

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
REDLANDS UNIFIED SCHOOL DISTRICT

In the Matter of the Dismissal of:

MARIE HONEYFIELD,

Respondent.

OAH No. 2018031237

**DECISION**

This matter was heard before the Commission on Professional Competence in Redlands, California on September 4, 5, 6, and 7, 2018. The Commission was comprised of the following members: Administrative Law Judge Theresa M. Brehl, Frank Pulice, and David W. Rodgers.

Mark W. Thompson and Dhruva N. (Neel) Ghanshyam, Attorneys at Law, of Atkinson, Andelson, Loya, Ruud & Romo, represented the Redlands Unified School District.

Justin M. Crane, Attorney at Law, of The Myers Law group, A.P.C., represented respondent Marie Honeyfield, who was present throughout the hearing.

After the Commission deliberated, the matter was submitted on September 7, 2018.

**SUMMARY**

This case concerns whether Ms. Honeyfield should be discharged from her position as a teacher for the Redlands Unified School District due to events that occurred from October 26, 2017, through October 30, 2017. On October 26, 2017, Ms. Honeyfield drove I.N., a 17-year-old student,<sup>1</sup> off campus to a restaurant to eat lunch when I.N. should have been in class. Ms. Honeyfield did not have authorization from the school or I.N.'s mother, who believed her

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<sup>1</sup> The student's name was redacted from the exhibits received in evidence; the court reporter was instructed to use the student's initials, I.N., in any transcription; and a protective order was issued. The protective order provides: "No persons shall release a transcript or recording of this matter containing confidential witness names or other identifying information to the public. Every court reporter or transcriber is hereby ordered to refer to individuals whose names appear on the confidential names list by the person's initials or assigned number only. Any confidential names list is sealed and subject to this order."

daughter was at school, to take I.N. out of class or off campus or to drive I.N. in Ms. Honeyfield's personal vehicle. I.N.'s counselor also ate at the same restaurant that day and saw Ms. Honeyfield and I.N. there. After Ms. Honeyfield and I.N. returned to campus, they decided to lie about it and say that Ms. Honeyfield had eaten lunch with I.N.'s older adult sister, who Ms. Honeyfield had never met. When the school principal asked Ms. Honeyfield what happened, she told the principal she took I.N.'s older sister, who was not a student, to lunch on October 26, 2017, to thank her for watching Ms. Honeyfield's son. On October 30, 2017, after being told she would be placed on administrative leave until an investigation was completed, Ms. Honeyfield admitted to the principal that she lied and that she had taken I.N. to lunch.

The district decided to discharge Ms. Honeyfield and suspend her without pay pending her dismissal. The district has dealt with other instances involving sexual contact between teachers and students in recent years and takes its responsibility to stop and/or prevent inappropriate relationships seriously. The district did not believe Ms. Honeyfield engaged in any sort of sexual misconduct, but it contended that Ms. Honeyfield's actions amounted to "grooming behavior which is known to lead to inappropriate sexual contact." The district asserted Ms. Honeyfield should be dismissed pursuant to Education Code section 44932 under the following grounds: immoral conduct (Ed. Code, § 44932, subd.(a)(1)), dishonesty (Ed. Code, § 44932, subd.(a)(4)), evident unfitness for service (Ed. Code, § 44932, subd.(a)(6)<sup>2</sup>), and persistent violation of or refusal to obey school laws (Ed. Code, § 44932, subd.(a)(8)). The district also asserted that Ms. Honeyfield's suspension without pay pending her dismissal should be affirmed pursuant to Education Code section 44939 based on allegations that Ms. Honeyfield engaged in immoral conduct and willfully refused to perform regular assignments without reasonable cause.

Ms. Honeyfield admitted that she took I.N. off campus during class time without authorization and then lied about it. She denied engaging in "grooming behavior." Ms. Honeyfield contended that she took I.N. to lunch to help I.N., who was anxious and having a bad day, and she initially lied about it to protect I.N. Ms. Honeyfield admitted that she knew it was wrong when she took I.N. off campus and then lied about it. Ms. Honeyfield has had a stellar 14-year career working as a physical education and health teacher and athletic coach. Ms. Honeyfield has received exemplary performance evaluations, and she has never previously engaged in any similar behavior or been disciplined.

Based on the evidence presented, the district met its burden of proving that Ms. Honeyfield should be discharged due to her dishonesty pursuant to Education Code section 44932, subdivision (a)(4). The evidence did not establish that Ms. Honeyfield engaged in "grooming behavior." The district failed to prove by a preponderance of the evidence that Ms. Honeyfield engaged in immoral conduct, was evidently unfit for service, or persistently violated or refused to obey school laws. Additionally, the district failed to prove grounds to

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<sup>2</sup> As is discussed further below, the Statement of Charges erroneously cited subdivision (a)(5) instead of subdivision (a)(6). It should be noted that before Assembly Bill 215 was enacted in 2014, amending the Education Code effective January 1, 2015, the "evident unfitness for service" ground for dismissal was contained in subdivision (a)(5).

suspend Ms. Honeyfield without pay pending her dismissal pursuant to Education Code section 44939.

Accordingly, the district's decision to dismiss Ms. Honeyfield is affirmed, but its decision to suspend her without pay pending her dismissal is reversed. Ms. Honeyfield shall be dismissed from her employment at the district, and the district shall pay her wages for the time she was suspended without pay up to the date of this decision.

## FACTUAL FINDINGS

### *Jurisdictional Background*

1. Ms. Honeyfield has been employed by the Redlands Unified School District as a health teacher since 2006. During October 2017, when the events at issue in this matter occurred, Ms. Honeyfield taught at Redlands East Valley High School (REV).

2. On October 30, 2017, the district placed Ms. Honeyfield on paid administrative leave pending the outcome of its investigation regarding what occurred from October 26, 2017, through October 30, 2017.

3. On February 12, 2018, Sabine Robertson-Phillips, the district's Assistant Superintendent, Human Resources, sent Ms. Honeyfield a letter entitled "Notice of Proposed Recommendation for Suspension Without Pay and Dismissal, and Statement of Charges," advising Ms. Honeyfield of the district's "proposed intention to recommend to the Governing Board that you be suspended without pay pending your dismissal from employment as a certificated employee of the District." The letter also informed Ms. Honeyfield of her right to a *Skelly* hearing, which was set to proceed on February 22, 2018.<sup>3</sup> Enclosed with the letter was the district's Statement of Charges, dated February 12, 2018, which Ms. Robertson-Phillips signed in her official capacity.

4. The Statement of Charges asserted that cause existed to dismiss Ms. Honeyfield for immoral conduct (Ed. Code, § 44932, subd. (a)(1)); dishonesty (Ed. Code, §

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<sup>3</sup> In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Court's directive gave rise to an administrative procedure known as a *Skelly* hearing, in which an employee is afforded the opportunity to respond to the charges upon which the proposed discipline is based.

44932, subd. (a)(4)); evident unfitness for service (Ed. Code, § 44932, subd. (a)(5) [*sic*])<sup>4</sup>; and 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 her (Ed. Code, § 44932, subd. (a)(8)), based on the following allegations:

- On October 26, 2017, Ms. Honeyfield took a 17-year-old student off campus to a restaurant in Ms. Honeyfield’s personal vehicle, when the student was supposed to be in class, and without parental consent, in violation of district policies and rules;
- On October 27, 2017, Ms. Honeyfield misrepresented to administrative staff and law enforcement that she had actually taken the student’s older, adult sister to lunch;
- On October 30, 2017, Ms. Honeyfield again falsely denied taking the student to lunch off campus; and
- On October 30, 2017, after being placed on administrative leave, Ms. Honeyfield admitted to the school’s principal that she had taken the student to lunch off campus on October 26, 2017, and then lied about it.

The Statement of Charges did not allege Ms. Honeyfield engaged in any inappropriate physical contact with the student. However, paragraph 8 of the Statement of Charges alleged Ms. Honeyfield engaged in immoral conduct and was evidently unfit to serve because her interactions with the student constituted “grooming behavior” as follows:

You have engaged in one or more secret one-on-one encounters with an at-risk or troubled minor student, with whom you have established a close and nurturing position [*sic*], which is indicative of grooming behavior which is known to lead to

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<sup>4</sup> The Statement of Charges listed “evident unfitness for service” as one of the grounds to dismiss Ms. Honeyfield, but erroneously cited subdivision (a)(5), instead of subdivision (a)(6). Since 2015, subdivision (a)(5) has concerned “unsatisfactory performance,” which was not alleged in this case, and subdivision (a)(6) has concerned “evident unfitness for service.” Ms. Honeyfield filed a motion in limine to exclude evidence regarding “evident unfitness for service” because the wrong subdivision was cited in the Statement of Charges. However, the Statement of Charges was clear that the district meant to charge Ms. Honeyfield with “evident unfitness for service,” and Ms. Honeyfield’s March 29, 2018, Request for Hearing and Notice of Defense stated on page 2, at paragraph 4, that the “[c]harge alleging unfitness for service mistakenly cites § 44932(a)(5).” Therefore, Ms. Honeyfield was not prejudiced by evidence of “evident unfitness for service” because she had long been aware of the district’s typographical error, and her motion was denied.

inappropriate sexual contact. This conduct is completely unacceptable in a school environment. You are charged with immoral conduct and evident unfitness for service.

The Statement of Charges also asserted cause existed to suspend Ms. Honeyfield without pay pending her dismissal pursuant to Education Code section 44939, based on allegations that her actions constituted immoral conduct and/or willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

5. Ms. Honeyfield opted to have her union representative submit a written response to the charges instead of appearing in person at the February 22, 2018, informal *Skelly* meeting. Her union representative, John Vigrass, Executive Director, Citrus Belt Uniserv, Inc., submitted a letter on Ms. Honeyfield's behalf, dated March 2, 2018. The last paragraph of that letter stated:

Ms. Honeyfield is a caring professional with an excellent record. She admits she had a lapse in judgment and handled it poorly when first questioned about it. Her conduct was not born of malice or ill intent, or an act of "grooming". She understands some manner of discipline is warranted and that her choices in this matter were regrettable. She is remorseful and there is not any indication from her record of service that she has any defect of temperament and that continued service would constitute any sort of threat to anyone. One of the Morrison Factors considers the praiseworthiness or blameworthiness of the motives resulting in the conduct. Her motive here was to help a child in need; this is in keeping with her record and can be supported by many individuals. While her method of meeting that need was not the best choice, this conduct does not rise to such a level-all things considered-as to warrant termination.

6. On March 9, 2018, Ms. Robertson-Phillips sent Ms. Honeyfield a letter entitled "Notice of Recommendation for Suspension Without Pay and Dismissal, and Statement of Charges." That letter advised Ms. Honeyfield the administration planned to recommend to the district's Governing Board during closed session on March 13, 2018, that it dismiss Ms. Honeyfield and suspend her without pay pending her dismissal. The letter acknowledged that Ms. Honeyfield's labor representative sent a written response to the charges, instead of Ms. Honeyfield appearing at the *Skelly* hearing, and stated that "[a]fter considering your responses, the administration has determined to proceed with the recommendation to the Board for your suspension and dismissal as noted above. Your written response will be provided to the Board at the time of the recommendation." The letter also notified Ms. Honeyfield of her right to have the administration's recommendation made in open session instead of closed session. Enclosed with the letter was another copy of the Statement of Charges, dated February 12, 2018.

