

BEFORE THE COMMISSION  
ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

ANITA CASTRO, a Permanent Certificated  
Employee,

Respondent.

OAH No. 2014050304

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California, on April 20, 21, 22, 23, 27, 28, 29, and 30, 2015, May 4, 5, 6 and 7, 2015, June 8, 9, 10, 25, and 26, 2015 and September 28 and 29, 2015. The Commission consists of the following members: Jan Miller, teacher, Ryan Hickman, teacher and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, who presided.

The Los Angeles Unified School District (District or Complainant) was represented by Ellen Wu, Attorney at law. Respondent Anita Castro (Respondent) was self-represented and assisted by her brother, Frank Castro, who served as her note-taker. Rulings on motions were made on the record during the proceedings. The exhibits and transcripts were sealed to protect the privacy of the students because redaction was not practical.

The Accusation in this matter was filed on May 14, 2014. Respondent's May 22, 2015 motion for Leave to Amend the Accusation to Conform to Proof was granted on June 25, 2015, after briefing, and over Complainant's objection. Complainant's motion to amend the Amended Accusation by interlineation was also granted without opposition. The Amended Accusation was amended on page 9, line 3, to replace "November 12" with "November 13", and on page 10, line 25, to replace "February 1, 2013" with "March 14, 2013." Oral and documentary evidence was received and the matter concluded on September 29, 2015, except for the submission of closing briefs. At the request of the parties, the record remained open until October 14, 2015 for the submission of written closing briefs. Complainant timely filed a closing brief which was marked and received as exhibit 100. On October 15, 2015, Respondent filed a request for extension of time to submit her closing brief which was granted over objection. The matter was reopened on October 15, 2015, to permit Respondent to file a closing brief before 1:00 p.m. on October 16, 2015. Respondent filed her closing brief late and accordingly, the brief was not considered because it was untimely. The matter was resubmitted on October 16, 2015.

## SUMMARY OF DECISION

The issue before the Commission is whether to uphold District's decision to dismiss Respondent from her permanent position as a certificated employee.

Complainant contends that Respondent, a physical education teacher, must be dismissed from her position as a certificated employee because she is an unfit teacher who was verbally abusive to the students and other staff, made racist comments to students, and failed to provide appropriate instruction to her students, manage her class and follow directives from her supervisors. Complainant also contends that despite assistance and guidance, Respondent failed to improve her performance.

Respondent contends that she was treated unfairly by the District when she was moved from local district 8 near her home, to John Muir Middle School (John Muir), and later to Barack Obama Global Preparatory School, both in local district 7. Respondent further contends that she was subjected to humiliation, verbal and physical threats, and injury by students, staff and a parent. Respondent also contends that she provided appropriate instruction to her students.

Respondent denies making the racist comments and most of the other statements attributed to her. Finally, Respondent asserts that despite the lack of administrative support and resources at both schools, she provided her students with appropriate physical education instruction and managed her class to the extent possible without administrative support.

The Commission considered the matter in executive session. After due consideration of the record, the Commission determined that although Respondent's teaching performance could be improved, she did not make the racist statements attributed to her, she is not unfit to teach, and cause does not exist to dismiss Respondent. On the contrary, Respondent performed as well as could be expected of any teacher faced with the extremely challenging behaviors from staff, students, and parents, without benefit of administrative support. Accordingly, the Commission makes the following factual findings, conclusions of law, and order dismissing the Accusation and Charges and reinstating Respondent.

## FACTUAL FINDINGS

1. The Amended Accusation and Statement of Charges were brought by Justo H. Avila, Chief Human Resources Officer for the District.
2. On April 22, 2014, Respondent was given written notice of the District's intention to dismiss Respondent unless she demanded a hearing. Respondent submitted a timely demand for a hearing.
3. The Statement of Charges, dated April 3, 2014, and the Accusation, dated May 14, 2014, recommended the dismissal of Respondent from District for the following

legal causes under Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) immoral conduct; (3) dishonesty; (4) unsatisfactory performance; (5) evident unfitness for service; (6) 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; and (7) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district.

4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

### *Background Information*

5. Respondent received her Bachelor of Arts degree and single subject physical education teaching credential from California State University, Long Beach. Respondent started her employment with the District as a substitute teacher more than 20 years ago with an emergency credential. Respondent is a certificated permanent employee. At the end of the 2009-2010 school year, Respondent signed a voluntary displacement request which resulted in her reassignment from the Ellen Ochoa Learning Center in local district 8 to Wilmington Middle School, also in local district 8, for the 2010-2011 school year. In the spring of 2011, Respondent was notified by the District that she would be displaced from Wilmington Middle School for the following school year (2011-2012) because of staffing needs and consistent with the voluntary displacement form she had signed the prior year. Respondent was initially placed at Carnegie Middle School (Carnegie) in local district 8, near her home, for the 2011-2012 school year. She was pleased with the assignment and hoped to stay at Carnegie. Respondent had hoped and expected that she would be transferred to a school within local district 8. A few days into the 2011-2012 school year, Respondent was notified that she would be reassigned effective immediately to John Muir Middle School (John Muir) in local district 7<sup>1</sup> for the 2011-2012 school year. Respondent and the administrator at Carnegie questioned the move and asked District administrators to allow Respondent to stay at Carnegie. The request was denied and Respondent was required to report immediately to John Muir in local district 7 on September 12, 2011. The change in work site required Respondent to commute in traffic for up to two hours each morning.

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<sup>1</sup> At the time, the District had divided itself internally into 8 geographic "districts." Each of those 8 districts had its own district superintendent who worked under the direction of the Los Angeles Unified School District's overall Superintendent of Schools.

*John Muir Middle School 2011-2012 school year*

6. John Muir was a newly "reconstituted" school. This meant that the District had released all teachers from the prior school year, replaced the administrators, and hired a new staff of teachers. Nisha Dugal was transferred to John Muir to serve as the principal after having previously served as principal of Manual Arts High School. Principal Dugal began her position the summer before school started. Her tasks included hiring a new staff of teachers and administrators. Some of the teachers that had previously worked at the school were re-hired. Others were hired from a District-provided list of available teachers. A group of unassigned teachers "displaced" from other schools designated as "pool teachers" were placed on the John Muir campus to serve as substitute teachers and extra staff for the campus. Respondent became a "pool teacher" when she was reassigned to John Muir. Respondent arrived on the John Muir campus on October 17, 2011, after the initial staff meetings and instruction had already taken place. (Exhibit 8.) She was not greeted, acknowledged, or treated as a member of the staff. Respondent was instructed to either sit in the office or in the school library until and unless needed. Respondent felt humiliated by the situation. Although John Muir teachers had time cards that were used to show the time they arrived and departed, Respondent was not given a time card during the time she served as a "pool teacher" and no contemporaneous record of her attendance was kept by John Muir staff until she was later assigned to a permanent position as a physical education teacher on October 28, 2011. Sometime in November of 2011, Respondent was asked to sign blank time cards for prior months. Respondent's original time cards were not offered as evidence at the administrative hearing.

7. Principal Dugal instituted a procedure at John Muir wherein all time cards were removed from the front desk and replaced with a "late book" that teachers were required to sign if they arrived less than 15 minutes before the start of the school day. In those instances, teachers were not allowed to check in using their time cards and instead were required to sign the "late book." The "late book" was not offered as evidence in the administrative hearing.

8. Respondent acknowledges that she was tardy on several occasions during her first weeks at the school due to her lack of familiarity with the traffic patterns and her long commute. Respondent was also at the District office on a few occasions resulting in her arriving late to John Muir. Respondent called the office and reported her estimated time of arrival on the days she was tardy. The dates of these absences and tardies were not established by the evidence.

9. On October 28, 2011, Principal Dugal held a conference with Respondent. At the conference, Principal Dugal advised Respondent that Respondent had been marked absent on September 19, 2011, and on October 4, 6, 18, 19, and 21, 2011. Principal Dugal also noted that Respondent had been marked tardy on September 28 and 30, 2011, and October 3, 5, 10, 25, and 27, 2011. Principal Dugal noted that the District Attendance policy requires regular attendance, because frequent absences negatively impact the instructional program, and excessive absences and tardies set a poor example for students, are a poor

reflection on the school, and undermine confidence in the school. Principal Dugal also told Respondent to allow more time for her commute. She directed Respondent to: (1) notify the main office by 7:30 a.m. on any day of absence; (2) bring verification for any future absences; and (3) enroll in, complete, and submit verification of completion of the District Absence Management Class by November 18, 2015. Respondent disputed that she was absent and tardy on all of the specified dates and advised Principal Dugal that she would respond in writing.

10. Principal Dugal issued a conference memorandum dated October 28, 2011, summarizing the conference. In the memorandum, Principal Dugal wrote that any written response should be made by November 4, 2011. (Exhibit 3.)

11. On November 3, 2011 Respondent replied to the conference memorandum. In her response, she explained that she had been instructed not to call the substitute desk because she was a "pool teacher" and that there had been no answer in the main school office until after 7:40 a.m. She also noted that her absences occurred prior to assignment to a regular teaching assignment on October 28, 2011, and did not impact the instructional program because she was only performing tasks as assigned.

12. Complainant did not provide original time cards or any contemporaneously prepared time records. Instead, a summary and chart prepared by Principal Dugal was offered as evidence to support the allegations of excessive absences and tardies. The Commission gave the charts and summary little weight because Complainant failed to prove that the data that Principal Dugal used to prepare the summary and chart was accurate and reliable. Respondent successfully challenged Principal Dugal's data by providing copies of time cards that conflicted with the summary and chart.

13. After Respondent was placed in a regular physical education assignment, Principal Dugal received complaints from some of the African-American female students about comments Respondent allegedly made to them. There were a few groups of girls that regularly complained about Respondent and made allegations that Respondent made racist and demeaning statements to them. Principal Dugal did not investigate the allegations, but assumed them to be true, and encouraged the students to continue reporting any such comments made by Respondent.

14. Respondent felt under siege during her tenure at John Muir. The students were openly disrespectful, threatened teachers, disobeyed school rules, and used profanity directed at teachers on a regular basis without disciplinary consequences. Principal Dugal made it clear that she expected the teachers to handle the students without sending them to the office. The physical education area was a particularly difficult area to monitor because students from other classes often tried to "ditch" class there. To ensure student safety, the teachers were required to monitor the locker rooms and the blacktop, in addition to their own classes. After Respondent was hired as a physical education teacher, a second teacher, Gina Holmes, was also hired. Initially, Respondent and Ms. Holmes worked well together. However, the relationship soured and eventually the two teachers were not speaking to each other. Ms.



