAD, although unsuccessful, was a violation of the trust the public places in her as a public school employee. Respondent demonstrated little insight into her behavior and took no responsibility for her dishonest actions. Respondent maintained that she was not required to obtain her CLAD due to District representations she fabricated. Respondent's credibility is also considered an aggravating factor. The Commission found respondent wholly lacking in credibility based upon her dishonesty and immoral conduct and her testimony.

(e). The praiseworthiness or blameworthiness of the motives resulting in the conduct. There was nothing praiseworthy in respondent's conduct. Respondent elected to lie instead of timely pursuing her CLAD. As set forth in the factual findings, CLAD certification was a state mandate designed to benefit English-language learners who are presumed to be underserved when their teachers are not CLAD-accredited. Based on the goals of the state mandate, and the District's responsibility to enforce the mandate, respondent's motives for lying were blameworthy. Respondent was financially-strapped, but that did not excuse her dishonesty with her employer. Respondent was on notice for years that she needed to obtain her CLAD and could have elected to do the exam preparation with LACOE without taking college courses. She chose not to do anything until she had no alternative but to complete it before March 2014, and then lied to the District about an agreement with Flores, to avoid her obligations, or force District and the public to pay for coursework.

(f). The likelihood of the recurrence of the questioned conduct. It is unlikely that respondent will repeat the same conduct with regard to the CLAD. She did obtain her CLAD, but based upon the extreme deceit she displayed it is highly likely that her deceitful behavior will continue and she will fail to cooperate with the District on matters important to students. Respondent demonstrated no insight into her behavior.

(g). The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the person involved, or other certified persons. There was no credible evidence offered to establish that any constitutional right will be impacted adversely by this matter. Several teachers had not received their CLAD at the time of District's 2013 notice to respondent. There is no evidence that any teacher, other than respondent, lied to the District to avoid or delay their obligations.

(h). The publicity or notoriety given to the conduct. There was no substantial evidence that respondent's conduct received schoolwide attention or notoriety.

Disposition

29. The Commission still has broad discretion to determine whether such discipline is actually warranted even where cause for dismissal has been established. (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 222.) The Commission finds that suspension and dismissal is warranted.

30. As described above, the District established by a preponderance of the evident unfitness for service, and after consideration of the *Morrison* factors, the Commission does not consider respondent temperamentally suited to be in the classroom with high school students. Respondent demonstrated she possessed a fixed personality unsuited to teaching students. Respondent demonstrated neither remorse nor contrition. She did not learn from her conduct. Overall, respondent did not show that she is willing to put the interests of students or the District over her own on a matter of great public concern. When viewed in the context of her deceit to avoid or delay her obligation to complete her CLAD by March 2014, the Commission found no reason to put her back in the classroom.

31. The Commission dismisses cause one, (persistent violation or refusal to obey school laws) and cause three (willful refusal to perform regular school assignments) as set forth in the legal conclusions.

32. The Commission affirms the Board's decision to immediately suspend and dismiss respondent from her employment with the District. The Commission affirms the charges in the Amended Accusation as set forth in the factual findings, upholds the Board's immediate suspension of respondent, and grants the Board's request to dismiss respondent for cause one, evident unfitness for service, cause four, immoral conduct, and cause five, dishonesty.

ORDER

1. The Board of the District's decision to immediately suspend respondent is affirmed.
2. The Board of the District's decision to dismiss respondent from her employment as a certified teacher with the District is affirmed.
3. Respondent Velma Lankster is dismissed as a permanent certified employee of the District.

Dated: November 29, 2016

DocuSigned by:
Carlton Campbell
FA8028B380884E0...

CARLTON CAMPBELL
Member
Commission on Professional
Competence

Dated: November 29, 2016

DocuSigned by:
Adrian Chiles
2AEBA2BFD584EC...

ADRIAN CHILES
Member
Commission on Professional
Competence

Dated: November 29, 2016

DocuSigned by:
Eileen Cohn
8B63201C4CF6474...

EILEEN COHN
Administrative Law Judge
Commission on Professional
Competence