7. On March 16, 2018, Ms. Robertson-Phillips signed the Notice of Suspension Without Pay and 30-Day Notice of Dismissal Pursuant to Education Code Sections 44932 and 44939, in her official capacity, which was sent to Ms. Honeyfield by certified mail. In that notice, Ms. Robertson-Phillips advised Ms. Honeyfield that on March 13, 2018, “the Board of Education of the Redlands Unified School District took action to suspend you without pay effective March 14, 2018, pursuant to Education Code section 44939, and to give you notice that it intends to dismiss you as a permanent certificated employee of the District.” Enclosed with the March 16, 2018, notice was another copy of the Statement of Charges, dated February 12, 2018.

8. Ms. Honeyfield timely appealed the district’s dismissal and suspension determination, denying that grounds for her dismissal and suspension without pay existed, and this hearing followed.

*Ms. Honeyfield’s Education, Employment History, and Evaluations of Her Teaching Ability*

9. Ms. Honeyfield holds a Bachelor’s Degree in Kinesiology and a Master’s Degree in Education, with an emphasis in Multi-Cultural Education. She has also taken courses at the University of Redlands geared towards becoming a counselor. She has worked as a health and physical education teacher for 14 years, 11 years of which were as a district employee. Ms. Honeyfield holds a single subject, physical education or health science, credential. Ms. Honeyfield submitted certificates showing she completed the following courses: Mandated Reporter: Child Abuse and Neglect (Full Course (California)) on August 10, 2015; Concussion in Sports on January 10, 2016; Sudden Cardiac Arrest on January 10, 2016; Heat Illness Prevention on January 10, 2016; and Standard-CPR/AED/First-Aid<sup>5</sup> on January 10, 2016.

10. Her first fulltime teaching position was working as a seventh-grade physical education teacher during the 2003-2004 school year at Suzanne Middle School, which is in the Walnut Unified School District. Ms. Honeyfield presented letters from John Casato, Suzanne Middle School’s Principal, and Sue Lemaire, Suzanne Middle School’s Physical Education Department Chair, praising Ms. Honeyfield’s teaching abilities.

Mr. Casato explained in his March 25, 2004, letter that the school might not be able to retain Ms. Honeyfield due to budget cuts and stated:

First, let me say that I have every intention of working to preserve Marie’s job status at our school. I have found her to be a very good addition to our staff. She has brought good organizational skills, some real expertise to the P.E. curriculum, a sense of positive energy and enthusiasm, and a student-

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<sup>5</sup> “CPR” is the abbreviation for “Cardiopulmonary Resuscitation” and “AED” is the abbreviation for “Automated External Defibrillator.”

centered approach to her work each day. She is someone [sic] we don't want to lose.

Marie is eager to please and to do an outstanding job. She has been a positive influence to [sic] our already exemplary P.E. program. Her organization and management skills are well-developed. Her program has a good level of rigor and a high level of participation and success among her students. She possesses an in-depth knowledge of her subject area and an unusual ability to relate to and motivate her students. Her instruction is clear and sequential. She models skills for her students and provides them with opportunities for guided practice before moving into independent activities or games.

Marie has worked hard to make herself a full-fledged member of our P.E. department and our school. She has been successful in doing both. It is my hope that we will be able to find a way to retain her for the up-coming school year.

Ms. Lemaire's April 28, 2004, letter noted that before Ms. Honeyfield worked fulltime at Suzanne Middle School, she had been a day substitute for the Walnut Valley School District for five years and a long-term substitute at Suzanne Middle School for two years. Ms. Lemaire's letter went on to describe Ms. Honeyfield as follows:

Marie has made a great contribution to our program. She is reliable, dependable and responsible as a teacher and a professional. She takes care of school equipment and the facilities. Marie is skilled in classroom management and student discipline following school guidelines in all areas of her faculty responsibilities. Marie truly cares about her students and works very hard to make sure that they perform at high standards.

11. After working at Suzanne Middle School, Ms. Honeyfield taught physical education at Nicolet Middle School, in the Banning Unified School District, during the 2004-2005 and 2005-2006 school years. While she was there, she was also the Head Softball Coach for Banning High School for one season and the Girls Soccer Coach for Banning High School for one season.

On Ms. Honeyfield's probationary 2006 evaluation, while working at Nicolet Middle School, she received "Meets the Standard" ratings in all categories, except that in the area of "[p]romoting social development and group responsibility," in which she received an "E-

Exemplary”<sup>6</sup> rating. The observer’s notes, attached to the evaluation, stated several times that Ms. Honeyfield’s class and lessons “went just like ‘clockwork.’”

Matt Valdivia, Nicolet Middle School’s Interim Principal, wrote a reference letter for Ms. Honeyfield, dated May 22, 2006, which stated:

Professionally, I have known Marie since she joined the Banning Unified School District in 2004. Marie quickly became an integral and indispensable part of the Nicolet Middle School staff. Marie continues to strive to learn and improve herself professionally. Marie has been a positive force within our school district.

I can attest that Marie conducts herself as the consummate professional. From observations, Marie provides valuable input and recommendations regarding how to best serve student needs. Marie works effectively with the students she serves. Through effective strategies in delivering instruction and assertive discipline, Marie makes certain that students are diligent to the tasks asked of them to perform. Marie effectively communicates with staff, students, and parents on a regular basis. Marie possesses excellence in character as well as personality. Marie is a natural born educator who is highly motivated and is truly innovative as a professional.

12. While she was working for the Banning Unified School District, Ms. Honeyfield applied for a physical education position in the Redlands Unified School District, without knowing to which school or level she might be assigned. She wanted to work for the district because she had grown up in the area, Redlands Unified was a prestigious school district, and there was a strong union. It was her goal to work for a district of Redlands Unified’s stature, and she believed it would be great for her career.

13. Ms. Honeyfield’s first position for the Redlands Unified School District was working as a physical education teacher for Clement Middle School during the 2006-2007 school year. On a 2007 probationary evaluation, Ms. Honeyfield received mostly “meets standards” ratings and some “exemplifies or exceeds standards” ratings. She received only one “developing practice/needs to improve” rating in the category “[w]orking with communities to improve professional practice.” The evaluator included the following comment on the evaluation: “Marie has been a great addition to our PE team. She works well with other staff members and has developed a positive rapport with her students.”

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<sup>6</sup> According to the “evaluation code” on the evaluation form, an “E” rating meant “exceeds standard.” However, in the body of her evaluation, the word “exemplary” was used.

14. Ms. Honeyfield next taught physical education at Beattie Middle School, also in the Redlands Unified School District, for two years beginning in the 2007-2008 school year. While she was at Beattie Middle School, Ms. Honeyfield volunteered with the “Run Club,” which was a cross-country running program. On her 2007-2008 probationary evaluation, Ms. Honeyfield received mainly “meets standards” ratings and some “exemplifies or exceeds standards” ratings. Under the “Evaluator Comments,” was written: “I appreciate your hard work in the PE department to continue developing our students [sic] physical abilities and helping them understand the importance of creating a healthy lifestyle.”

15. Ms. Honeyfield then taught physical education at Citrus Valley High School, also in the Redlands Unified School District, for seven years beginning in the 2009-2010 school year. While at Citrus Valley, she served as the Head Cross Country Coach for six years and the Head Track and Field Coach for seven years. She was the Assistant Athletic Trainer for two or three years. She was also the Physical Education Chair for one or two years and served as the WASC<sup>7</sup> representative for physical education and health while she was the department chair.

On her 2010 and 2012 evaluations at Citrus Valley High School, Ms. Honeyfield received mostly “exemplifies or exceeds standards” ratings and some “meets standards” ratings. The “Evaluator Comments” on the 2010 evaluation stated: “Throughout the school year, Marie has had adversities and challenges in the face of delayed construction. She has made adjustments and has managed through the lack of facilities and locker rooms. In the second semester, Marie has worked with students and has established a culture of expectations for students of Citrus Valley High School within the PE department.” The “Evaluator Comments” on the 2012 evaluation stated: “Marie is a significant contributor to CVHS. She does a great job in the classroom while serving as the P.E. Department Chair, Assitant [sic] Athletic Trainer, Head Cross Country and Head Track Coach. I sincerely appreciate Marie’s work ethic and her valuable contributions to our school, students and staff.”

During 2014, while at Citrus Valley High School, Ms. Honeyfield worked on an extensive project to serve as an alternative evaluation, and as a result of the nature of that project, her evaluation date was extended from May 2014 to May 2015. Ms. Honeyfield’s project integrated the common core subjects of writing, reading, mathematics, and science into her physical education class to teach her students the connection between physical education and common core subjects. The curriculum included having students complete X/Y graphs of their fitness scores on fitness tests throughout the first semester; create cross-curricular connections between physical education, math, and science by completing “a summary comparing fitness core progress by evaluating their own fitness graphs”; and write “arguments to support claims using valid reasoning and sufficient evidence.” The

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<sup>7</sup> WASC is the acronym for “Western Association of Schools and Colleges,” which is an organization that accredits schools, including kindergarten through 12th grade public schools.

Administrator's Assessment Comments on Ms. Honeyfield's 2015 alternative evaluation described the project as follows:

Over the past two years, Ms. Honeyfield has diligently worked to provide her physical education students with an authentic learning experience incorporating science, math, reading, and writing. Students monitored their physical progression throughout the year, graphed their results, reflected upon their standings and compared results with their peers. Ms. Honeyfield incorporated the national Fitnessgram Standards to further provide students with authentic evidence to compare to their own results. Students also participated in close reading activities, comparing the pros and cons of artificial turf after reading several resources. Ms. Honeyfield not only created cross-curricular assignments but she also created a make-up assignment for PE which asked students to reflect upon several questions, resulting in thoughtful "essays" written by each student who completed the assignment. Ms. Honeyfield compiled all of her "findings" in a well-organized and comprehensive binder which clearly shows the activities themselves, student work samples, and clear evidence of the power of integrating multiple subjects within a PE curriculum.

Under the heading, "Recommendations," the evaluator also wrote:

I believe that this was a valuable and appropriate project to demonstrate to students ways in which other subject areas can be supported through cross-curricular activities in a physical education class. The Common Core is difficult for students and incorporating some of the strategies and practices into a typically non-academic course like PE, was very powerful. My hope is that Ms. Honeyfield shares this model, along with the results/reflections of her students, with her colleagues. This is a true model of how all content areas can be integrated in order to provide engaging and authentic learning experiences for students, and truly models the effectiveness of Common Core. I hope Ms. Honeyfield uses this experience as a model for her further PE instruction so that future students will also benefit.

Based on her project, Ms. Honeyfield received an "Exemplifies or Exceeds Standards" rating for her 2015 alternative evaluation and qualified for five-year evaluations at the district going forward.

16. Ms. Honeyfield began working for Redlands East Valley High School (REV) at the beginning of the 2016-2017 school year, as a health teacher and Assistant Athletic

Coach. She continued working in that role until she was placed on leave beginning October 31, 2017.

17. Ms. Honeyfield has been a Director of the Ken Hubbs Foundation for the past four or five years. The Ken Hubbs Foundation recognizes the top student athletes in the Inland Empire.

*Ms. Honeyfield's Relationship with I.N. Before October 26, 2017*

18. Ms. Honeyfield first met I.N. when she attended Ms. Honeyfield's class during I.N.'s freshman year at Citrus Valley High School. I.N. did not play on any teams, but her best friend was an athlete. Ms. Honeyfield did not see I.N. at Citrus Valley High School after I.N.'s freshman year, and Ms. Honeyfield believed that I.N. lived with her father in Arizona for a period of time after her freshman year. When Ms. Honeyfield began working at REV during the 2016-2017 school year, I.N. was a student at REV, in her junior year. I.N. was not in any of Ms. Honeyfield's classes at REV, but she was Ms. Honeyfield's first period Teacher's Aide (TA) during the 2017-2018 school year, when I.N. was a senior.