Holmes and Respondent were frequently at odds about whose responsibility it was on a given day to monitor the locker room or the students on the blacktop and about the presence of Ms. Holmes' students in Respondent's class area. Respondent complained that Ms. Holmes' students were frequently mixing into Respondent's classes and were unsupervised.

15. Respondent had heated exchanges with students from Ms. Holmes class. Ms. Holmes saw what she believed to be a rift between the African-American students and Latino students and teachers. She became the confidant for the African-American female students and encouraged them to report any comments they found offensive. Ms. Holmes did not challenge student behavior and allowed her students to wander about the physical education area and disrupt Respondent's class.

16. At hearing, Ms. Holmes presented as having a bias against Respondent. She refused to look at the Respondent while testifying even asking the court on one occasion if she was required to look at Respondent during her testimony. Ms. Holmes openly displayed contempt and disgust for Respondent. Ms. Holmes acknowledged that she had never heard Respondent make any racist or race-related statements to students. She had observed, and did not like, that Respondent always seemed to be loud and yelling about something. Ms. Holmes's testimony conflicted with the more credible testimony of teacher Anthony Catanzaretti and proctor Gloria Caro who were not directly involved in the dispute between Ms. Holmes and Respondent. Mr. Catanzaretti and Ms. Caro never heard such comments and had witnessed Ms. Holmes allow her students to go to Respondent's class and be verbally and physically aggressive with Respondent. Ms. Holmes' uncorroborated testimony that she had heard the Respondent mumbling "I hate black people" as she walked behind Respondent was not credible based upon her demeanor and apparent bias.

17. J [REDACTED] was a student in Respondent's physical education class in the 2011-2012 school year. She was the only student witness offered to support Complainant's allegations that Respondent made racist and inappropriate statements to students. The commission did not find J [REDACTED]'s uncorroborated testimony credible. J [REDACTED]'s testimony was inconsistent and her memory was selective about the details of her interactions with Respondent. While Respondent had a vague recollection of comments made by Respondent, she had no memory of the context in which the comments were made. J [REDACTED] testified that Respondent's physical education class was out of control within the first three weeks. She felt that Respondent had a bad attitude toward the class and the students had a bad attitude toward Respondent. J [REDACTED] acknowledged having a bad attitude, starting fights, misbehaving and challenging teachers on a regular basis while a student at John Muir. She also acknowledged that she did not like Respondent. According to J [REDACTED], Respondent yelled often, used the word "Bitch" on several occasions, and commented "Black Kids are stupid," "Black kids are from the 'hood and are not going anywhere" and told J [REDACTED] to "get your ass out of my class." J [REDACTED] now attends a continuation school as a result of her behavior and poor performance in school.

18. On December 9, 2011, Principal Dugal held another conference with Respondent and her union representative in which she advised Respondent that in addition to the previously noted absences and tardies, Respondent had been absent on November 13, 16, 17, and December 5, 2011, for a total of 12 absences, and on November 8, 9, November 28, and December 6, through December 9, 2011, for a total of 16 tardies. Principal Dugal also advised Respondent of the following complaints made by students:

On November 15, 2011 S ■■■ M., R ■■■ L., and I ■■■ W. alleged that [Respondent] said "S ■■■ M. is a man." and H ■■■ G., S ■■■ M, K ■■■ J., and E ■■■ A. alleged that [Respondent] said "where do black people get their attitude from;"

On November 30, 2011 A ■■■ J. alleged that [Respondent] told her to "shut up", J ■■■ R. alleged that [Respondent] said "what did you say you stupid little girl," and T ■■■ G. alleged that [Respondent] said "I'm sorry that you don't have no mother to take care of you," "you all black kids don't have any parents" and "I don't like you, you're a butt kisser and I don't like butt kissers;" and

On December 1, 2011, S ■■■ M. alleged that [Respondent] told her to "shut up." (Exhibit 4.)

19. Principal Dugal referred Respondent to the District policies including its: Attendance Policy; Employee Code of Ethics; Code of Conduct with Students; and Board Resolution on the Respectful Treatment of all Persons and the Standard for Creating and Maintaining Effective Environments for Student Learning.

20. Respondent denied making the alleged statements to students, disputed the attendance issues, and stated that she would further respond in writing.

21. At the conference and in a written memorandum, Principal Dugal directed Respondent to:

- a. Notify the main office by 7:30 a.m. on the day of any absence;
- b. Bring verification of any future absences or she would not be paid until receipt of verification;
- c. Enroll in, complete, and submit a verification of completion of the District Absence Management Class by December 16, 2011;
- d. Not retaliate against any student who provided information regarding the allegations;

e. Not make statements or comments, either directly or in the presence of students, which are not professional or which may be considered harassing or demeaning nature; and

f. Refrain from using negative or disrespectful language around students and or staff members. (Exhibit 4.)

22. Principal Dugal also warned that if Respondent were to be evaluated at that time, she would rank her performance as below standard. (Exhibit 4.)

23. On December 13, 2011, student N [REDACTED] M. struck Respondent with a rock. Respondent attempted to get assistance from school police and to make a report of the incident, but was not given any assistance by the school police or administration. (Exhibit R 137)

24. On December 16, 2011, Respondent replied to Principal Dugal's memorandum. In her reply, Respondent denied the allegations made by the students set forth in the December 9, 2011 memorandum. Respondent described the December 13, 2011, attack by N [REDACTED] M. and her attempts to obtain assistance. She notified Principal Dugal that she was fearful for her own safety and had not received any assistance from the administration despite multiple requests for assistance. Respondent reported she did not have technical support to use the computers for attendance and had only recently been provided with a form for office referrals. Respondent disputed the accuracy of school attendance records. (Exhibit RESP 116.)

25. Beginning in October of 2011, Respondent regularly sent notes, hand-delivered by proctor Gloria Caro, to Assistant Principal Alfie Enciso, her immediate supervisor, notifying him of vulgar and threatening comments and actions by students. She identified the students, dates, and times of the comments. In response to her complaints, Mr. Enciso visited Respondent's class on numerous occasions. He instructed Respondent not to send students that refused to dress for physical education to the school office. Instead, Respondent was to call their parents and have parent conferences. As documented in Respondent's notes to Mr. Enciso, many of the students who had alleged Respondent made inappropriate comments to them, had in fact made vulgar or threatening remarks to Respondent.

26. On January 19, 2012, Principal Dugal had another conference with Respondent. At the conference, Principal Dugal discussed Respondent's failure to submit verification of completion of the District Absence Management Class by December 16, 2011, as previously instructed. Respondent explained to Principal Dugal that she had completed the class, but did not know how to print out the verification and had asked for assistance. Principal Dugal again instructed Respondent to submit the verification, and in writing reminded her, as she had before, that had she been evaluated at that time, she would receive a below standard performance evaluation. Principal Dugal summarized the conference in a memorandum dated January 19, 2013. (Exhibit 5.)



27. On January 31, 2012, Respondent was sent home from work without explanation while an investigation was conducted about female student R ■ L.'s allegation that Respondent used her elbow to strike R ■ L. Respondent returned to work the following day, February 1, 2012, after the allegations were deemed unsubstantiated.

28. On February 2, 2012, Principal Dugal held a conference with Respondent. Also present were Assistant Principal Enciso and Respondent's colleague, Anthony Catanzeritti, who attended at her request. At the conference, Principal Dugal advised Respondent that on November 30, 2012, R ■ L. alleged that Respondent thrust her elbow into R ■ L's face. That same day, student N ■ M. alleged that Respondent said to him "you need to go fucking cry to your daddy." Respondent denied the allegations and advised Principal Dugal that she would respond in writing. Principal Dugal again referred Respondent to the District bulletins and policies and reiterated the directives she had previously given. Principal Dugal summarized the conference in a memorandum dated February 2, 2012. (Exhibit 7.)

29. Also on February 2, 2012, an incident occurred in the physical education area when Ms. Holmes' student, R ■ L., left Ms. Holmes class and lingered in the area of Respondent's class area on the black top. Respondent asked R ■ L. to leave, but she did not. Also, at the same time, student N ■ M., also not Respondent's student, lingered in her class area. Respondent became frustrated seeing the two students back in her class. Respondent called to the other physical education teachers and Assistant Principal Gonzales who was in the immediate area. In front of students, referring to R ■ L., Respondent shouted "how can I have a student that has falsely accused me back in my class." Respondent also shouted to her colleagues that "administration was doing nothing to help" with reference to N ■ M. Teacher Anthony Catanzaretti and another male physical education teacher went to Respondent's aid. They directed N ■ M. to leave the area, but he refused. Assistant Principal Gonzalez stood on the perimeter of the physical education area, but did nothing to assist the teachers. When Assistant Principal Gonzalez approached Respondent, she told him that she would not remain in the area if student N ■ M. remained in the area. Respondent was very upset and left the class leaving Assistant Principal Gonzales in charge of the students.

30. Respondent's colleague, teacher Anthony Catanzaretti testified on her behalf. He credibly testified that he found John Muir to be completely out of control. He found the administration offered no support to teachers and there were no consequences for student misbehavior. He reported that students threatened his life and students regularly cursed at teachers without disciplinary consequences. He also testified about an incident in which a parent punched a teacher. Mr. Catanzaretti was in Respondent's vicinity often and never heard her make any inappropriate or racist remarks to students. Mr. Catanzaretti opined that Respondent was a good teacher facing challenging circumstances at John Muir. According to Mr. Catanzaretti, Ms. Holmes was not a motivated teacher and often allowed her students to do whatever they wanted, including disrupting Respondent's class. He found the environment at John Muir to be very stressful. Mr. Catanzaretti was injured when two

students trampled him to exit the gym and did not finish the school year. He did not return to John Muir.

31. Gloria Caro, the school proctor, was often stationed in the physical education area for extra supervision. She corroborated Mr. Catanzaretti's testimony about the demeanor and behavior of John Muir students. She frequently saw Ms. Holmes allow her students to wander throughout the physical education area and disrupt Respondent's class. Ms. Caro assisted Respondent by hand-delivering her notes and student referrals to Assistant Principal Enciso.