19. During the 2016-2017 school year, I.N. would sometimes visit Ms. Honeyfield in her classroom, and I.N. asked if she could spend time in Ms. Honeyfield's class. Ms. Honeyfield told I.N. that she needed permission from her counselor, Ms. O'Day. Ms. O'Day then asked Ms. Honeyfield if I.N. could sit in her class, and Ms. Honeyfield told Ms. O'Day I.N. was welcome to come to her class, as long as she did not interfere with the class.

20. I.N. sent text messages to Ms. Honeyfield in August 2017, asking if I.N. could be Ms. Honeyfield's TA, and Ms. Honeyfield and I.N. exchanged text messages about that request. Ms. Honeyfield explained during this hearing that TAs help teachers pass out papers, possibly grade papers, get photocopies, and they may also deliver messages to other teachers. The teachers at REV were usually limited to having only two TAs. When Ms. Honeyfield received I.N.'s request to be a TA, Ms. Honeyfield did not know if she already had a TA. Ms. Honeyfield did not request that I.N. be one of her TAs, but she did request that another, exemplary student from the previous school year, be her TA. Ms. Honeyfield ended up having five TAs for the 2017-2018 school year, including I.N., who was the TA for Ms. Honeyfield's first hour health class.

21. Ms. Honeyfield did not remember receiving any text messages from I.N. before August 2017, nor did she remember giving I.N. her cell phone number.<sup>8</sup> Ms. Honeyfield mentioned that when she taught at Citrus Valley High School, her cell phone

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<sup>8</sup> Text messages between August 1, 2017, and October 2, 2017, were received as evidence. Due to the manner in which Ms. Honeyfield responded to I.N.'s August 1, 2017, text, without asking who that message was from, Ms. Honeyfield's testimony that the August 1, 2017, text was the first text message she received from I.N. was not credible. Additionally, I.N.'s mother testified that she believed her daughter had Ms. Honeyfield's cell phone number when Ms. Honeyfield was at Citrus Valley High School.

number was available on the Track and Field website. Ms. Honeyfield also testified that she did not have personal cell phone numbers of other REV students.

22. I.N. and Ms. Honeyfield also exchanged text messages about topics other than I.N.'s request to be a TA, including a few instances when I.N. was running late in the morning, whether I.N. could draw something for the classroom, I.N. taking Polynesian dance lessons from Ms. Honeyfield's mother, a memorial service I.N. was considering attending, and I.N. being in the hospital. Ms. Honeyfield explained that she knew I.N. wanted to join the Hawaiian/Polynesian Dance Club, but I.N. was pessimistic about it. Ms. Honeyfield's mother taught that type of dance, so Ms. Honeyfield referred I.N. to her mother to take dance lessons. Ms. Honeyfield was aware that I.N. had lost a family member and was in what Ms. Honeyfield described as the "anger" stage of her grief and trying to decide whether to attend a memorial service. Ms. Honeyfield did not know why I.N. was in the hospital.

23. While working at REV, Ms. Honeyfield talked to students, including I.N., about various topics while in her classroom and sometimes outside her classroom, but still on campus. During such discussions with I.N., I.N. confided in Ms. Honeyfield about I.N.'s concerns about a rigorous English class, which was at a higher level than I.N. had been accustomed; boys I.N. liked; arguments I.N. had with her mother; I.N. missing her grandmother, who had passed away; I.N.'s anger about her uncle passing away; I.N.'s anxiety; and other "teenager type issues."

24. I.N. told Ms. Honeyfield that she had anxiety in stressful situations, including sometimes when she argued with her mother. Ms. Honeyfield asked I.N. if she had seen a doctor about her anxiety, but Ms. Honeyfield could not remember how I.N. responded. Ms. Honeyfield told I.N. that if she was experiencing high anxiety, she should see her counselor, Ms. O'Day, or even the principal. Ms. Honeyfield told I.N. at least three times that she should talk to her counselor because "obviously, something was bothering her." Ms. Honeyfield thought that if I.N. was telling her, I.N. should also tell the counselor as well. However, according to Ms. Honeyfield, I.N. rejected the suggestions that she speak with her counselor, claiming that she did not feel comfortable talking to her counselor. I.N. was also not open to seeing the principal because I.N. did not know the principal well enough. Ms. Honeyfield believed I.N.'s counselor, Ms. O'Day, was a good counselor, and Ms. Honeyfield believed I.N. had talked to Ms. O'Day about school.

25. There was a point in time, no more than three months before October 2017, when I.N. told Ms. Honeyfield that I.N. wanted to be emancipated from her mother and go to foster care because I.N. and her mother had been fighting and I.N. felt that her mother did not want her anymore. At that time, it seemed to Ms. Honeyfield that I.N. and her mother had a strained relationship. Ms. Honeyfield told I.N. to talk to her counselor about it, and Ms. Honeyfield believed that I.N. did. Ms. Honeyfield believed I.N. had been in foster care at one point, and that she had "been happy in foster care."<sup>9</sup> By October 2017, it seemed to

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<sup>9</sup> There was no evidence presented that I.N. was ever in foster care other than Ms. Honeyfield's testimony, which was based solely on things I.N. had told her.

Ms. Honeyfield that I.N. and her mother were in a good place. Ms. Honeyfield did not believe I.N. wanted to be emancipated anymore, and she never asked I.N. why she changed her mind.

*October 26, 2017-Ms. Honeyfield Takes I.N. Off Campus to a Restaurant; School Counselors Eat at the Same Restaurant; and Ms. Honeyfield and I.N. Decide to Lie About It*

26. On October 26, 2017, I.N. went to Ms. Honeyfield's classroom in the morning shortly before Ms. Honeyfield's preparation (prep) time, when Ms. Honeyfield did not have a class. When I.N. arrived in her classroom, Ms. Honeyfield did not know whether I.N. had a class, but Ms. Honeyfield knew I.N. had a class during Ms. Honeyfield's prep time. I.N. told Ms. Honeyfield she was "stressed out" about a birthday party her mom was giving her on Saturday and because she had a major project due and she was behind the progress of all the other students. I.N. said: "Ms. Honey, I can't be here"; "I just can't be here right now"; "I'm stressing out" about the "party," "English class," and "just everything"; and "Can I stay in your classroom?" Ms. Honeyfield told I.N. that she could not stay in her classroom because Ms. Honeyfield was leaving to run errands. I.N. asked if she could accompany Ms. Honeyfield while she ran her errands, and Ms. Honeyfield said, "No." I.N. continued to ask if she could go with Ms. Honeyfield, and Ms. Honeyfield told her "No" a "few" times. Ms. Honeyfield eventually changed her mind and decided to take I.N. to eat lunch off campus and have a chat with her because it seemed like I.N. needed to talk. Ms. Honeyfield did not recall telling I.N. to see her counselor during this conversation.

27. Ms. Honeyfield decided to take I.N. to the Restore Kitchen restaurant, which was about a 15-minute drive from school and on the other side of town, because the food there was "delicious." They did not discuss how they would get off campus, but Ms. Honeyfield offered to drive. They did not walk to her car together. Instead, Ms. Honeyfield gave I.N. her car keys, and they met at Ms. Honeyfield's car in the parking lot. Before going to her car, Ms. Honeyfield went to the administrative office because she needed to do something there. She did not tell anyone in the office that she planned to take I.N. off campus. When Ms. Honeyfield got to her car, I.N. was in the passenger seat with the seat reclined. Ms. Honeyfield told I.N. to sit up and buckle her seatbelt, and I.N. was sitting upright with her seatbelt on by the time they turned onto the street exiting the campus parking lot. Ms. Honeyfield knew I.N. was supposed to be in class, and Ms. Honeyfield did not have I.N.'s mother's permission or the school's authorization to take I.N. out of class or off campus. Ms. Honeyfield was concerned about taking I.N. out of class and off campus, but she felt I.N. needed to talk to someone.

28. While driving to the restaurant, they talked about the party I.N.'s mother was planning, and Ms. Honeyfield asked, "What's so stressful about a party?" I.N. calmed down and seemed "happy." They parked directly across the street from the restaurant, went inside, and ordered. Inside the restaurant, they discussed the party some more. They also discussed I.N.'s plans after graduation, and I.N. said she would likely attend Grafton College. I.N. asked if she could live with Ms. Honeyfield after graduation, and Ms. Honeyfield declined by telling I.N. that she "already had one child." I.N. had previously asked Ms. Honeyfield if

she could live with her, and Ms. Honeyfield had always said, “No.”<sup>10</sup> Ms. Honeyfield believed I.N. liked the way she listened and maybe I.N. just felt comfortable with her because, according to Ms. Honeyfield, she does not judge when she listens to kids.

29. While I.N. and Ms. Honeyfield were still in the restaurant, three REV counselors, including Ms. O’Day, arrived and were seated at a table next to where I.N. and Ms. Honeyfield were sitting. Ms. Honeyfield did not see the counselors come in because her back was to that table. I.N., who was seated facing that table, told Ms. Honeyfield that Ms. O’Day, I.N.’s counselor, had come in. After the counselors entered the restaurant, I.N.’s demeanor changed. According to Ms. Honeyfield, I.N.’s facial expression then showed “anxiety and stress,” whereas before she had been “happy and positive.” Ms. Honeyfield told I.N. to say “Hello” to Ms. O’Day, but I.N. said, “No.” They still needed to pay their bill, and I.N. said she needed to use the restroom. Ms. Honeyfield gave I.N. her car keys, I.N. left for the bathroom, and Ms. Honeyfield waited for the bill. Ms. Honeyfield paid the bill and said “Hello” to Ms. O’Day and the other two counselors at their table. They did not discuss the fact that Ms. Honeyfield was at the restaurant with a student, and the counselors did not ask why Ms. Honeyfield was there or say anything about the person with whom Ms. Honeyfield had been eating. Ms. Honeyfield did not see I.N. leave the restaurant, and after she exited the restaurant and went to her car, she saw I.N. standing across the street near a neighboring business. I.N. then walked to and got in the car, and they left.

30. While at the restaurant, Ms. O’Day recognized I.N. because she was one of the students on Ms. O’Day’s caseload. Ms. O’Day then checked the school’s calendar system on her phone to see if I.N. or Ms. Honeyfield had a class during that period and saw that it was Ms. Honeyfield’s prep time and I.N. had a class. The counselors did not see I.N. leave the restaurant. After Ms. Honeyfield and I.N. left the restaurant, the counselors discussed how unusual it was to see someone off campus in the middle of the day and their concerns about Ms. Honeyfield being with a student off campus so far away from school. Ms. O’Day thought it was strange that I.N. did not talk to her because she knew I.N. Ms. O’Day did not see Ms. Honeyfield or I.N. do anything that caused her concern, other than the fact they were off campus. The counselors decided that Ms. O’Day, who was the student’s counselor, would tell the school’s administration what they saw.

31. On the drive back to school, I.N. asked Ms. Honeyfield why she was so calm, and Ms. Honeyfield asked I.N. why she was “freaking out.” I.N. then told Ms. Honeyfield that her mother would be upset that she had left campus, and Ms. Honeyfield suggested that they call her mother from the car, but they did not do so. Ms. Honeyfield told I.N. to “calm down.” I.N. also mentioned to Ms. Honeyfield that her probation officer would be notified if her mother found out she had ditched class. This was the first time I.N. had ever said

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<sup>10</sup> Ms. Honeyfield did not provide further details about when or how often I.N. had asked if she could live with Ms. Honeyfield.

anything to Ms. Honeyfield about a probation monitor.<sup>11</sup> As they were about to turn into the school parking lot, I.N. said she needed to get out of the car, and Ms. Honeyfield let her out at a location that she believed was a “safe spot.” Ms. Honeyfield then parked her car and returned to her classroom.

32. I.N. went to Ms. Honeyfield’s classroom again later the same day. I.N. was then very nervous and said she had been pulled out of class by a security guard, who questioned her about being out of class and asked her, “Where have you been?” I.N. told Ms. Honeyfield that she did not want to get into trouble. I.N. said she did not want her mother to find out she was off campus, and she was afraid about how her mother would react because she did not ask for permission. Ms. Honeyfield believed I.N. did not want to be sent back to live with her father in Arizona or be sent to foster care. I.N. asked Ms. Honeyfield to say she was eating lunch with I.N.’s older sister, who I.N. said looked like her. They agreed that Ms. Honeyfield would say she was at the restaurant with I.N.’s sister, who Ms. Honeyfield had never met.

*October 27, 2017-School Administration’s Efforts to Investigate What Happened on October 26, 2017, and Ms. Honeyfield’s Communications with I.N.’s Mother that Day*

33. On October 27, 2017, at about 7:30 a.m., Ms. O’Day told REV Principal Jennifer Murillo that Ms. O’Day and two other counselors had seen Ms. Honeyfield with I.N. at a restaurant and considered it to be odd. Ms. O’Day told Ms. Murillo that although Ms. Honeyfield talked to the counselors at the restaurant, I.N. did not talk to them and took a different route to exit the restaurant. Ms. O’Day was concerned that I.N. did not come to her and that Ms. Honeyfield was with a student during the day when the student should have been in class. Ms. Murillo’s reaction to learning this information was that “it didn’t seem natural.” Ms. Honeyfield had not contacted Ms. Murillo about taking I.N. to lunch, nor had Ms. Honeyfield sought Ms. Murillo’s approval to take I.N. off campus. Ms. Murillo would not have given a teacher permission to take a student off campus during school.

34. Ms. Murillo and REV Assistant Principal Jeffrey Martinez began investigating the report Ms. Murillo received from Ms. O’Day. Ms. Murillo called Ms. Robertson-Phillips, the district’s Assistant Superintendent, Human Resources, several times during the day to let her know what they had learned and ask for guidance.

35. Mr. Martinez and Ms. Murillo confirmed that I.N. was supposed to be in class during the time when Ms. O’Day said she saw I.N. at the restaurant with Ms. Honeyfield.

36. Ms. Murillo checked I.N.’s attendance and saw that she was not at school on October 27, 2017, and she had been marked absent on October 26, 2017. Ms. Murillo then called I.N.’s mother and shared with her that it had been reported that Ms. Honeyfield had taken I.N. off campus. I.N.’s mother was in her car during their conversation, and Ms.

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<sup>11</sup> There was no evidence presented showing that I.N. actually had a probation monitor.

Murillo could hear another voice saying, “at school” and “not off campus.” I.N.’s mother told Ms. Murillo that her daughter had not gone off campus, and her daughter did not have permission to be off campus, but if she was off campus with Ms. Honeyfield that was okay because she was a family friend.<sup>12</sup> I.N.’s mother told Ms. Murillo that she was too busy to bring I.N. to school that day because they were preparing for I.N.’s birthday party that weekend. The conversation ended with Ms. Murillo saying she would talk to Ms. Honeyfield and then call I.N.’s mother back if Ms. Murillo needed to talk to I.N.

37. Near the end of the day, Ms. Murillo and Mr. Martinez met with Ms. Honeyfield in Ms. Murillo’s office. Ms. Murillo shared the information she had received from Ms. O’Day and asked Ms. Honeyfield what happened. Ms. Honeyfield confirmed that she had seen and talked to the counselors at the restaurant, but she denied she was with I.N. Ms. Honeyfield told them she had not seen I.N. all day.<sup>13</sup> Ms. Honeyfield said she took “Chelsea,” who was I.N.’s older, adult sister, out to lunch at Restore Kitchen restaurant. Ms. Honeyfield explained to Ms. Murillo and Mr. Martinez that Chelsea was in her 20s and was not one of Ms. Honeyfield’s students; Chelsea helped Ms. Honeyfield out with her son; and sometimes Ms. Honeyfield took Chelsea out to lunch to thank her. Ms. Honeyfield also told them she saw Chelsea on campus on October 26, 2017; they went to the restaurant together; Chelsea left the restaurant and walked to Saverino’s, a sandwich shop next to Restore Kitchen, to buy a sandwich for her sister, I.N.; and Ms. Honeyfield picked Chelsea up at Saverino’s. Both Mr. Martinez and Ms. Murillo were relieved when they learned it was not I.N., and Ms. Murillo said it lowered her blood pressure to learn that Ms. Honeyfield had not been with a student.

38. Before talking to Ms. Honeyfield, Ms. Murillo had called the sheriff’s department, and a sheriff’s deputy showed up while Mr. Martinez and Ms. Murillo were talking to Ms. Honeyfield. Ms. Murillo left the room to speak with the deputy, and she relayed to him that it had turned out to be a case of “mistaken identity.” The deputy responded that there was not really anything for him to do, and he offered to talk to Ms. Honeyfield to share with her why the school made a report and to confirm it was a case of mistaken identity.

39. While Mr. Martinez and Ms. Honeyfield were alone in the room, Mr. Martinez asked Ms. Honeyfield where she parked, and she said, “I don’t know, it changes.” According to Ms. Honeyfield, she told Mr. Martinez that where she parked depended on the activities she had scheduled for the day. For example, if she was teaching baseball, she would park close to the baseball field. The fact that she parked in different places was a “red flag” to Mr. Martinez because teachers usually parked in the same spots. Ms. Honeyfield

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<sup>12</sup> I.N.’s mother testified that she had not given Ms. Honeyfield written permission to take I.N. off campus, but that she gave Ms. Honeyfield “verbal” permission, although that “verbal” permission was not given “ahead of time.”

<sup>13</sup> I.N. was not Ms. Honeyfield’s TA that day because October 26, 2017, was a “blocked” day such that she did not have her regular first hour class that day.

also testified that she asked Mr. Martinez if she could leave, and he told her to wait until Ms. Murillo came back. Mr. Martinez did not recall her asking him if she could leave.

According to Ms. Honeyfield, she almost said to Mr. Martinez that, if she needed to stay, maybe she needed union representation. However, she did not request union representation during this meeting.

40. Ms. Murillo returned to the room with the deputy.<sup>14</sup> The deputy summarized what Ms. Murillo had told him about it being a case of mistaken identity. He also said the school had called law enforcement because someone had reported to the school that Ms. Honeyfield had been seen having lunch with a student. He did not ask Ms. Honeyfield any questions. While the deputy was in the room, Ms. Honeyfield did not do anything to correct the perception that it was a case of mistaken identity. The deputy was in the room for three to four minutes, Ms. Honeyfield was not placed under arrest, and the deputy did not tell her she was in custody or that she could not leave. Although Ms. Honeyfield thought that it would have been seen as inappropriate and/or disrespectful if she had left, no one told her she could not leave.<sup>15</sup>

41. After speaking with Ms. Honeyfield, Ms. Murillo called I.N.'s mother again and told her that it was a case of mistaken identity because Ms. Honeyfield actually had lunch with I.N.'s older sister. During that call, Ms. Murillo asked if she could speak with I.N. the following Monday because I.N. had been absent from class. I.N.'s mother then told Ms. Murillo that I.N. missed class because she had been crying in the bathroom, and I.N.'s mother agreed to bring I.N. in to talk to Ms. Murillo on Monday.

42. Near the end of the school day, Ms. Murillo and Mr. Martinez told Ms. O'Day that it was a case of "mistaken identity" because Ms. Honeyfield had been at lunch with

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<sup>14</sup> Ms. Honeyfield filed a motion in limine seeking an order excluding the deputy's testimony, any statements made by the deputy, and any statements Ms. Honeyfield made to the deputy, arguing that Ms. Honeyfield had been subjected to a custodial interrogation in violation of her constitutional rights. The district opposed that motion with sworn declarations stating that Ms. Honeyfield was not in custody and she was not questioned by the deputy. The motion was denied pursuant *Department of Transportation v. State Personnel Board* (2009) 178 Cal.App.4th 568, in which the court explained that the exclusionary rules applied in criminal cases are seldom applied in administrative proceedings and a balancing test was required before such evidence would be excluded from an administrative hearing, taking into consideration the "social consequences of applying the exclusionary rules." (*Id.* at pp. 576-578.) The evidence presented by both sides during this hearing confirmed that Ms. Honeyfield was not in police custody, was not questioned by the deputy, and was not subjected to a custodial interrogation.

<sup>15</sup> Ms. Honeyfield's testimony that she asked Mr. Martinez if she could leave, and that he responded that she should wait until Ms. Murillo returned to the room, was not sufficient under the circumstances to establish she was "in custody."

I.N.'s older sister. But Ms. O'Day said it was not I.N.'s sister; Ms. O'Day was certain it was I.N.

43. When Ms. Honeyfield returned to her class after the meeting with Ms. Murillo and Mr. Martinez, she learned that I.N. and her mother had been trying to get hold of her. Ms. Honeyfield then called I.N.'s mother and asked if she could meet with her. About 30 minutes later, Ms. Honeyfield met with I.N.'s mother and told her the truth about what happened on October 26, 2017. Ms. Honeyfield also told I.N.'s mother that she had covered for I.N. when Ms. Honeyfield was questioned on October 27, 2017, because she thought I.N. would get into trouble. I.N.'s mother was not happy that I.N. had not told her the truth and that she had gotten a call from school when she did not know what was going on. Ms. Honeyfield apologized to I.N.'s mother for taking her child off campus during school hours and then lying about it, and I.N.'s mother accepted her apology. Ms. Honeyfield also told I.N.'s mother that she did not "want to get fired." I.N.'s mother wanted to tell the school that Ms. Honeyfield took I.N. to lunch because she could not go to I.N.'s birthday party, but Ms. Honeyfield told her she did not want to concoct any more lies.<sup>16</sup>

44. I.N.'s mother went to the school late in the day on October 27, 2017, and asked to speak to Ms. Murillo, and Ms. Murillo and Mr. Martinez met with her. Mr. Martinez described her as a "bull in a china shop," "agitated," and "aggressive" due to her tone of voice. Ms. Murillo described her as "very upset" and like a "whirlwind." I.N.'s mother told them, "You will not question or talk to my daughter" and "You are not going to turn her into one of those things we read about in the paper." She said she believed her daughter "100 percent." Ms. Murillo got I.N.'s mother to calm down and assured her that she did not intend to interrogate I.N., but she wanted to support I.N., and I.N.'s mother agreed to bring I.N. in to talk to Ms. Murillo on Monday. Ms. Murillo thought I.N.'s mother's demeanor raised "red flags" because it seemed out of proportion to what they were dealing with and I.N.'s mother had been very agreeable when they spoke earlier in the day.