32. Once the students sensed that Respondent did not have the support of the administration, her predicament worsened. She lost control of the students and became concerned for her safety. Respondent's boyfriend, Andrew Corral, drove her to work each day, picked her up from work, escorted her to the campus, and spent many days observing Respondent from positions both on and off the campus. He identified himself as Respondent's husband and was frequently allowed on the campus, as such. Respondent was fearful for her safety, but needed her job, so she continued working at John Muir while trying to work through union channels to transfer to another school closer to her home.

33. On February 28, 2012, Respondent was injured by two students. One intentionally ran into her trying to knock her down and another kicked a ball hitting Respondent on the side of the head. She reported the incidents to the school administration, but Principal Dugal discounted the incidents. As a result of the incidents, Respondent was absent from work for the period of February 29, 2012 through March 6, 2012. Respondent did not want the students prosecuted, but did want the incidents noted by school police. Respondent, Counselor Ramona Fletcher and an officer from the District police met to discuss the incidents on March 12, 2012. District treated the incidents solely as a workers' compensation matter. Principal Dugal wrote a memorandum dated March 12, 2012, summarizing the meeting. (Exhibit 10.)

34. On April 16, 2012, Principal Dugal held another conference with Respondent. In the conference, Principal Dugal informed Respondent that her records showed that Respondent had 24 absences and 18 tardies. Respondent disputed the accuracy of the records and asserted that she would respond in writing. Principal Dugal admonished Respondent about her attendance and directed Respondent to turn in lessons plans for substitutes directly to Principal Dugal. She also directed Respondent to maintain lesson plans for substitutes, call the office before 4:00 p.m. to have a substitute "held over," and call before 7:30 a.m. to notify the office of an absence. Principal Dugal summarized the conference in a memorandum dated April 16, 2012. (Exhibit 11.)

35. On April 16, 2012, Principal Dugal also issued Respondent a Notice of Unsatisfactory Acts and a Notice of Suspension for three days based upon on the charge that on February 2, 2012 Respondent retaliated against student R ■■■ L., by yelling out "How can I have a student that has falsely accused me back in my class" and "Administration is doing nothing to protect me." The Notice stated that the allegations constituted poor judgment,

failure to follow district policies and a failure to follow an administrative directive. As a result, Respondent was suspended for three days without pay. (Exhibits 13 and 14.)

36. On April 20, 2012, Respondent filed a request for an immediate transfer to any other middle school or high school in the District. Principal Dugal approved the request.

37. On April 23, 2012, Respondent reported to the administration that Student R■■ L. came into her office cursing and threatening her, then followed her to class taunting her along the way, cursing at her in front of students, and mocking her when she called to proctor Gloria Caro for assistance.

38. Assistant Principal Enciso was Respondent's direct supervisor. She often complained to him about the discipline problems in her classes and the general bad behavior of several groups of students. Assistant Principal Enciso conducted multiple classroom observations during the period of January 12, 2012, to March 14, 2012, and went to Respondent's classroom to assist with discipline issues on nine occasions between January 12, 2012, and April 21, 2012.

39. On May 4, 2012, Assistant Principal Enciso held a conference with Respondent. Also in attendance were Assistant Principal Ed Gonzalez and a union representative. At that time, Assistant Principal Enciso, advised Respondent of allegations made by several students against her. Specifically, Mr. Enciso reported the following statements.

a. On April 11, 2012, Respondent "got up" in M■■ H.'s face and yelled "That's why nobody likes you!"

b. On April 17, 2012, I■■ R. and E■■ R. alleged that Respondent pushed E■■ R. and broke his earphones.

c. On April 19, 2012, J■■ A. alleged that Respondent told a group of African American girls in the 5th period class that "That's why I don't like dealing with black kids like you..."

d. Students C■■ C. and J■■ M. also alleged that Respondent told them to "Shut up" which caused them to leave class.

e. On April 20, 2012, Student C■■ V. alleged that Respondent said "Black students are the ones that cause the problems anyway" and "Black girls are only used for opening their legs."

f. On April 20, 2012, Student A■■ J. alleged that Respondent said "This is why I can't deal with black kids."

g. On April 20, 2012, Student A■■ B. alleged that Respondent said "Black students are the one that cause problems anyway."

h. On April 26, 2012, Student T [REDACTED] M. alleged that while Respondent was screaming and arguing with another student, Respondent said that "[I] don't like black kids."

40. Respondent denied the allegations and asserted that she would respond in writing. There was no evidence that Mr. Assistant Principal Enciso investigated the allegations or that the allegations were true. Instead, he accepted the student allegations as true. Assistant Principal Enciso summarized the conference in a memorandum dated May 4, 2012. (Exhibit 14.)

41. On May 5, 2012, Assistant Principal Enciso collapsed on campus and later died. After Mr. Enciso's death, Principal Dugal reviewed his files pertaining to Respondent and her own conference memorandum. Principal Dugal had never conducted an observation of Respondent's class and had never visited Respondent's class. Her practice was to delegate classroom observations to her assistant principals. On May 15, 2012, Principal Dugal prepared an evaluation of Respondent. She contacted Respondent about several meeting dates and Respondent agreed to meet with her on May 18, 2012 about the evaluation. Respondent did not attend the scheduled meeting. Principal Dugal issued the Below Standard Evaluation without a conference on May 21, 2012,.

42. In the evaluation, Principal Dugal rated Respondent as meeting performance standards in three of five areas of Section 1 (Support for Student Learning) and needing improvement in two areas. Principal Dugal rated Respondent as meeting performance standards in three of five areas of Section 2 (Planning and Designing Instruction) and needing improvement in two areas. Principal Dugal rated Respondent as meeting performance standards in one of six areas of section 3 (Classroom Performance) and needing improvement in four areas and not meeting standards in the area 3c. (establishes and maintains standards for student behavior and creates a climate that promotes fairness and respect). Principal Dugal rated Respondent as meeting performance standards in three of eight areas of section 4 (Developing As a Professional) and needing improvement in four areas. Respondent was rated as not meeting standards in area 4g. (communicates and interacts with colleagues, staff, parents and students in an appropriate manner). Principal Dugal did not rate Respondent as meeting performance standards in any of the three areas of section 5 (punctuality, attendance and recordkeeping.) Respondent was rated as needing improvement in maintaining accurate and timely records. Principal Dugal rated Respondent as not meeting standards in areas 5a (regularly arrives on time, starts class on schedule) and 5b (regularly in attendance for the total contract day). (Exhibit 15.)

43. As a result of the below standard evaluation, Respondent was required to participate in the District's PAR program, a remedial program, in which a mentor teacher is assigned to provide confidential assistance and guidance to a teacher that has received a below standard evaluation.

44. On May 25, 2012, Principal Dugal issued Respondent two Notices of Unsatisfactory Acts. The first Notice of Unsatisfactory Act was accompanied by a five day



unpaid suspension related to absences and tardies accumulated during the 2011-2012 school year. (Exhibit 16.) The second Notice of Unsatisfactory Act recommended Respondent's dismissal based upon the allegations recited in the various conference memoranda. (Exhibit 17.)

*2012-2013 School Year Barack Obama Preparatory Academy*

45. Respondent was reassigned from John Muir to Barack Obama Global Preparatory Middle School (Barack Obama) for the 2012-2013 school year. Barack Obama was also in local district 7. Respondent was excited and relieved to leave John Muir. Respondent was the only female physical education teacher at Barack Obama at the beginning of the 2012-2013 school year. She took on the role of department head and prepared duty schedules because the other physical education teachers were not inclined to perform administrative tasks. Although Barack Obama was a brand new school with state of the art facilities, it lacked basic physical education equipment. Respondent made repeated requests for funds or a budget for the physical education department to no avail.

46. Initially, Herbert Jones, Principal of Barack Obama, saw Respondent as a hard working teacher with a good attitude. At first, he was impressed with her initiative in setting up duty schedules and serving as the de facto department chair for physical education while handling all physical education duties for the female students. Principal Jones was not aware that Respondent had a prior below standard evaluation when he hired her. He first became aware of the issue when he saw a PAR teacher on campus. He later inquired with Principal Dugal about Respondent's performance at John Muir. He was somewhat surprised to find out that Respondent had attendance issues and allegations of making inappropriate comments to students. He was also advised by the District Staff Relations department that Respondent "had a history." Principal Jones testified that he "believes in second chances" and would have hired Respondent even had he known of her prior performance issues.

47. Principal Jones is an experienced administrator and very familiar with the community in which Barack Obama is situated. Principal Jones presents as a credible and candid witness with no particular bias. He had worked as the principal of George Washington Preparatory School for many years and was asked to open Barack Obama, a new school. Principal Jones served as the principal from September of 2012 until he was placed on medical leave in April of 2012. When Principal Jones returned from medical leave, he was placed in an administrative position with the District's Staff Relations department.

48. Manuel Santa Maria was the Assistant Principal at Barack Obama for a period of time. Assistant Principal Santa Maria did not testify at hearing, but a memorandum that he prepared following his 55 minute observation of Respondent's physical education class on September 28, 2012, was admitted in part. Assistant Principal Santa Maria was critical of a strength and exercise activity Respondent used. Students were asked to run a lap and then perform an exercise which required them to use their arms and lower body to "crab walk" along the field. The activity was a warm-up exercise and part of Respondent's ongoing attempts to assess the fitness level of her students. Assistant Principal Santa Maria, in his



memorandum, was critical of the amount of time Respondent spent in the locker room with sixth graders who had just been assigned lockers and were still struggling with opening them. Mr. Santa Maria also noted concerns about Respondent's choice to have students sitting on the blacktop in warm weather when the gymnasium was available. It was not clear whether Mr. Santa Maria was aware that Principal Jones had instructed Respondent not to use the gymnasium because there were too many doors to be monitored and his concerns about student elopement. In his memorandum, Assistant Principal Santa Maria also expressed concern about Respondent's admonishment to students and her tone of voice.

49. Respondent's problems at Barack Obama started when Superintendent Deasy announced his desire to rid the District of poorly performing teachers. Principal Jones invited Superintendent Deasy to visit Barack Obama and asked for his help in improving the teaching staff. Superintendent Deasy committed to helping Principal Jones and other principals improve their teaching staffs. When he visited Barack Obama, he told Principal Jones to categorize his staff into groups one, two and three. Group one was defined to be the teachers who were performing at the highest level. Group two teachers were teachers who were performing adequately or could be coached to a higher level. Group three teachers were those who were not performing at standard. Mr. Deasy asked to visit a random sample of classrooms from each category and insinuated that principals would be evaluated, in part, based upon the accuracy of their selections. Based upon her prior below standard evaluation, Principal Jones placed Respondent in Group three.