45. After I.N.'s mother left, Ms. Murillo and Mr. Martinez talked about how strange it was that I.N.'s mother was so defensive. Based on I.N.'s mother's behavior and Ms. O'Day's insistence that she had seen I.N. at the restaurant, they decided Mr. Martinez would look at the school's surveillance camera tapes.

46. When Mr. Martinez viewed the tapes, he saw I.N. go to Ms. Honeyfield's classroom at 9:35 a.m. on October 26, 2017. He also saw Ms. Honeyfield and I.N. leave and return within minutes of each other. Mr. Martinez called Ms. Murillo and told her about what he saw on the tapes, and they viewed them together. Video footage was played during the hearing and screen shots were received as exhibits. The video footage and screen shots showed I.N. walking to Ms. Honeyfield's classroom; Ms. Honeyfield and I.N. leaving Ms. Honeyfield's classroom within minutes of each other; I.N. leaving campus; I.N. returning to

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<sup>16</sup> Ms. Honeyfield explained during the hearing that she was not planning to go to I.N.'s birthday party because she did not believe it was appropriate for teachers to attend students' birthday parties.

campus; and Ms. Honeyfield returning to her classroom close to the time when I.N. returned to campus. The video footage and still shots did not show Ms. Honeyfield leave or return to campus or drive out of or into the parking lot. In addition to the screen shots received as evidence, Ms. Murillo testified that she saw footage of Ms. Honeyfield's car leaving the parking lot, in which a passenger could not be seen, but no such video footage was offered as evidence.<sup>17</sup>

47. After viewing the tapes, Ms. Murillo and Mr. Martinez reported to Child Protective Services (CPS) that Ms. Honeyfield had reportedly left campus and had lunch with a student and they believed she had lied about it. They made the report because they had a reasonable suspicion, and they feared, that Ms. Honeyfield might be having an inappropriate relationship with I.N. They later received a response from CPS that the report did not meet the requirements to warrant a referral.

*October 30, 2017-School Administration Meets with I.N. and Her Mother and Ms. Honeyfield Admits She Took I.N. Off Campus and Lied About It*

48. I.N. and her mother met with Ms. Murillo and Mr. Martinez in the morning on Monday, October 30, 2017. I.N. told them she had left campus, but she gave short answers like, "I told my mom," "My mom knows," and "I don't have to tell you" in response to questions about where she was on October 26, 2017. I.N. was then excused to go to class, and Mr. Martinez and Ms. Murillo continued to talk to her mother. I.N.'s mother told them that I.N. told her that she had walked off campus to a friend's house, which was okay with I.N.'s mother. I.N.'s mother gave them the name of the friend, and I.N.'s mother said: "My daughter was with her friend"; "She told me where she was"; and "I believe her." According to Mr. Martinez, the friend I.N.'s mother identified lived on the opposite side of campus from the location where he saw I.N. leave campus on the video footage. Ms. Murillo believed the "whole meeting seemed off."

49. Because Ms. Murillo thought things did not make sense, she asked her secretary to schedule another meeting with Ms. Honeyfield. When Ms. Murillo's secretary scheduled the meeting, she told Ms. Honeyfield she could bring a union representative to the meeting. Ms. Honeyfield met with Ms. Murillo in her office after school between 3:00 and 3:30 p.m. No one else was present. Ms. Honeyfield testified that she "did not know" why she did not bring a union representative to the meeting.<sup>18</sup>

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<sup>17</sup> Because no video footage or screen shots were presented showing Ms. Honeyfield driving in or out of the parking lot, the testimony about what such footage showed was viewed with distrust pursuant to Evidence Code section 412, which states: "If weaker and less satisfactory evidence is offered when it was within the power of the party to produce stronger and more satisfactory evidence, the evidence offered should be viewed with distrust."

<sup>18</sup> Ms. Honeyfield had spoken to a former union official over the weekend, and he had told her that she needed union representation

50. During this meeting, Ms. Murillo walked through what Ms. Honeyfield had told her before while Ms. Honeyfield just sat there. Ms. Murillo also told Ms. Honeyfield that the details were not lining up and asked Ms. Honeyfield for clarification of the timeline of events. According to Ms. Murillo, Ms. Honeyfield again stated that Chelsea had come to campus, but Ms. Honeyfield focused on the sign-in procedure and said Chelsea did not sign in correctly. Ms. Honeyfield also stated that she could put a timeline together at home, which Ms. Murillo thought raised a “red flag” because Ms. Murillo just needed a general understanding of what happened.

51. During this meeting, Ms. Honeyfield stated she wanted a union representative, but there were some differences between Ms. Murillo’s and Ms. Honeyfield’s versions of what occurred when she made that request.<sup>19</sup> Ms. Murillo stated that as soon as Ms. Honeyfield said she wanted union representation, Ms. Murillo stopped asking questions and provided Ms. Honeyfield dates for a future meeting when a union representative could be present and told Ms. Honeyfield that she would be placed on administrative leave pending an investigation. According to Ms. Honeyfield, she had to ask for union representation several times; Ms. Murillo responded that her request raised a “red flag” and Ms. Honeyfield “needed to cooperate”; Ms. Honeyfield responded that she would cooperate with a union representative present; and Ms. Murillo then told her she was placed on administrative leave pending an investigation. Either way, both witnesses agreed that Ms. Honeyfield did not answer questions after she asked to have a union representative present.

52. After Ms. Murillo told Ms. Honeyfield she would be on paid administrative leave pending an investigation, Ms. Murillo accompanied Ms. Honeyfield to her classroom because Ms. Honeyfield needed to prepare her class for a substitute and pick up her things. While they walked to the classroom and while Ms. Honeyfield gathered her personal belongings in the classroom, they engaged in small talk, but they did not talk about the allegations in this case. As Ms. Honeyfield finished gathering her things, she said, “I am ready to tell you everything.” That statement was not in response to a question, and Ms. Murillo believed that it meant Ms. Honeyfield wanted to tell her the truth. According to Ms. Honeyfield, she needed to “get the weight off her shoulders.”

53. They then went back to Ms. Murillo’s office, and Ms. Honeyfield told Ms. Murillo the following: I.N. came to her classroom on October 26, 2017; I.N. was having a

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<sup>19</sup> Ms. Honeyfield filed a motion in limine seeking an order excluding any statements she made after she asserted her right to union representation, citing *N.R.L.B. v. Weingarten, Inc.* (1975) 420 U.S. 251. In opposition to the motion, the district submitted a sworn declaration by Ms. Murillo, which was consistent with her hearing testimony, stating that she stopped asking Ms. Honeyfield questions as soon as she asked to have a union representative present. Although violating an employee’s *Weingarten* rights to union representation may be an unfair labor practice, respondent’s counsel was unable to point to any authority that, even if those rights were violated, would require that information obtained after the assertion of such rights should be excluded from evidence in this proceeding. Therefore, the motion was denied.

bad day and did not want to go to class; Ms. Honeyfield told I.N. that she was planning to run errands; Ms. Honeyfield agreed to take I.N. off campus to go to lunch; I.N. left the classroom first; Ms. Honeyfield and I.N. met in the parking lot; while they were in the restaurant, they saw the counselors; Ms. Honeyfield told I.N. to talk to the counselors, but I.N. did not do so; Ms. Honeyfield talked to the counselors; I.N. panicked and walked a different route out of the restaurant; I.N. went next door to get a sandwich and Ms. Honeyfield had the sandwich for dinner that evening<sup>20</sup>; and I.N. asked Ms. Honeyfield to drop her off at the side gate. Ms. Murillo then told Ms. Honeyfield that no passenger was visible in her vehicle on the camera footage Ms. Murillo had seen, but Ms. Honeyfield did not then have an explanation why. During this conversation, Ms. Murillo said Ms. Honeyfield could not recall specifics about why I.N. was having a bad day. Regarding the reason I.N. did not want to talk to the counselors, Ms. Honeyfield told Ms. Murillo that I.N. said something about being drug tested and having a probation monitor.<sup>21</sup>

54. Ms. Murillo again told Ms. Honeyfield that she was placed on paid administrative leave, pending a further investigation, and instructed Ms. Honeyfield not to have any contact with I.N.'s family or talk to anyone about the situation other than Ms. Murillo and Ms. Robertson-Phillips.

#### *The Investigation Report*

55. The district decided to hire an investigator to make sure nothing else was going on. They knew Ms. Honeyfield had taken a student off campus, then lied about it, and there were other "red flags," including that there was no other adult in the car when Ms. Honeyfield drove I.N. to the restaurant and Ms. Honeyfield and I.N. had exchanged text messages.<sup>22</sup>

56. Alyssa Jarvis, a Senior Investigator of Education Services and Student Relations for Nicole Miller & Associates, Inc., conducted the investigation for the district. Ms. Jarvis testified, and her written Investigation Report was received as evidence. She has worked for her current employer for the past three and one-half years, she has been in her current position for one and one-half years, and she has conducted other investigations for the district. She holds a Master's Degree in Marriage and Family Therapy, and she has also received "Title 9" and "Title 5" training and some informal interview training. Ms. Jarvis is not familiar with the Education Code, and she does not have a legal background.

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<sup>20</sup> During this hearing, Ms. Honeyfield admitted that no one bought a sandwich from the business next to the restaurant.

<sup>21</sup> No evidence was presented verifying whether I.N. was subject to any sort of drug testing.

<sup>22</sup> Ms. Robertson-Phillips also believed Ms. Honeyfield may have communicated with students on social media, but there was no evidence presented during this hearing to substantiate that belief.

57. Ms. Jarvis performed her investigation in 2017. She was told Ms. Honeyfield had admitted some of the conduct, and Ms. Jarvis's assignment was to confirm what happened and make sure Ms. Honeyfield had not engaged in any other inappropriate conduct. The primary allegations were that Ms. Honeyfield took I.N. off campus to a restaurant during school hours, and when Ms. Honeyfield was later asked about it, she was dishonest.

58. Ms. Jarvis interviewed Ms. Murillo, Ms. Honeyfield, Ms. O'Day, students who were close to I.N., another student who had graduated, and that student's mother. I.N.'s mother refused to be interviewed and declined to consent to I.N. being interviewed. Based on her interviews, Ms. Jarvis confirmed that Ms. Honeyfield had taken I.N. off campus without parental consent to a restaurant in downtown Redlands in Ms. Honeyfield's car, and when REV's administrators questioned Ms. Honeyfield about it, she was dishonest. When Ms. Jarvis interviewed Ms. Honeyfield, she admitted to most of the allegations, but she denied that she lied to law enforcement, as she was never posed a direct question when the deputy was present. Ms. Jarvis did not find any evidence that Ms. Honeyfield had any similar relationships with other students or that she engaged in any sexual misconduct.

#### *Ms. Honeyfield's Explanatory Testimony*

59. Ms. Honeyfield explained during her testimony at this hearing that when she took I.N. to lunch, Ms. Honeyfield was trying to make I.N. "feel better," and she lied about taking I.N. to the restaurant because she did not want to get I.N. in trouble. Ms. Honeyfield expressed her belief that it is "extremely important" that children remain with their parents. She believed I.N. and her mother were in a good place, although their relationship had been unstable before. I.N. seemed more responsible and healthier than when she was in foster care, and I.N. told Ms. Honeyfield she did not want to be kicked out of her home. Ms. Honeyfield concluded that I.N. might be sent to live with her father or to foster care, and Ms. Honeyfield did not want either of those things to happen. Ms. Honeyfield acknowledged that part of her was afraid she would get into trouble because she lied to the school's administration. She was not initially afraid she might get into trouble, but after she lied, she was afraid she might be terminated.

60. Thursday, October 26, 2017, was the only time Ms. Honeyfield had ever taken a student off campus during a school day. She knew it was inappropriate to take I.N. off campus when she did it. She did not intend to engage in any physical contact with I.N., she has never had a physical relationship with any student, and she denied being a lesbian.<sup>23</sup> Ms. Honeyfield had never lied to the school's administrators before, and it bothered her that she lied. She stated that she decided to tell the truth over the weekend.

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<sup>23</sup> Although Ms. Murillo testified that Ms. O'Day said her sister heard that Ms. Honeyfield was "openly" a "lesbian" when she worked at Beattie Middle School, Ms. Honeyfield's sexual orientation was not relevant, and such unsubstantiated rumors were not considered in rendering this decision.

*Expert Witness Brian Paul Jacks, M.D.'s Testimony Regarding "Grooming Behavior"*

61. Brian Paul Jacks, M.D., is a clinical doctor of psychiatry at the University of Southern California, and he serves as an expert witness in childhood sex abuse cases. He received his medical degree from the University of Toronto in 1967. He moved to California in 1969, where he did his residency in adult and child psychiatry and neurology. He is board certified in both adult and child psychiatry and neurology. Dr. Jacks has served as a consultant for the California Medical Board. Dr. Jacks has testified approximately 100 times in court cases, including about 20 times in federal court. He has testified about 50 percent of the time for the defense, and 50 percent of the time for the plaintiff. However, in cases regarding child abuse in schools, his testimony has mainly been against school districts.

62. Dr. Jacks explained that "grooming" is behavior used by sexual predators to gain trust as a prelude to sexual abuse. Sexual predators usually pick vulnerable victims, such as someone with only one parent and limited financial resources. A sexual predator will typically single out a minor of special interest, usually in a certain age group to which the predator is attracted. The predator will carefully ingratiate him or herself with the intended victim's family by gaining the parent's trust, buying gifts, and granting special favors. Dr. Jacks mentioned that allowing a student to be a TA could be an example of granting a special favor. However, Dr. Jacks also stated that such conduct may not always be inappropriate. He noted that there are rules at schools to protect students and to protect schools from liability. Grooming is almost always a prelude to sexual abuse, unless it is rape. Grooming does not require "intent," as people may not be honest about their intentions and predators deny and rationalize their behavior.

63. Grooming is a form of a boundary violation. Dr. Jacks explained that boundary violations relate to persons with unequal power, such as an authority figure and someone under that person's authority. If the person in power crosses boundaries, it creates problems "because it creates expectations." He gave an example of a therapist giving out his or her personal telephone number to a patient, which would lead the patient to expect the therapist to be there to help if the patient called the number. Intent is not part of what is required to find a boundary violation, and a boundary line violation is not a crime. Dr. Jacks noted that the person with authority has the ability to change the relationship. Therefore, even if a child tries to make a relationship more personal, the teacher is still in a position of authority and should avoid crossing boundaries.

64. Dr. Jacks had never met Ms. Honeyfield or I.N. He reviewed the Statement of Charges, which he understood had not been proven; the Investigation Report and Witness Key to the Investigation Report; and the transcript of Ms. Honeyfield's deposition.<sup>24</sup> Dr. Jacks summarized his understanding of the facts as follows: Ms. Honeyfield had been a teacher for 13 years and she was not a counselor; Ms. Honeyfield took the student off campus without parental permission and without school authorization; taking the student off

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<sup>24</sup> The Statement of Charges and the Investigation Report were received as evidence; Ms. Honeyfield's deposition transcript was not.

campus interfered with the student's class time; the behavior was very suspicious; there were efforts to conceal it; and Ms. Honeyfield lied about it. Dr. Jacks believed I.N. was "extremely vulnerable" because she had been in foster care, had familial problems with her mother, had a probation monitor, and was required to submit to random drug testing.<sup>25</sup> He stated that it is "wrong" for a teacher, such as Ms. Honeyfield, to assume a counseling role with a troubled student.

65. Based on the information he was provided, Dr. Jacks reached the following conclusions in this case: There was no evidence of sexual abuse in this case. There are two ways to look at what happened. Ms. Honeyfield might just have been trying to help, or Ms. Honeyfield was a "renegade teacher" who was "not following the rules." Dr. Jacks saw no reason to take the student off campus and he opined that this, therefore, appeared to be a situation involving a "renegade teacher" who was not following the rules. Ms. Honeyfield's behavior "could be grooming," and her behavior "would come under the category" of "grooming." Dr. Jacks made it clear during his testimony that he cannot generalize that grooming behavior "predicts" sexual abuse will occur.

#### *Pertinent District Board Policies*

66. The district's Board Policies (BP) regarding transporting students are provided in BP 3541.1, which was cited in and attached to the Statement of Charges. BP 3541.1 states the following regarding use of private and school employee's vehicles to transport students:

#### Transportation by Private Vehicle

The Superintendent or designee may authorize the transportation of students by private automobile for appropriate field trips and activities when the vehicle is driven by an adult who has registered with the district for such purposes by filing a completed School Driver Certification Form. When filing the School Certification Form, all drivers shall be issued the Driver Instruction Form and asked to keep it in their car. All student passengers shall provide permission slips signed by their parents.

[¶] . . . [¶]

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<sup>25</sup> There was no evidence in this record establishing I.N. had actually ever been in foster care, had a probation monitor, or was required to submit to drug testing. Although I.N. and her mother briefly testified, such topics were not addressed during their testimony. I.N. and her mother were not interviewed by the investigator, and Ms. O'Day was reluctant to disclose information about I.N. to the investigator. According to the Investigation Report, Ms. O'Day told the investigator she was not aware of I.N. being in foster care.

## Transportation of Students in School Employee's Vehicle

The school principal or designee is authorized to transport students when involved in school activities, school business or for emergency purposes.

When such transportation is arranged, and the employee uses his/her private vehicle, the employee's automobile liability insurance shall provide the primary insurance coverage. The school district's liability insurance shall provide secondary insurance coverage.

If an employee uses his/her private vehicle, the employee must follow the most direct route to the destination, and avoid unnecessary stops.

67. BP 4119.21 sets forth the district's professional standards.<sup>26</sup> Ms. Robertson-Phillips testified that Ms. Honeyfield engaged in the types of inappropriate conduct listed under BP 4119.21, items 1, 4, and 9. BP 4119.21 states (references to other board policies are omitted):

The Governing Board expects district employees to maintain the highest ethical standards, exhibit professional behavior, follow District Policies and Regulations, abide by state and national law, and exercise good judgment when interacting with students and other members of the school community. Employee conduct should enhance the integrity of the district, advance the goals of the educational programs and contribute to a positive school climate.

The Board encourages District employees to accept as guiding principles the professional standards and codes of ethics adopted by educational or by professional associations to which they belong.

Each employee should make a commitment to acquire the knowledge and skills necessary to fulfill his/her responsibilities and should focus on his/her contribution to the learning and achievement of district students.

Inappropriate employee conduct includes, but is not limited to:

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<sup>26</sup> BP 4119.21 was not cited in the Statement of Charges.

1. Engaging in any conduct that endangers students, staff, or others, including, but not limited to, physical violence, or possession of a firearm or other weapon.

[¶] . . . [¶]

4. Engaging in inappropriate socialization or fraternization with a student or soliciting, encouraging, or maintaining an inappropriate written, verbal, or physical relationship with a student.

[¶] . . . [¶]

9. Dishonesty with students, parents/guardians, staff, or members of the public, including but not limited to falsification of information in employment records or other school records.

*The District's "Tips for Working Smart"*

68. Ms. Robertson-Phillips explained that the district has zero tolerance for misconduct against children, and since 2013, all district employees have been given a copy of a document titled "Tips for Working Smart" at the beginning of each school year. Ms. Robertson-Phillips created the Tips document, which addresses interactions with students through social media and electronic communications, based on information she obtained from a colleague from another district. The Tips document is meant to advise district employees regarding how to avoid "red flags" that could be interpreted as something that may lead to disciplinary action. Ms. Robertson-Phillips explained that she put the document together because of everything going on in Southern California, including a 2013 incident in the district which involved a teacher giving birth to a student's child.

The Tips for Working Smart is not a board policy. Instead it provides guidelines as follows (italicized and boldened emphasis in original):

*Teachers, staff, and coaches should interact and communicate with students for educational purposes in a professional manner at all times. Further, courteous and professional relationships with students are expected at all times. All employees are expected to establish and maintain appropriate boundaries in their interactions with students inside and outside of the classroom. Below please find tips for working with students as related to physical and emotional boundaries, social media and electronic communications. More than ever, employees are being scrutinized in their daily interactions with students; therefore, it is imperative that employees are cognizant of their actions in the performance of their professional duties.*

## **Behaviors that Raise Red Flags Regarding Professional Boundaries**

- When employees are alone with a student behind closed/locked doors.
- When employees ask students to run their personal errands.
- When employees transport students without proper authorization.
- Even when approved to transport, when employees do not have another adult in their vehicle when transporting students.
- When employees share their personal problems/stories/information with or in the presence of students.
- When employees invite students to their home, unless it is a school sponsored extracurricular activity that is appropriately supervised.
- When employees meet students in off-site locations without a parent/guardian being present.
- When employees exhibit behaviors which may be viewed as favoring one student over others.
- When employees use innuendos that may be suggestively interpreted when talking with students.
- When employees tell inappropriate jokes or make inappropriate comments about others to students.

[¶] . . . [¶]

## **Texting with Students**

- Cell phone numbers should only be provided if absolutely necessary to accomplish a District related or school related purpose.

- Consider whether sending a text message is absolutely necessary.
- Keep texting communication related to educational purposes, class matters or school activities.
- Be respectful of timing of electronic communications. Texting after 8:00 p.m. or before 6:00 a.m. should be information based, absolutely necessary, and should include another adult as a recipient.
- Whenever possible, avoid texting students one on one.
- Consider using group text messages or including another adult (parent, club advisor, assistant coach, etc.) as a recipient.
- Be aware of innuendo, casual or informal language (nickname, inside jokes, etc.).
- Consider how something (context) sent could be perceived as inappropriate.

[¶] . . . [¶]

### **Absolute Prohibitions**

*The following are examples of interactions between employees and students that are absolutely prohibited:*

- Inappropriate physical contact with students.
- Inappropriate emotional relationships with students.
- Planning or discussing a future romantic relationship with a student.
- Engaging in any conduct that violates Board Policies, Regulations, Education Code, or constitutes criminal behavior.

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*Ms. Robertson-Phillip's Testimony Regarding Ms. Honeyfield's Conduct*

69. As the Assistant Superintendent, Human Resources, for the district, Ms. Robertson-Phillips's duties include negotiating with the union, recruitment, hiring, contract management, and employee discipline. She is also a member of the district's executive committee. She has been in her current position for approximate 12 years, and she has worked for the district for 23 years. Ms. Robertson-Phillips has known Ms. Honeyfield since she was hired by the district about 14 years ago. Ms. Robertson-Phillips testified that Ms. Honeyfield was generally a good teacher.

70. Ms. Robertson-Phillips was very upset about Ms. Honeyfield's conduct. With all the training that was given, Ms. Robertson-Phillips could not believe that a teacher would violate the rules and then lie about it. Ms. Robertson-Phillips was "highly disappointed."