50. Respondent was targeted for removal when designated as a Group three teacher. The superintendent created a special task force of administrators charged with assisting principals in preparing the evaluations and observation of teachers that had been placed in Group three. Michael Voight was the Coordinator in charge of staff relations assigned to the special task force. Mr. Voight earned a Bachelor of Arts degree from Humboldt State, a Master's degree, a teaching credential, and an administrative credential from California State University, Dominguez Hills. He also received a law degree from the University of West Los Angeles. Mr. Voight's job consisted of accompanying principals on surprise observations of the Group three teachers, observing the teachers, comparing observations with the principal, writing the observations in the form of a conference memorandum for the principal's signature and drafting evaluations for review and signature by the principals. His services were provided as administrative support for principals to assist them in carrying out the superintendent's mandate of improving teacher performance and rooting out and removing bad teachers. Of the group of teachers assigned to Mr. Voight for observation, only one teacher improved and remained employed with the District. The remaining teachers either left the District or were terminated.

51. Mr. Voight and Principal Jones carried out a series of unannounced observations of Respondent on November 13, 2012, February 22, 2013, and March 14, 2013. Neither Mr. Voight nor Principal Jones have physical education credentials and neither has ever been a physical education teacher. Principal Jones has served as a track coach and supervised physical education teachers.

52. Based upon the November 13, 2012 observation, Principal Jones held a conference with Respondent on November 28, 2012 and advised her of their concerns about her planning and designing curriculum, classroom performance, use of instructional time and student learning. Principal Jones read the concerns from a written conference memorandum Mr. Voight drafted. The November 13, 2012 observation was conducted during one segment of a multi-part unit in which the students were running and walking the track and measuring heart rates. Mr. Voight and Principal Jones criticized Respondent for spending too much time talking with a group of students and handling locker room and P.E. clothes related issues. Mr. Voight and Principal Jones were also concerned that not all students were running, not all students seemed to report their heart rate data, students were not asked to chart or graph their heart rates, and no alternatives to running were provided. Respondent engaged students in an activity which was part of a multi-part lesson, consistent with state standards. The lesson incorporated the Activities Integration, Math and Science (AIMS) curriculum, a well-respected and professionally developed curriculum. In a written conference memorandum, dated November 28, 2012, Principal Jones directed Respondent to review the state standards for physical education. Principal Jones also directed Respondent to optimize class time, model expectations, tasks, and activities for students, stand in the student line-up area of the blacktop unless supervising the locker room, and use physical education and fitness equipment to make the lessons "more exciting, engaging, and relevant to students." (Exhibit 20.) The criticisms frustrated Respondent, but she did her best to follow the directives given by Principal Jones. Subsequently, Respondent prepared and posted written standards for physical education and announced an intention for each lesson at the beginning of each class.

53. On February 1, 2013, Principal Jones and Mr. Voight, made an unannounced observation of Respondent's Health class. Respondent had been using a third floor classroom which was different from the assigned classroom shown on the school master schedule. Principal Jones was not aware that Respondent had been using a different classroom than the one shown on the master schedule. Principal Jones had Respondent and her students summoned from classroom 304 to classroom 130 as listed on the master schedule over the school announcement system. In her haste to get to the classroom, Respondent left some of her notes behind, and attempted to reorganize her materials and her students in the new classroom. The classroom did not have sufficient chairs for the students. The observers obtained sufficient chairs from other classrooms to accommodate the students. Respondent was giving a lesson on the food groups and food pyramid. She assigned students to prepare projects in groups. The class was loud and students were moving about the classroom, however the students were not disruptive. Respondent used a loud voice when addressing the class.

54. Mr. Voight and Principal Jones considered the lesson to be disjointed and lacking because Respondent did most of the talking in the lesson. They also believed that Respondent had not done anything to ensure that all students were engaged in the lesson because one student was brushing her hair during the lesson. Respondent was aware of the student brushing her hair, but chose to ignore her behavior because the student had an

explosive temperament and Respondent wanted to continue with the lesson for the students who were interested and participating instead of spending time dealing with one student's tantrum. Principal Jones communicated their concerns to Respondent in a conference on February 22, 2013, and in written memorandum drafted by Mr. Voight and approved by Principal Jones dated February 26, 2013. In the memorandum, Mr. Jones warned Respondent that she was in danger of receiving a below standard evaluation. (Exhibit 24.)

55. Later in the day on February 1, 2013, Respondent was assaulted by Naomi Manchan, a long-term substitute physical education teacher who had been placed at Barack Obama in November 2012. Initially, Ms. Manchan and Respondent got along well, but as time went on, Ms. Manchan became resentful of Respondent's loud and bossy ways. On February 1, 2013, Respondent locked herself out of the locker room and asked Ms. Manchan to unlock it for her. When Ms. Manchan hesitated, Respondent told Ms. Manchan that she needed to listen to Respondent as an authority figure. Ms. Manchan became frustrated and upset and vented her frustration to Rhonda Miller, a custodial staff member. Ms. Miller encouraged Ms. Manchan to confront Respondent and put a stop to her bossiness. Ms. Miller accompanied Ms. Manchan to the locker room to confront Respondent. The two entered the girls locker room, found Respondent in the physical education office, closed the door, and Ms. Manchan yelled at Respondent and struck Respondent. When Respondent pushed Ms. Manchan away, she scratched her. Ms. Manchan was a credible witness at hearing. Ms. Manchan admitted that she started the physical encounter with Respondent because she was upset with what she perceived as Respondent's lack of respect for her. Ms. Manchan was released from her assignment at Barack Obama as a result of the incident. Ms. Manchan expressed sincere regret and remorse for her conduct.

56. In the same general time frame, Principal Jones made Respondent return a radio he had issued to her for the physical education department for emergencies because she made a radio call for assistance in which she stated that that she needed some help because her colleagues were not being supportive. In one instance the radio was lost, stolen or misplaced, and students were heard on the radio making inappropriate comments. Principal Jones was concerned that Respondent might not be using the radio as intended, and that transmissions over the radio were being recorded by the District police and transmitted throughout the District. Respondent felt even more vulnerable when the radio was eliminated.

57. In the same general time frame, Respondent was attacked by a parent wielding a crowbar. The attack occurred after Respondent witnessed some students abuse a dog. Respondent was not aware that the dog had bitten one of the students that had abused it. Respondent had approached the stray dog and commented that it was pretty. The parent of the student who had been bitten by the dog became enraged by Respondent's comment and attacked her with a crowbar. Respondent's boyfriend, Andrew Corral, witnessed the abuse, the dog bite and Respondent being attacked with a crowbar while he waited in his car for Respondent to arrive at the end of the school day. Mr. Corral immediately intervened to keep Respondent from being hurt. School police arrived on the scene, but did not provide

assistance to Respondent. Instead, the school police and Principal Jones comforted the irate parent and injured student.

58. On March 14, 2013, Mr. Voight and Principal Jones observed Respondent's eighth grade physical education class. Respondent took roll, had students do stretching activities and run a lap around the blacktop before leading them to the gym. Several students were sitting on a bench outside of the gym and not dressed in gym clothes when Mr. Voight and Principal Jones arrived. These students were not part of Respondent's class. Principal Jones and Mr. Voight assumed that the students sitting outside the gym belonged in Respondent's class and insisted that they go into the gym and sit in the stands. Respondent planned a lesson involving footballs, but after she discovered there were not enough inflated footballs for the lesson, she changed plans and conducted a dance lesson instead. Some of the students engaged in the dance lesson and some did not. Principal Jones and Mr. Voight were critical of several aspects of Respondent's performance. Principal Jones and Mr. Voight were concerned that she had not checked to make sure she had footballs to use before going to the gym and opined that Respondent failed to engage the students, did not show them respect and left students outside the gym that they assumed belonged in her class. Not long after the observation, Principal Jones suffered an injury and was placed on medical leave. Respondent was also off from work for an extended period of time during the same time period on medical leave.

59. On March 19, 2013, Principal Jones issued a memorandum to Respondent admonishing her not to behave inappropriately with colleagues or to engage in work place violence. The memorandum was issued in response to Ms. Manchan's February 1, 2013 assault of Respondent.

60. Respondent's boyfriend, Mr. Corral, had been in contact with school board member Marguerite Poindexter LaMotte, after Ms. Manchan assaulted Respondent. Ms. LaMotte was Principal Jones' mentor and a vocal critic of the then-Superintendent Deasy. At one point, Lani Foster, an experienced physical education teacher who served as Ms. LaMotte's chief of staff, was dispatched to Barack Obama as a substitute physical education teacher to assist Respondent and report back to Ms. LaMotte. While at Barack Obama, Ms. Foster noted that the school lacked basic physical education equipment and made arrangements for additional balls and other essential physical education equipment to be delivered to Barack Obama. Ms. Foster credibly testified at hearing that she found Respondent to be hard working and an adequate physical education teacher.

61. Principal Jones was on medical leave and could not meet with Respondent about the March 14, 2013 observation. Instead, he prepared a written memorandum dated April 12, 2013 which the Barak Obama staff placed in her school mail box while she was out on medical leave. When Respondent received the April 12, 2013 memoranda, she prepared a response in which she disputed Principal Jones' version of the March 14, 2013 lesson. She placed it in Principal Jones' mail box, but he never received it. (Exhibits RESP 076-RESP 086)



62. Principal Jones left Barack Obama on April 13, 2013 and did not return to the school site. Yesenia Karamanos replaced Principal Jones as principal of Barack Obama. Principal Karamanos had never observed Respondent's class. Based solely upon her review of Principal Jones' memorandum and notes, on April 29, 2013, Principal Karamanos prepared a below standard evaluation for Respondent. Principal Karamanos rated Respondent below standard in all aspects of supporting student learning, three of five areas in planning and designing instruction, four of six areas of classroom performance, two of six areas of developing as a professional and in the area of regular attendance noting 17 absences. Respondent was rated as meeting standards in the remaining 12 areas evaluated including regularly arriving on time (0 tardies), starting class on schedule, maintain accurate and timely records, communicating and interacting with colleagues, staff, parents and students in an appropriate manner, following policies, communicating instructional goals to students, planning and implementing classroom procedures and routines that support student learning, using a grading/evaluation system aligned with state standards, using instructional strategies, materials and resources that are appropriate, interrelating ideas and information within and across subject matter areas.