71. Ms. Robertson-Phillips hoped it was not common for teachers and TAs to communicate by text because they see each other every day in class such that texting should not be necessary. She did not know if it was common for coaches to text students, although she noted there were text message apps that teachers may use to communicate things to students, such that it should not be necessary to communicate using their personal cell phone numbers. If there was a need to text, Ms. Robertson-Phillips stated that it should not be a "one-on-one" text.

72. Ms. Robertson-Phillips acknowledged that not all socialization between teachers and students is inappropriate. Appropriate social interactions with a student would include discussing school and future plans, but not getting into "personal" topics that do not have anything to do with school. "Getting so close to a student" that a teacher takes that student off campus is "completely inappropriate," a health teacher taking a student off campus constitutes inappropriate fraternization, and "inappropriate emotional relationships" with students are "absolutely prohibited." Counselors can discuss personal lives with students, and teachers should refer students seeking to engage in personal discussions to the administration, their parents, and/or counselors.

73. Ms. Robertson-Phillips believed Ms. Honeyfield's relationship with I.N. amounted to a boundary violation. She pointed out that Ms. Honeyfield had texted I.N. one-on-one regarding topics that were not related to education.

74. Ms. Robertson-Phillips explained that when dealing with "grooming" as opposed to "signs of grooming," the district cannot wait to learn a teacher's motivation before taking action. She was not aware of any other cases where the district was aware of signs of grooming and did not act. According to Ms. Robertson-Phillips, in the case of the teacher giving birth to her student's child, there were no signs from which the district was aware of an inappropriate relationship between the student and the teacher, and in another

case, there were signs and the district took appropriate action. Ms. Robertson-Phillips denied there was a cover-up in those cases, as had been asserted in news articles.<sup>27</sup>

75. Ms. Robertson-Phillips also stressed that anytime a student is taken off campus, if an accident or anything happens, it endangers the student.

*Character Testimony by Matthew Madea*

76. Ms. Honeyfield called Matthew Madea, the father of one of her former student athletes, to testify. Mr. Madea has worked for the San Bernardino Unified School District as the Athletic Director at San Gorgonio High School for the past 16 years. In his current position, he supervises coaches and he does not teach any classes. He previously taught for 12 years at the same school. Mr. Madea is also a representative of the Ken Hubbs Foundation.

77. Mr. Madea's son recently graduated from Pepperdine University, and he now helps Mr. Madea coach his team at San Gorgonio High School. When his son was in sixth and seventh grade, Ms. Honeyfield was one of his teachers at Beattie Middle School, and she recruited Mr. Madea's son to run when he was in sixth grade. "It shaped" his "son's life," and it has "defined" his son. When his son attended Citrus Valley High School, Mr. Madea and his family spent a lot of time with the track team; they would cook for the entire team and Mr. Madea would drive the team and support the kids on the team. As a result, his family's relationship with Ms. Honeyfield, who was then a coach at Citrus Valley High School, evolved. His youngest daughter also ran and competed in track and field, with Ms. Honeyfield as her coach, and his oldest daughter volunteer coached for one to two years while his kids were coached by Ms. Honeyfield. While his son was in college, Ms. Honeyfield continued to attend races to support his son.

78. According to Mr. Madea, coaches' relationships with students vary, can become personal, can be positive or negative, and there should be boundaries. When there is a special personal relationship between a coach and student, greater care should be taken to ensure boundaries are not crossed. Adults do not want to give the wrong idea to students. In Mr. Madea's experience, it is common for coaches to have personal cell phone numbers of student athletes, and it would not concern him if one of his coaches had a student athlete's cell phone number. Whether texting students is appropriate depends on the circumstances. It is okay if it is on the job and it does not get personal. He was not aware of defined guidelines about texting students. Purely personal texts are "not a good idea" because of the perception. If a teacher is not a coach, Mr. Madea did not see any need to have students' cell phone numbers or to be texting students, although it might be appropriate if the texts are associated with extracurricular activities, such drama club.

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<sup>27</sup> No news articles were submitted as evidence or considered in reaching this decision.

79. Mr. Madea noted that, as a parent, he does not immediately trust his kids with a coach. Based on his and his children's interactions with Ms. Honeyfield, Mr. Madea believes Ms. Honeyfield is honest. He never saw her do anything that concerned him, and he had no fear that she would ever harm his children. Mr. Madea never believed Ms. Honeyfield was not acting in the best interests of his children. Ms. Honeyfield is now a friend of his family and they have become "lifelong friends."

80. Mr. Madea has not observed Ms. Honeyfield working as a teacher, and he did not know much about the allegations against her. He had been told that Ms. Honeyfield was on leave because of an incident involving a girl going to lunch during the school day. It surprised him because of his past experience with Ms. Honeyfield. Mr. Madea stated that it was "not advised" for a coach to spend time one-on-one with a student, but it does happen. He advises his staff not to do it because of what could happen. He had no recollection of Ms. Honeyfield taking other students to lunch, and that sort of conduct seemed out of character for her. If Ms. Honeyfield had taken his son to lunch, he would not have been concerned, even if it had been without his knowledge. But, he would not want his children to be taken out of class, and if she lied about it, that "would raise concerns."

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The district bears the burden in this case of proving that cause exists to dismiss respondent and/or to suspend her without pay pending dismissal. (Evid. Code, § 500.)

2. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

3. "'Preponderance of the evidence means evidence that has more convincing force than that opposed to it.' [Citations.]' (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) "The sole focus of the legal definition of 'preponderance' in the phrase 'preponderance of the evidence' is on the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant." (*Ibid.*, italicized emphasis in original.) "If the evidence is so evenly balanced that you are unable to say that the evidence on either side of an issue preponderates, your finding on that issue must be against the party who had the burden of proving it [citation].'" (*People v. Mabini* (2001) 92 Cal.App.4th 654, 663.)

### *Statutory Authority*

4. Education Code section 44932, subdivision (a)(1), (4), (6), and (8), provides:

(a) A permanent employee shall not be dismissed except for one or more of the following causes:

(1) Immoral conduct, . . .<sup>28</sup>

[¶] . . . [¶]

(4) Dishonesty.

[¶] . . . [¶]

(6) Evident unfitness for service.

[¶] . . . [¶]

(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.

5. Education Code section 44934 sets forth the steps a governing board of a school district must follow for dismissal or suspension of a permanent employee based on charges specified under Education Code section 44932.

6. Education Code section 44939, subdivisions (b) and (c), concern when a permanent school district employee may be suspended without pay and provide:

(b) Upon the filing of written charges, duly signed and verified by the person filing them with the governing board of a school district, or upon a written statement of charges formulated by the governing board of a school district, charging a permanent employee of the school district with immoral conduct, . . . [or] with willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, . . . the governing board of the school district may, if it deems that action necessary, immediately suspend the employee from his or her duties and give notice to him or her of his or her suspension, and that 30 days after service of the notice of dismissal, he or she will be dismissed, unless he or she demands a hearing.

(c)(1) An employee who has been placed on suspension pursuant to this section may serve and file with the Office of Administrative Hearings a motion for immediate reversal of suspension. Review of a motion filed pursuant to this section

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<sup>28</sup> The deleted portions of subdivision (a)(1) concern “egregious misconduct,” which is not at issue in this matter.

shall be limited to a determination as to whether the facts as alleged in the statement of charges, if true, are sufficient to constitute a basis for immediate suspension under this section. The motion shall include a memorandum of points and authorities setting forth law and argument supporting the employee's contention that the statement of charges does not set forth a sufficient basis for immediate suspension.

[¶] . . . [¶]

(4) . . . The grant or denial of the motion shall be without prejudice to consideration by the Commission on Professional Competence, based upon the full evidentiary record before it, of the validity of the grounds for dismissal. The ruling shall not be considered by the commission in determining the validity of the grounds for dismissal, and shall not have any bearing on the commission's determination regarding the grounds for dismissal.

7. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and the Commission's authority regarding its final decision.

8. Education Code section 44946 provides:

If the employee has been suspended pending the hearing, he shall be reinstated within five days after the governing board's decision in his favor, and shall be paid full salary by the governing board for the period of his suspension.

#### *California Supreme Court and Appellate Court Authority*

#### TEACHERS' DUTIES AND RESPONSIBILITIES TO STUDENTS AND TO THE PUBLIC

9. “[R]esponsibilities and limitations on freedom of action which do not exist in regard to other callings” are imposed upon certain professions, “such as judges, policemen and schoolteachers. . . .” (*Board of Trustees v. Stubblefield (Stubblefield)* (1971) 16 Cal.App.3d 820, 824.) Therefore, when analyzing whether a teacher, such as Ms. Honeyfield, should be dismissed and/or suspended without pay pending dismissal, reviewing courts have consistently taken into account the inherent and important obligations teachers owe to students and to the public.

10. The court of appeal in *Board of Education v. Weiland (Weiland)* (1960) 179 Cal.App.2d 808, 812, citing *Goldsmith v. Board of Education* (1924) 66 Cal. App. 157, 168, explained:

[T]he calling of [a teacher] is so intimate, its duties so delicate, the things in which a teacher might prove unworthy or would fail are so numerous that they are incapable of enumeration in any legislative enactment. . . . His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands are matters of major concern in a teacher's selection and retention. . . . A teacher in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the students coming under his care and protection.

11. The importance of a teacher's ability to counsel and direct students was discussed in *Watson v. State Bd. of Education* (1971) 22 Cal.App.3d 559. In that case, the appellate court upheld the Board of Education's decision to deny Watson's application for a general secondary life diploma (teaching credential) because Watson had sustained six criminal convictions involving alcohol abuse over a 10-year period. In upholding the Board of Education's decision, the court noted that in light of that teacher's conduct: "It is unreasonable to conclude, therefore, that petitioner can have the proper concerned attitude necessary for successfully counseling and directing young students away from the harmful effects of alcohol." (*Id.* at p. 564.) The court stressed that (*Id.* at p. 565):

"As between a teacher and his student, '[a]n important part of the education . . . is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept.' [Citations.] 'A teacher . . . in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the [students] coming under [his] care and protection.'" [Citation.] It would seem that even minimum responsible conduct on the part of a teacher necessarily excludes a consistent course of law violations and convictions which can do no less than give the students a bad example or proper respect for law and authority. The teaching by example as well as precept, of obedience to properly constituted authority and discipline necessary to a well ordered [sic] society is an important part of education.

12. Similarly, *Palo Verde Unified School District of Riverside County v. Hensey* (*Hensey*) (1970) 9 Cal.App.3d 967, 970-71, citing *Johnson v. Taft School District* (1937) 19 Cal.App.2d 405, 408, stated:

A board of education is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and

the moral, mental and physical welfare of the pupils during school hours. An important part of the education of any child is the instilling of a proper respect for authority and obedience to necessary discipline. Lessons are learned from example as well as from precept. The example of a teacher who is continually insubordinate and who refuses to recognize constituted authority may seriously affect the discipline in a school, impair its efficiency, and teach children lessons they should not learn. Such conduct may unfit a teacher for service in a school even though her other qualifications may be sufficient. “Book learning” is only a phase of the important lessons a child should learn in a school.