63. On June 7, 2013, Principal Karamanos issued a Notice of Unsatisfactory Act and 15 day suspension to Respondent based on the February 1, 2013 assault of Respondent by Ms. Manchan. Respondent was not personally provided with the Notice and did not sign it.

64. Also on June 7, 2013, Principal Karamanos issued another Notice of Unsatisfactory Service and 15 day suspension to Respondent. This Notice of Unsatisfactory Service was based upon the observations and allegations contained in the various conference memoranda issued to Respondent during the 2011-2012 and 2012-2013 school years. Respondent was not personally provided with the Notice and did not sign it.

#### *Specific Charges of Amended Accusation*

65. In Paragraph 1 of the Accusation, District alleges:

During or about the period [Respondent] commencing September 19, 2011 through March 29, 2012, [Respondent], P.E. teacher at Muir Middle School, failed to report to work on time by at least 229 minutes as follows:

- a. On September 28, 2011, [Respondent] was 6 minutes late.
- b. On October 2, 2011, [Respondent] was 3 minutes late.
- c. On October 13, 2011, [Respondent] was 2 minutes late.
- d. On December 12, 2011, [Respondent] was 70 minutes late.



- e. On December 14, 2011, [Respondent] was 7 minutes late.
- f. On January 9, 2012, [Respondent] was 12 minutes late.
- g. On January 24, 2012, [Respondent] was 17 minutes late.
- h. On January 25, 2012, [Respondent] was 12 minutes late.
- i. On January 26, 2012, [Respondent] was 17 minutes late.
- j. On February 22, 2012, [Respondent] was 4 minutes late.
- k. On March 20, 2012, [Respondent] was 16 minutes late.
- l. On March 22, 2012, [Respondent] was 63 minutes late.

66. District failed to establish the allegations set forth in Paragraph 1 the Amended Accusation by a preponderance of the evidence.

67. In Paragraph 2 of the Amended Accusation, District alleges:

During or about the period commencing September 19, 2011 through March 29, 2012, [Respondent], failed to provide at least 205 instructional minutes to her students when she arrived late to her assignment.

- a. On September 28, 2011, [Respondent] failed to provide 4 minutes of instruction.
- b. On October 3, 2011, [Respondent] failed to provide 1 minute of instruction.
- c. On December 12, 2011, [Respondent] failed to provide 68 minutes of instruction.
- d. On December 14, 2011, [Respondent] failed to provide 5 minutes of instruction.
- e. On January 9, 2012, [Respondent] failed to provide 10 minutes of instruction.
- f. On January 24, 2012, [Respondent] failed to provide 15 minutes of instruction.
- g. On January 25, 2012, [Respondent] failed to provide 10 minutes of instruction.
- h. On January 26, 2012, [Respondent] failed to provide 15 minutes of instruction.

i. On February 22, 2012, [Respondent] failed to provide 2 minutes of instruction.

j. On March 20, 2012,. [Respondent] failed to provide 14 minutes of instruction.

k. On March 22, 2012, [Respondent] failed to provide 61 minutes of instruction.

68. District failed to establish the factual allegations set forth in paragraph 2 of the *Amended Accusation* by a preponderance of the evidence.

69. In paragraph 3 of the *Amended Accusation*, District alleges:

During or about the period commencing September 19, 2011 through April 12, 2012, [Respondent], failed to sign in the late book, on 21 different occasions, as instructed by Principal Nisha Dugal:

a. On September 30, 2011, [Respondent] did not sign the late book.

b. On October 5, 2011, [Respondent] did not sign the late book.

c. On October 10, 2011, [Respondent] did not sign the late book.

d. On October-20, 2011, [Respondent] did not sign the late book.

e. On October 25, 2011, [Respondent] did not sign the late book.

f. On October 27, 2011, [Respondent]did not sign the late book.

g. On November 8, 2011, [Respondent] did not sign the late book.

h. On November 9, 2011, [Respondent]did not sign the late book.

i. On November 28, 2011, [Respondent] did not sign the late book.

j. On December 7, 2011, [Respondent] did not sign the late book.

k. On December 8, 2011, [Respondent] did not sign the late book.

l. On December 9, 2011, [Respondent] did not sign the late book.

m. On December 13, 2011, [Respondent] did not sign the late book.

n. On December 15, 2011, [Respondent] did not sign the late book.

o. On January 10, 2012, [Respondent] did not sign the late book.

p. On March 21, 2012, [Respondent] did not sign the late book.

q. On March 26, 2012, [Respondent] did not sign the late book.

r. On March 27, 2012, [Respondent] did not sign the late book.

s. On April 9, 2012, [Respondent] did not sign the late book.

t. On April 10, 2012, [Respondent] did not sign the late book.

u. On April 12, 2012, [Respondent] did not sign the late book.

70. District failed to establish the factual allegations of paragraph 3 of the Amended Accusation by a preponderance of the evidence.

71. In paragraph 4 of the Amended Accusation District alleges:

During or about the period commencing September 19, 2011 through March 29, 2012, [Respondent], failed to supervise her students by allowing them to wait outside the classroom until she arrived.

72. District failed to establish the factual allegations of paragraph 4 of the Amended Accusation by a preponderance of the evidence.

73. In paragraph 5 of the Amended Accusation District alleges:

During or about the period commencing September 19, 2011 through March 29, 2012, [Respondent], failed to notify Muir Middle School that she would be arriving late to the school and her assignment.

74. District failed to establish the factual allegations set forth in paragraph 5 of the Amended Accusation by a preponderance of the evidence.

75. In paragraph 6 of the Amended Accusation, District alleges:

During or about the period commencing September 19, 2011 through March 29, 2012, [Respondent], P.E. Teacher at Muir Middle School, failed to report to work on 24 different days.

76. District failed to establish the factual allegations set forth in paragraph 6 of the Amended Accusation by a preponderance of the evidence.

77. In paragraph 7 of the Amended Accusation, District alleges:

On or about November 15, 2011, [Respondent], stated the following to students S ■■■ M., R ■■■ L., and I ■■■ W.: "Sh ■■■ M. is a man."

78. District failed to establish the factual allegations set forth in paragraph 7 of the Amended Accusation by a preponderance of the evidence.

79. In paragraph 8, of the Amended Accusation, District alleges:

On or-about November 15, 2011, Respondent, stated the following to students H ■■■ G., S ■■■ M., K ■■■ A. and E ■■■ A...: "Where do black people get their attitude from?"

80. District failed to establish the factual allegations of paragraph 8 of the Amended Accusation by a preponderance of the evidence.

81. In paragraph 9 of the Amended Accusation District alleges that on or about November 30, 2011, Respondent said "Shut up!" to student, A ■■■ J.

82. District failed to establish the factual allegations of paragraph 9 of the Amended Accusation by a preponderance of the evidence.

83. In paragraph 10 of the Amended Accusation, District alleges:

During or about the period commencing November 2011, through April 2012, [Respondent], said, "Get your stupid ass out of class," or words to that effect, to student, J ■■■ R. During or about the period commencing November 2011, through April 2012, [Respondent], said following in the presence of student, J ■■■ R. and other students:

- a. "Black kids are stupid," or words to that effect;
- b. "Black kids are from the hood, this is why black kids are like this; they [black kids] are not going to make it; they [black kids] are not going anywhere," or words to that effect.

84. District failed to establish the factual allegations of paragraph 10 of the Amended Accusation by a preponderance of the evidence.

85. In paragraph 11 of the Amended Accusation, District alleges:

On or about November 30, 2011, [Respondent], said, to student, T [REDACTED] G.:

- a. "I'm sorry that you don't have no mother to take care of you."
- b. "You all black kids don't have any parents."
- c. "I don't like you. You're a butt kissers and I don't like butt kissers."

86. District failed to establish the factual allegations of paragraph 11 of the Amended Accusation by a preponderance of the evidence.

87. In paragraph 12 of the Amended Accusation, District alleges:

On or about February 2, 2012, [Respondent], yelled out in the hearing range of other students, in retaliation for student R [REDACTED] L. having reported her to the principal as follows:

- a. "How can I have a student that has falsely accused me back in my class?"
- b. "Administration is doing nothing to protect me!"

88. District established by a preponderance of the evidence that Respondent made the two statements alleged in paragraph 12 of the Amended Accusation. District also established by a preponderance of the evidence that the statement "How can I have a student that has falsely accused me back in my class?" was made with reference to R [REDACTED] L. and was made in retaliation against R [REDACTED] L. for having made an unsubstantiated claim of child abuse against Respondent a few days prior. The second statement, was made by Respondent in reference to student N [REDACTED] M. and was not retaliatory.

89. In paragraph 13 of the Amended Accusation, District alleged that or about February 2, 2012, Respondent, failed to follow an administrative directive when she retaliated against R [REDACTED] L., a 6th grade student.

90. District established the factual allegations of paragraph 13 of the Amended Accusation by a preponderance of the evidence. When Respondent shouted "How can I have a student that has falsely accused me back in my class," she did so in front of the entire



physical education class and called attention to Respondent. This was a violation of the directive issued by Principal Dugal.

91. In paragraph 14 of the Amended Accusation, District alleged that on or about April 11, 2012, [Respondent], walked up to third period student M■■■■ H., put her face a few inches away from M■■■■'s face and yelled, "That's why nobody likes you."

92. District failed to establish the factual allegations of paragraph 14 of the Amended Accusation by a preponderance of the evidence.

93. In paragraph 15 of the Amended Accusation, District alleges that on or about April 17, 2012, Respondent pushed her third period student, E■■■■ and ripped his earphones in half.

94. District failed to establish the factual allegations of paragraph 15 of the Amended Accusation by a preponderance of the evidence.

95. In paragraph 16 of the Amended Accusation, District alleges that on or about April 17, 2012, Respondent, yelled at C■■■■ C., and J■■■■ M., students in her fifth period class, to "Shut up!" causing the students to become alarmed and leave the classroom.

96. District failed to establish the factual allegations of paragraph 16 of the Amended Accusation by a preponderance of the evidence.

97. In paragraph 17 of the Amended Accusation, District alleges that:

On or about April 19, 2012, [Respondent], said the following in the presence of her students:

a. "Black students are the ones that-cause the problems anyway."

b. "Black girls are only used for opening their legs and collecting a government welfare check," or words to that effect;. "That's why I hate black people. You are bullies. I went to school with black kids and you are nothing but bullies." or words to that effect.

98. District failed to establish the factual allegations of paragraph 17 of the Amended Accusation by a preponderance of the evidence. The only evidence offered to support this allegation came from witnesses Holmes and J■■■■. Neither witness testified that Respondent made these statements. Furthermore, the Commission did not find either of them credible witnesses.

99. In paragraph 18 of the Amended Accusation, District alleges that on or about April 26, 2012, Respondent said "I don't like black kids" while screaming and arguing with a student.

100. District failed to establish the factual allegations of paragraph 18 of the Amended Accusation by a preponderance of the evidence.

101. In paragraph 19 of the Amended Accusation District alleges:

On or about September 28, 2012, [Respondent], P.E. Teacher at Barack Obama Global Preparatory Academy did not demonstrate evidence of short term and long term plans to foster student learning nor did she use state subject matter content standards to establish rigorous learning goals for students. Specifically, [Respondent] did not:

- a. Give purpose to the lesson.
- b. Share the learning objective.
- c. Share the standards for Physical Education lesson with students.
- d. Instead, [Respondent] taught a lesson more aligned with 2nd and 3rd grade level standards. She only directed students to perform basic warm-up activities including running a lap around the field and engaging in an activity where students had to use their arms to drag their buttocks and lower body backwards across the grassy field.
- e. [Respondent] should have engaged students in a lesson that was aligned to the 6th grade standards which calls for students to explain and analyze physical education principles, distinguish relationships between physical education techniques, and identify and define roles in physical education activities.

102. District failed to establish the factual allegations of paragraph 19 of the Amended Accusation by a preponderance of the evidence.

103. In paragraph 20 of the Amended Accusation, District alleged that on or about September 28, 2012, Respondent, did not use the results of multiple assessments to guide instruction because she directed all students, regardless of athletic or fitness ability to engage in the same skill. She should have demonstrated that she had knowledge of the individual students' athletic and fitness abilities and developed lesson components to match the needs of the students.

104. District failed to establish the factual allegations of paragraph 20 of the Amended Accusation by a preponderance of the evidence.

105. In paragraph 21 of the Amended Accusation, District alleged that:

On or about September 28, 2012, [Respondent] should have given relevance to the lesson so as to further students' interest in physical education and life-long fitness goals by relating the lesson activities and skills with real world

occurrences that students could relate to and understand. She did not integrate students' prior knowledge, life experiences and interests into the instruction program because she did not relate the skill being taught with real world application, relate the skill to a part of future activity or give relevance to the activities.

106. District failed to establish the factual allegations of paragraph 21 of the Amended Accusation by a preponderance of the evidence.

107. In paragraph 22 of the Amended Accusation, District alleged:

On or about September 28, 2012, [Respondent] did not use instructional time effectively. For the first 14 minutes of the class period (1:40 p.m. to 1:54 p.m.), [Respondent] was not with her students who were on the playground waiting for her. As a result, 18% of the class period was not utilized and students had to wait for [Respondent] to start instruction. From 1:55 p.m.-1:58 p.m. [Respondent] did not engage students in a lesson when she yelled at students for being so slow in the locker room, left students to retrieve her clipboard from her office, then did not return to the waiting class until 2:04 p.m. and did not instruct students to engage in any activity until 2:06 p.m. when she asked students to "give me ten jumping jacks." In total, from 1:40 p.m. to 2:06 p.m., twenty minutes of instructional time was not effectively used for instruction. This constitutes a 33% loss of the total instructional period.

108. District failed to establish the factual allegations of paragraph 22 of the Amended Accusation by a preponderance of the evidence.

109. In paragraph 23 of the Amended Accusation, District alleged:

On or about September 28, 2012, [Respondent] did not create a physical environment that engaged students in meaningful lessons. Despite the 84 degree weather and numerous complaints from students, [Respondent] directed students to sit on the hot black asphalt and exercise in the direct sun. [Respondent] should have planned her lesson to allow students to use the indoor and air conditioned gymnasium. At the time of this occurrence, one entire room of the gymnasium was empty.

110. District failed to establish the factual allegations of paragraph 23 of the Amended Accusation by a preponderance of the evidence.

111. In paragraph 24 of the Amended Accusation, District alleges:

On or about September 28, 2012, [Respondent] did not create a climate that promoted fairness and respect because she addressed students unprofessionally and disrespectfully. At 1:55 p.m. she abruptly yelled to the class, "What's your problem? Don't bother me with your complaining. It's 500 degrees out here

and I'm hot!" At 1:57 p.m., she scolded the class and said, "From now on you have one minute to go to your locker. I don't want to hear a peep from you! If you are going to have problems!" At 2:23 p.m., in front of the entire class she loudly yelled at a student, "Sit down! How many times do I have to tell you? When you are done running, sit down!"

112. District failed to the factual allegations of paragraph 24 of the amended accusation by a preponderance of the evidence.

113. In paragraph 25 of the Amended Accusation, District alleges:

On or about September 28, 2012, [Respondent] did not organize the curriculum to support student understanding of physical education concepts. As a result, students could not easily follow along with her lesson or understand the meaning of lesson components. She did not transition between one activity and the next and she did not interrelate one activity with another.

114. District failed to establish the factual allegations of paragraph 25 of the Amended Accusation by a preponderance of the evidence.

115. In paragraph 26 of the Amended Accusation, District alleges:

On or about September 28, 2012, [Respondent] did not offer an opportunity for students to reflect on and evaluate their learning by engaging students in an activity where they could connect class material with real world application of fitness skills.

116. District failed to establish the factual allegations of paragraph 26 of the Amended Accusation by a preponderance of the evidence. The activity that the students engaged in was a strength exercise not a skill-based learning activity.

117. In paragraph 27 of the Amended Accusation, District alleges:

On or about November 13, 2012, [Respondent], a Physical Education Teacher at Barack Obama Global Preparatory Academy, did not demonstrate evidence of short-term or long-term plans to foster student learning and achievement of the state standards when she directed students to walk around the field as the Physical Education activity. She did not require or provide an opportunity for students to assess and maintain levels of physical fitness to improve health and performance, demonstrate knowledge of physical fitness concepts, principles, and strategies to improve health, or direct students to demonstrate fitness knowledge as related to the class activity.

118. District failed to establish the factual allegations of paragraph 27 of the Amended Accusation by a preponderance of the evidence. Respondent incorporated AIMS, a professionally developed curriculum, in her lesson plans. Respondent was working with the students on activities related to heart and training rates.

119. In paragraph 28 of the Amended Accusation, District alleges:

On or about November 13, 2012, [Respondent] did not establish and maintain standards for student behavior. [Respondent] should have redirected off task student behavior and reminded students of her behavioral and class participation expectations. Students did not follow the lesson plan nor engage in the lesson activities. At 9:25 a.m., although she directed students to run around the field, all of the students walked around the field and socialized with peers. Four of the eighteen students did not wear their prescribed physical education uniform.

120. District failed to establish the factual allegations of paragraph 28 of the Amended Accusation by a preponderance of the evidence. Complainant did not meet its burden of proof because it failed to establish by a preponderance of the evidence that Respondent did not establish and maintain standards for student behavior.

121. In paragraph 29 of the Amended Accusation, District alleges:

On or about November 13, 2012 [Respondent] did not use instructional time effectively. She did not supervise nor provide instruction to the students for the first fifteen minutes of class. Students socialized with peers. [Respondent] stood away from the class and talked with four students who were not enrolled in her class. For the final thirteen minutes of class, [Respondent] allowed students to change from their PE uniforms, sit on the lunch benches and socialize with peers. In total, [Respondent] provided only 23 minutes of actual instructional activities. This represents only 48% of the total class used for instruction while 52% was not used for instruction.

122. District failed to establish by the factual allegations of paragraph 29 of the Amended Accusation by a preponderance of the evidence. Complainant did not meet its burden of proof because it failed to demonstrate by a preponderance of the evidence that Respondent did not use instructional time effectively or supervise students.

123. In paragraph 30 of the Amended Accusation, District alleges:

On or about February 1, 2013, [Respondent] did not sequence instructional activities and materials for student learning and, as a result, her students were not engaged in the lesson and seemed confused about lesson activities. [Respondent] primarily lectured and did not engage students in any type of meaningful lesson. When she asked students questions, students did not respond or only minimally responded. She lectured about the food pyramid but did not explain the meaning of the different sections of the food pyramid nor how students would use this information. She did not explain the procedures of a group project which resulted in confusion. A student called out, "What are we doing?" Another student asked her, "What are we doing? What is our group?" She did not respond. [Respondent] was not prepared for



the lesson. She announced, "Where is my sodium group?" None of the students responded. She said, "Oh, I had a list but I forgot it." At 10:10 a.m., she said, "OK ... I need to fill time. I need each group to select a leader, timekeeper, speaker and note taker." She announced to the class that they were to complete a final report but did not explain what the report entailed or the rubric she would use to evaluate the reports. She said, "You will do energy drinks. They are bad for you! Just get a board. Buy it or make it and explain. This is due on Monday! I want a board and an outline on it by Monday. If you don't do this you will have to see [school principal] Mr. Jones!"

124. District failed to establish by the 1 allegations of paragraph 30 of the Amended Accusation by a preponderance of the evidence. Although the students made the statements or similar statements to those alleged, the statements were irrelevant to a determination of whether Respondent properly sequenced activities and instruction. Complainant did not meet its burden of proof because it failed to demonstrate by a preponderance of the evidence that Respondent did not sequence instructional activities and materials for learning and that her students were not engaged in the lesson and she was unprepared.

125. In paragraph 31 of the Amended Accusation, District alleges:

On or about February 1, 2013, [Respondent] did not establish and maintain standards for student-behavior nor did she ensure that all students were following along and participating in the lesson. At the beginning of the class period, she directed students to take out a piece of paper. Only sixteen of thirty-one students complied. [Respondent] did not hold them accountable for taking out paper. Students who did not take out paper were unable to participate in the lesson. At 9:40 a.m., a student who was sitting in the back row was brushing her hair and not engaged in the class activity. [Respondent] did not redirect her. At 9:45 a.m., three of the students in her class rested their heads on their desks for over fifteen minutes. [Respondent] did not wake them up nor engage them in the lesson. At 10:12 a.m., although [Respondent] was attempting to assign topics for research reports, none of the class was listening to her as they were all socializing with peers. [Respondent] did not attempt to regain the attention of the class and continued to talk over the noise. Three minutes later, the noise level from the students was so loud [Respondent] loudly yelled over the noise and continued to give instructions. None of the students listened or were engaged in the lesson.

126. District failed to establish the factual allegations of paragraph 31 of the Amended Accusation by a preponderance of the evidence. District did not meet its burden of proof because it failed to demonstrate by a preponderance of the evidence that Respondent did not establish and maintain standards for student behavior and participation. Although Respondent and her students had been forced to move classrooms at the beginning of the period, she maintained her confidence, adapted to the situation, provided instruction and most students participated. Respondent was aware that one student was brushing her hair,

but made a decision to ignore the behavior because the student had volatile behavior and she did not want to deal with behavior issues during the lesson.

127. In Paragraph 32 of the Amended Accusation, District alleges:

On or about February 1, 2013, [Respondent] did not develop lessons that engage students in problem solving, critical thinking, or other activities that made the subject matter meaningful to them. She told students to complete a report of different health related topics but only required students to write a general summary. She did not instruct them to actually apply health concepts or use skills learned in class toward real world application.

128. District failed to establish the factual allegations of paragraph 32 of the Amended Accusation by a preponderance of the evidence. District did not meet its burden of proof because it failed to demonstrate by a preponderance of the evidence that Respondent failed to engage students in problem solving, critical thinking, or other activities that made the subject matter meaningful to them.

129. In paragraph 33 of the Amended Accusation, District alleges:

On or about March 14, 2013, [Respondent] did not establish and articulate the class agenda or the class learning goals for student learning and, as a result, students were confused about the purpose of the lesson. At the beginning of class, [Respondent] should have shared the overall agenda for the period and the intended learning objective so students know the purpose of the lesson and overall class expectations. At 8:44 a.m., forty-four minutes after class started, she announced, "Your objective today is to accept and encourage people." This lesson objective does not align with any of the Physical Education Standards nor did it demonstrate a real lesson purpose. At 8:48 a.m., one student loudly called out, "What? What did you say? What are we doing today?" [Respondent] did not respond or repeat the instructions given. At 8:39 a.m. [Respondent] appeared to not be prepared for the lesson and not know what the objective of the lesson was. She yelled out, "Oh, I don't even want to do this lesson anymore cause (sic) we don't even have enough footballs. OK! Hurry up! Everybody! Let's go! Somebody go grab those cones and bring them over to me." She further induced confusion by shouting, "Don't even start with me today. I'm not in the mood. I need lines. Give me lines now!" At 8:41 a.m. she said, "OK ... stand up! Stand! Hey, stand up!" After all the students in the class stood she yelled, "I only want the first person to stand! Come on!" Students appeared confused about what they were supposed to do. A student called out to her, "What do we do?" Another student yelled, "What are we doing? Where do we go?" [Respondent] responded, "OK...everybody, sit! Ready? Sit!" A student responded, "What are we doing? I don't get if you want us to sit or stand?" [Respondent] did not respond to the student comments because she just stood at the front.

130. District failed to establish the allegations of paragraph 33 of the Amended Accusation by a preponderance of the evidence. District did not meet its burden of proof because it failed to demonstrate by a preponderance of the evidence that Respondent failed to establish and articulate the class agenda or the class learning goals for student learning and, as a result, students were confused about the purpose of the lesson. Respondent attempted to engage the students in a football activity, but was unable to do so because of the lack of equipment. When she discovered the lack of equipment, she quickly shifted to a new lesson plan involving dancing which did not require equipment. Although there was initially minor confusion and reluctance, the students were engaged in the lesson.

131. In paragraph 34 of the Amended Accusation, District alleges:

On or about February 1, 2013, at about 12:20 p.m., [Respondent], P.E. Teacher at Barack Obama Preparatory Academy, after having lost her keys yelled the following at Ms. Manchan, a fellow P.E. teacher in the presence of students:

- a. "Ms. Manchan open up the locker room door please!"
- b. [Respondent], in response to Ms. Manchan's request to stop yelling, yelled back: "Ms. Manchan you need to learn how to respect because I'm the authority!"

132. District established the allegations set forth in paragraph 34 of the Amended Accusation by a preponderance of the evidence.

133. In paragraph 35 of the Amended Accusation, District alleges:

On or about February 1, 2013, at about 12:20 p.m., [Respondent], P.E. teacher at Barack Obama Preparatory Academy, grabbed Ms. Manchan, a fellow P.E. teacher by her sweatshirt and while pulling on the sweatshirt, yelled: "Ms. Manchan you need to learn how to respect because I'm the authority here!" This caused Ms. Miller, Campus Aide, to step in and break up the altercation.

134. District failed to establish the factual allegations set forth in paragraph 35 of the Amended Accusation. Ms. Manchan and Ms. Miller were the instigators of the incident, they approached Respondent, cornered her, and Ms. Manchan made the first physical contact with Respondent. Respondent was not the aggressor and any physical contact she had with Ms. Manchan was an act of self-defense.

135. In paragraph 36 of the Amended Accusation, District alleges:

On or about February 1, 2013, after the 6th period, [Respondent], after the altercation, yelled at Ms. Manchan: "Ms. Manchan you are nothing! I am the authority!"

136. District failed to establish the factual allegations of paragraph 36 by a preponderance of the evidence.

137. In paragraph 37 of the Amended Accusation, District alleges:

On or about March 14, 2013, [Respondent] did not supervise students for the entire period. At 8:28 a.m. after she escorted her class into the gymnasium, she directed seven students to sit on a bench outside the gymnasium, she then closed the gymnasium door. While the students were sitting outside, they were outside of her direct supervision. The school principal, Herbert Jones, asked one of the students why they had to sit on the bench. One student responded, "We aren't in uniform. We have time out." The students remained unsupervised outside of the gymnasium for the remainder of the class period. During this time the students sitting outside socialized and listened to music on their MP3 players and cell phones.

138. District failed to establish the allegations of paragraph 37 of the Amended Accusation by a preponderance of the evidence. The students that Principal Jones encountered outside of the gymnasium were not Respondent's students and were not under her supervision.

139. In paragraph 38 of the Amended Accusation, District alleges:

On or about March 14, 2013, [Respondent] did not develop stronger management of her students by establishing clear behavior expectations and engaging students in meaningful lesson or create a classroom climate that promoted fairness and respect. She did not develop a positive rapport with her students because she repeatedly yelled at and reprimanded students. At 8:34 a.m. she yelled, "Boys! You get in a straight line now! Do it before I run you!" At 8:37 a.m. she sharply yelled to the entire class: "Hey! I asked you to give me a boy's and girl's line but you can't even listen! Go! Go! I want three and three of each! Do it before you all run! That will teach you!" At 8:39 a.m. she yelled: "I'm talking! Hello! Get in your lines! Don't touch those cones! No! Now, line up by a cone! Why aren't you ready? Come on! Stand up! No, wait! Only the first person stands up! I said, only the first person! Hey! Only the first person!" At 8:42 a.m. she yelled: "Ready yet? Sit! Everybody sit! Ok, stand up!" At 8:57 a.m. the students laughed at [Respondent] when she yelled to the class: "You are not listening! Follow instructions! You know what? That's it!"

140. District established by a preponderance of the evidence that Respondent made the statements attributed to her in paragraph 38 of the Amended Accusation. However, District failed to establish that those statements demonstrate that Respondent did not have strong management skills, did not establish clear behavior expectations, did not engage students in a meaningful lesson and did not create a classroom climate that promoted fairness and respect. Respondent was frustrated with the lack of administrative support and

consequences for student misbehavior. She used a loud voice to get the students' attention in an outdoor space and to project authority.

141. In paragraph 39 of the Amended Accusation, District alleges:

On or about March 14, 2013, [Respondent] was not developing as a professional educator because she was not showing evidence of reflecting on her teaching practice or establishing professional goals as to grow professionally. The school principal, Herbert Jones, repeatedly provided her with assistance and guidance, formal directives with regard to planning lessons that were more rigorous and developing a positive rapport with her students. [Respondent] repeatedly failed to use the assistance and guidance provided and did not develop rapport with her students. She did not prepare necessary equipment and materials for her lessons. She continued to engage students in low level lessons that did not require critical thinking or skill application. She continued to address students in a disrespectful fashion.

142. District failed to establish the factual allegations of paragraph 39 by a preponderance of the evidence and failed to establish by a preponderance of the evidence that Respondent was not developing as a professional. Principal Jones referred Respondent to District policies, but did not provide Respondent with real assistance, guidance or useful training. Respondent showed sincere efforts to meet Principal Jones' expectations but struggled with the lack of equipment and lack of administrative support for discipline. By the end of her two years in local District 7 at John Muir and Barack Obama, Respondent was simply exhausted and demoralized.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. In this case, the District has the burden of proving the allegations of the Charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709.)

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### *Cause for Dismissal*

2. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in Education Code<sup>2</sup> section 44932, subdivision (a), are established. In this case, the District seeks respondent's dismissal based on subdivisions (a)(1) immoral conduct, (a)(2) unprofessional conduct, (a)(4) dishonesty (a)(5) unsatisfactory performance, (a)(6) evident unfitness for service, and (a)(8) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her. District also seeks dismissal under Education Code section 44939, subdivision (b) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district. The Amended Accusation does not specifically identify which factual allegations support each alleged cause for dismissal.

3. Complainant failed to establish by a preponderance of the evidence that Respondent engaged in immoral conduct within the meaning of section 44932, subdivision (a)(1). 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.) There was no evidence to support a finding that Respondent engaged in immoral conduct. The various racist and inappropriate statements that Respondent allegedly made were not proven and the evidence revealed that Respondent was assaulted by Ms. Mancham who instigated the confrontation and only defended herself. It was proven by a preponderance of the evidence that Respondent made a single statement about student R ■ L in the heat of the moment and that statement was retaliatory and in violation of a directive from her supervisor. However, District failed to prove by a preponderance of the evidence that the single instance constituted immoral conduct.

4. Complainant failed to establish by a preponderance of the evidence that Respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(2). Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming a member of the profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.) The evidence in this case did not establish that Respondent engaged in unprofessional conduct. Instead, it was established that Respondent used a loud voice, attempted to take control of the

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<sup>2</sup> All further references to Code shall mean the Education Code.



physical education classroom and manage students with extremely challenging behaviors without any support from District administration.

5. Complainant failed to establish by a preponderance of the evidence that Respondent was dishonest within the meaning of section 44932, subdivision (a)(4). Dishonesty “connotes a disposition to deceive” and “necessarily includes the element of bad faith.” It means “fraud, deception, betrayal, faithlessness,” and “denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.” *Midway School District v. Griffieath* (1946) 29 Cal.2d 13, 19; *Hogg v. Real Estate Commissioner* (1942 ) 54 Cal. App. 2d 712, 717.

6. Complainant failed to establish by a preponderance of the evidence that Respondent engaged in unsatisfactory performance within the meaning of section 44932, subdivision (a)(5). The term “unsatisfactory performance” is not specifically defined in the Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in section 44932, and it is not to be presumed that the Legislature intended to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that “unsatisfactory performance” does not include any other cause for dismissal specified in section 44932.

7. While unprofessional conduct can be determined by analyzing a teacher’s conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher’s performance as evaluated by his or her employing school district. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance. Section 44938 refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs in an unsatisfactory manner to her employing school district. However, it has been observed that the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass’n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed in an unsatisfactory manner.

8. In this case, Complainant failed to establish unsatisfactory conduct by a preponderance of the evidence because Respondent’s conduct did not rise to the level of unsatisfactory performance. Respondent received two below standard evaluations and multiple Notices of Unsatisfactory Acts/Service. However, those evaluations and Notices were for the most part, based upon assertions that were not proven at hearing. Of the many allegations asserted in the Notices and below standard evaluations, only the allegation that

Respondent made a retaliatory comment about student R L. was proven at hearing. The comment was the subject of the Notice of Unsatisfactory Act dated May 25, 2012. Respondent received an unpaid suspension for that conduct. Respondent was among a group of teachers targeted for dismissal by the District as part of a plan to improve the quality of teachers in the District. As such, she was subjected to intense scrutiny, surprise observations, and received little support from the administration. Furthermore, Respondent was not provided meaningful opportunity to improve her performance, or any real assistance or guidance from her administrators. Instead, Respondent was directed to read various bulletins and policies. A comparison of Respondent's evaluation from John Muir with that from Barack Obama, reveals that she improved her performance in several areas including attendance. Under these circumstances, Complainant's conclusion that Respondent's performance was unsatisfactory must be viewed as arbitrary and capricious.

9. Complainant failed to establish by a preponderance of the evidence that Respondent is evidently unfit for service as a teacher, pursuant to section 44932, subdivision (a)(6). "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 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." (*Id.*) Respondent expressed a sincere desire to improve her teaching and did make improvements as evidenced by a comparison of her two evaluations. While Respondent was not a good fit for Barack Obama or John Muir, each of which had significant challenges as low performing schools plagued with disciplinary problems, that does not mean that she is unfit to teach. Respondent was faced with challenging student behaviors, verbal and physical assaults, a lack of resources, a lack of administrative support and an ongoing evaluation process that was demeaning at best. Nevertheless, Respondent trudged on and provided instruction to her students to the best of her ability and responded to direction and suggestion from administrators.

10. Complainant failed to establish by a preponderance of the evidence that Respondent persistently violated or refused 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 Board, within the meaning of section 44932, subdivision (a)(8). Cause for discipline here may be based on the violation of school rules or district policies. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) However, there must be a "showing of intentional and continual refusal to cooperate." (*Id.* at p. 1196.) The violation must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 322.) In this case, Complainant alleged that Respondent made a series of racist remarks, violated a variety of District policies and a Board policy. These

allegations were not proven at hearing. Similarly, Complainant's allegations that Respondent was excessively absent and tardy in violation of the District Attendance Policy were not proven. Complainant proved only that Respondent made a retaliatory statement in the heat of the moment and was suspended for making the statement. Respondent's conduct was not proven to be habitual or continuing.

11. Complainant 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). There was no evidence that Respondent willfully refused to perform regular assignments. Complainant asserts that Respondent willfully refused to perform a regular assignment when she left her class with Assistant Principal Gonzalez in charge of the students. The incident does not support a finding that Respondent willfully refused to perform a regular assignment. Instead, Respondent left her students in the capable hands of an administrator while she extricated herself from a volatile situation. In other instances, Respondent dutifully followed direction to leave her preferred assignment at Carnegie and report to John Muir where she was designated as a "pool teacher" and required to report to the school office or library without a teaching assignment even though she felt humiliated by the situation.

12. Respondent followed the curriculum for physical education, developed lesson plans, and incorporated suggestions from the administration. She attempted to implement the curriculum despite extreme behavior challenges from students at John Muir and a lack of adequate equipment and support at Barack Obama. At Barack Obama Respondent demonstrated her enthusiasm for her assignment by assuming the role of defacto department chair and handling the girls locker room as the sole female physical education teacher. To the extent that Respondent deviated from the curriculum, the deviations were minor and made for the benefit of the students by necessity, because necessary equipment was not available to her.

#### *Analysis of the Morrison Factors*

13. Here, the Commission did not find cause for dismissal under any of the grounds asserted by the District. Nevertheless, an analysis of the *Morrison* factors is informative.

14. Generally, in deciding whether cause for dismissal on the grounds of unprofessional conduct and evident unfitness for service, it also must be established that a teacher's misconduct relates to her fitness to teach, within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 227-230). The *Morrison* analysis does not apply to cause for dismissal for unsatisfactory performance or persistent violation of school rules, laws or policies because such theories, by definition, have a direct nexus with teaching. (*Id.*, at pp. 227-230). With regard to the remaining identified causes for dismissal that must be analyzed, all of the factors suggested by *Morrison* were considered and compared to the facts

established above. Not all "*Morrison* factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) 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 District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.) As applied in this case, the applicable factors do not support a nexus between Respondent's conduct and respondent's fitness to teach.

15. In the *Morrison* case, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

16. In *Morrison*, the California Supreme Court noted that legislation authorizing disciplinary action against the holders of a variety of certificates, licenses and government jobs, other than teaching, contain general terms. The Court had not attempted to formulate explicit definitions of those terms, but had given those terms more precise meaning by referring to the particular profession or specific governmental position to which they were applicable. (*Ibid.*, at p. 220). With regard to such general terms "immoral" or unprofessional conduct" and "moral turpitude," those terms had to be interpreted in a manner bearing upon the teacher's fitness to teach. "Without such a reasonable interpretation, the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state." (*Ibid.*, at p. 225.) Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana Unified School District v. Burman*, 45 Cal. 3d, 208, 220.) The *Morrison* factors are analyzed with regard to Respondent's conduct as follows:

(a) *Morrison* Factor: *The likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity.* Respondent's conduct, specifically her loud voice and her retaliation against student R ■ L., the only factual allegations that were proven, had a mild effect on her students. Respondent had a negligible impact on her colleagues and they had mixed reactions to her. Some of her colleagues, such as Ms. Caro, Ms. Foster and Mr. Catanzaretti got along with Respondent and others such as Ms. Manchan and Ms. Holmes disliked her.

(b) *Morrison* Factor: *The proximity or remoteness in time of the conduct.* The conduct was proximate in time.



(c) *Morrison Factor: The type of teaching certificate held by the teacher.* Respondent held a physical education credential which was the appropriate credential for the teaching assignment.

(d) *Morrison Factor: The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct.* As extenuating circumstances, Respondent was struggling with challenging student behavior, verbal and physical threats and assaults, and received no real assistance or guidance from her administrators. Instead, she was targeted for dismissal and not given the support that she needed to be successful in new and challenging assignments.

(e) *Morrison Factor: The praiseworthiness or blameworthiness of the motives resulting in the conduct.* There was nothing praiseworthy or blameworthy about Respondent's conduct.

(f) *Morrison Factor: Likelihood of Recurrence:* The conduct is likely to reoccur if Respondent is placed in the same circumstances without appropriate support and training.

(g) *Morrison Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.* No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from the District.

17. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Ass'n v. State of California* (1999) 20 Cal.4th 327, 343-344.)

18. In this instance, the Commission found no cause for dismissal of Respondent. District failed to provide sufficient evidence to establish a single cause for discipline by a preponderance of the evidence. Substantial portions of the case were based upon allegations made by students that Respondent made a series of inappropriate and racist statements. District failed to establish these statements were made. Notably, only a single student testified at hearing and her testimony, which was not seen as credible by the Commission, did not establish that Respondent made any such statements. Another large portion of the case concerned Respondent's absences and tardies as recorded in the records at John Muir. The records produced at hearing, were not reliable and did not establish Respondent's attendance. Notably, the Notices of Unsatisfactory Service/Acts and Below Standard Evaluations which were offered by District to support their case for dismissal of Respondent were in large part based upon those allegations.

19. Respondent may have room to improve her teaching skills, but this fact alone does not support a conclusion that she should be discharged from her certificated teaching position. On the contrary, the Commission found unanimously that District failed to demonstrate by a preponderance of the evidence that cause exists to dismiss Respondent

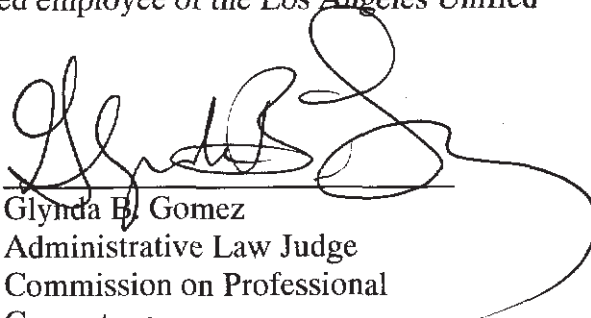


from her employment with the District based upon the allegations set forth in the Amended Accusation and the evidence presented at the administrative hearing.

### ORDER


The Accusation and Statement of Charges are dismissed. Anita Castro shall be reinstated to her position as a permanent certificated employee of the Los Angeles Unified School District.

Dated: January 22, 2016



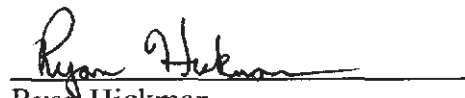
Glynda B. Gomez  
Administrative Law Judge  
Commission on Professional  
Competence

Dated: January 22, 2016



Jan Miller  
Member  
Commission on Professional  
Competence

Dated: January 22, 2016



Ryan Hickman  
Member  
Commission on Professional  
Competence