#### IMMORAL CONDUCT

13. “Immoral conduct” has been defined, as set forth in *San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466, citing *Weiland, supra*, 179 Cal.App.2d at 811, as conduct:

[W]hich is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

14. *Weiland, supra*, 179 Cal.App.2d 808, was among the first appellate decisions analyzing “immoral conduct” in the context of a teacher dismissal case under the Education Code. The *Weiland* court found that a teacher engaged in immoral conduct when she falsified attendance records after she learned that if attendance fell below a certain level, her class would be dropped, and she would lose her job. The appellate court noted that no other California cases had previously defined the term “immoral conduct” in the context of the Education Code section authorizing dismissal of a school employee for “immoral conduct.” (*Id.* at p. 811.) The *Weiland* court explained that the charge of immoral conduct was “amply supported” because the teacher admitted she felt no remorse other than to the extent that she got into trouble and “[h]er acts were deliberately designed to defraud the state and the district and were essentially criminal in nature.” (*Id.* at p. 812.)

15. Other appellate cases have found immoral conduct based on sexual indiscretions and use of vulgar language, illegal drug use and alcohol abuse, and theft. For example:

- In *San Diego Unified School District.*, *supra*, 194 Cal.App.4th at 1466, a teacher who solicited sex using an explicit Craigslist ad was found to have engaged in immoral conduct.
- In *Stubblefield*, *supra*, 16 Cal.App.3d 827, a teacher caught having sex with a student in a car who then led the police on a high-speed chase was found to have engaged in immoral conduct which indicated unfitness to teach.
- In *Hensey*, *supra*, 9 Cal.App.3d 967, a teacher who made vulgar and sexual comments in the classroom was found to have engaged in immoral conduct and unfit to teach.
- In *West Valley-Mission Community College District v. Concepcion* (1993) 16 Cal.App.4th 1766, a teacher who possessed and sold cocaine was found to have engaged in immoral conduct.
- In *Pittsburg Unified School District v. Commission on Professional Competence* (1983) 146 Cal.App.3d 964, a teacher who purchased and received stolen property from an undercover police officer was found to have engaged in immoral conduct.

16. The California Supreme Court explained, in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229, that whether conduct is “immoral” cannot be considered in the abstract but must be analyzed in the context of whether the conduct at issue is hostile to the welfare of the school community. That case addressed whether a teacher’s life diplomas (teaching credentials) should be revoked by the State Board of Education based on private, out of classroom, non-criminal, homosexual activity between two teachers. In that case, the Court reversed the lower court’s revocation of the teacher’s life diplomas because the evidence did not support the conclusion that the teacher’s actions indicated he was unfit to teach. (*Id.* at. p. 224-229.) The Court concluded: “[T]he Board of Education cannot abstractly characterize the conduct in this case as ‘immoral,’ ‘unprofessional,’ or ‘involving moral turpitude’ within the meaning of section 13202<sup>29</sup> of the Education Code unless that conduct indicates that the petitioner is unfit to teach.” (*Ibid.*)

In response to the concern that the term “immoral” may be too vague to provide teachers fair notice of the type of conduct that may lead to dismissal from employment or revocation of their right to teach, the *Morrison* Court explained (*Id.* at p. 233):

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<sup>29</sup> When the *Morrison* case was decided, Education Code section 13202 set forth grounds to suspend or revoke a teacher’s certification to teach, which were similar to the grounds to dismiss a permanent certificated employee currently set forth in Education Code section 44932, which is at issue in the present case.

[T]he prohibitions against immoral and unprofessional conduct and conduct involving moral turpitude by a teacher constitutes a general ban on conduct which would indicate his unfitness to teach. This construction gives section 13202 the required specificity. Teachers, particularly in the light of their professional expertise, will normally be able to determine what kind of conduct indicates unfitness to teach. Teachers are further protected by the fact that they cannot be disciplined merely because they made a reasonable, good faith, professional judgment in the course of their employment with which higher authorities later disagreed.

17. The *Morrison* Court listed seven factors to analyze whether a teacher's conduct demonstrates an unfitness to teach. (*Id.* at p. 229.) Those factors and their application are discussed further under the "Morrison Factors" subheading below.

#### EVIDENT UNFITNESS FOR SERVICE

18. "Fitness to teach" is a question of ultimate fact. (*Board of Education of Sunnyvale Elementary School District v. Commission on Professional Competence (Sunnyvale)* (1980) 102 Cal.App.3d 555, 560-562.) In *Sunnyvale*, a teacher described as "an exceptional, efficient and effective classroom teacher" made a false bomb threat during a teachers' strike. (*Id.* at pp. 558-559.) He did so based on "an inchoate, emotionally founded, but irrational thought that a visual count of the students assembled outside the school would effectively challenge what he believed to be incorrect attendance figures announced by the District. He was persuaded in his own mind that bringing the True [sic] facts on attendance to the media, and thereby to the public, would help to shorten the strike by causing the District to negotiate more earnestly." (*Ibid.*) The court affirmed the commission's finding that the evidence presented of the teacher's conduct did not prove that he was evidently unfit to teach. (*Id.* at p. 562.)

19. In *Hensey, supra*, 9 Cal.App.3d 967, the court applied the following definitions when affirming a finding that a teacher was evidently unfit to teach (*Id.* at p. 972):

Insofar as the phrase "evident unfitness" is concerned, the parties refer us to dictionary definitions in which "evident" is defined in Webster's Collegiate Dictionary as "Clear to the vision and understanding," (Webster's Collegiate Dict., 7th ed. p. 288), and "unfit" as defined in the same tome at page 968, as "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound." The parties further refer us to a definition of the word "unfit" in California Words, Phrases and Maxims, page 440, as in general "unfit" means "unsuitable, incompetent and not adapted for a particular use or service."

20. When evaluating a teacher's fitness to teach, ““evident unfitness for service’ . . . means ‘clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.’ Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.”” (*San Diego Unified School District, supra*, 194 Cal.App.4th at 1462, quoting *Woodland Joint Unified School District. v. Commission on Professional Competence (Woodland)* (1992) 2 Cal.App.4th 1429, 1444, fn. omitted.)

21. In *Woodland, supra*, the appellate court affirmed the trial court’s determination that a teacher who failed to follow procedures for disciplining students; wrote sarcastic and belittling notes to students; insulted and was rude to students, parents, and other teachers; and used profanity, was evidently unfit to teach. (*Woodland, supra*, 2 Cal.App.4th at 1434-1435.) The appellate court determined that ““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.* at p. 1444.) The court of appeal also stated that when interpreting the ““evident unfitness for service”” grounds in Education Code section 44932, significance must be given to the word ““evident,”” and that “[a] requirement of temperamental defect gives significance to this term.”” (*Ibid.*) The *Woodland* opinion explained that, notwithstanding its interpretation of ““evident unfitness to serve,”” the *Morrison* factors, still ““must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service.”” (*Id.* at p. 1445.) “If the *Morrison* criteria are satisfied, the next step is to determine whether the ““unfitness”” is ““evident”; i.e., whether the offensive conduct is caused by a defect in temperament.”” (*Ibid.*) A finding of ““unfit to serve”” may be made if ““the evidence, taken in the aggregate, shows that”” retaining the employee ““would pose a significant danger of psychological harm to students and fellow teachers.”” (*Id.* at p.1456.)

22. Furthermore, “[t]o establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that ‘[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.’”” (*San Diego Unified School District, supra*, 194 Cal.App.4th at 1463, citation omitted.)

23. The nexus between an employee’s conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a ““serious lapse in good judgment,”” the teacher ““failed to recognize the seriousness of his misconduct,”” the teacher ““attempted to shift blame to parents and students”” or others, his principal had ““lost confidence in his ability to serve as a role model based upon”” his conduct, or, “[m]ost noteworthy,” if the teacher ““did not think it would have any impact on his ability to teach if his students”” were aware of his conduct, which the teacher did not view as immoral. (*San Diego Unified School District, supra*, 194 Cal.App.4th at 1465-1466.) ““The conduct itself, together with [the teacher’s] failure to accept responsibility or recognize the seriousness of his misconduct given his position as a teacher and role model, demonstrates evident unfitness to teach.”” (*Ibid.*)

24. On the other hand, an employee's actions on a given day may suggest a lack of judgment and discretion or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee's teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder may reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.) In *Jack M.*, the school district sought to dismiss the teacher based on a single incident, an arrest for soliciting homosexual activity in a public restroom, which did not result in a conviction. The teacher had taught for 16 years, without any previous incidents. The school's principal testified that she "felt that the charged conduct demonstrated 'unusual judgment and improper reaction to stress and pressure.' She stated that she had no reason to believe that he could not now perform his specific duties as a certified teacher but that she was not willing to take a chance that the incident might recur and that, therefore, she felt the defendant unfit to teach." (*Id.* at p. 695.) On appeal, the court determined that the evidence supported the trial court's finding that the teacher's conduct did not demonstrate an unfitness to teach. (*Id.* at p. 697.)

#### DISHONESTY

25. The California Supreme Court examined and upheld a commission's decision that a teacher should not be dismissed, despite the commission's finding that the teacher was guilty of dishonesty, in *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208. Ms. Burman was a school principal who decided to falsely call in sick on December 8, 1983, so that she could attend the first California landing of the space shuttle at Edwards Air Force Base, and she had a third party call her school to falsely report that she was ill. When she was initially confronted by the district's superintendent about it, she lied, but she confessed a short time later. The district's statement of charges asserted cause to dismiss her pursuant to Education Code section 44932, subdivision (a), for immoral conduct, evident unfitness for service, dishonesty, and persistent violation of or refusal to obey reasonable regulations of the district. The commission only found cause existed to dismiss her for dishonesty, but it nonetheless decided that dismissal was not warranted under the circumstances. The commission noted that Burman "had a previously unblemished record" and made an express finding that her actions "represented isolated conduct . . . not likely of repetition under any set of circumstances in the future." (*Id.* at pp. 213-214.)

In a footnote, the Court added (*Id.* at p. 220, fn. 12):

Although *Morrison* concerned itself only with the proper definition of "immoral or unprofessional conduct," its analysis requires an identical approach to an attempt to discipline a permanent employee on grounds of dishonesty, as here. Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or

unprofessional conduct, and not every falsehood will constitute “dishonesty” as a ground for discipline.

#### PERSISTENT VIOLATION OF OR REFUSAL TO OBEY SCHOOL LAWS

26. In *Governing Board of the Oakdale Union School District v. Seaman (Seaman)* (1971) 28 Cal.App.3d 77, the appellate court found that a teacher’s approximately one-month long absence, although it violated the school’s rules and regulations, was not “persistent” within the meaning of the Education Code, and therefore did not support a dismissal for persistent violation of or refusal to obey school laws. The facts of the case were that Mrs. Seaman was supposed to begin work for the 1969-1970 school year by participating in orientation beginning on September 3, 1969, and then begin teaching on September 10, 1969. She requested a leave of absence until October 1, 1969, to participate in an international conference on mental health in Paris, France during September 1969, but her request was not granted. Before the start of the school year, she again asked for a leave of absence, while she was out of the country, and she received no response. She then did not return to the school until October 1, 1969.

The appellate court explained that the question on appeal was whether Mrs. Seaman’s violation was “persistent,” as the grounds listed in the applicable code section, which was then Education Code section 13403, subdivision (g), stated: “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 district employing him.” (*Id.* at p. 81.)<sup>30</sup>

The district argued that each day Mrs. Seaman was absent was a separate violation of the school’s regulations, thereby making her violation “persistent.” The court of appeal rejected that argument as follows (*Id.* at pp.81-82):

The argument is specious. This is not a case where it is reasonable to say that Mrs. Seaman’s absence, by its very duration, amounted to a “persistent” violation of the governing board’s rules. [Citation omitted.] Nor can it fairly be said from the evidence presented that the teacher was motivated by an attitude of continuous insubordination. Mrs. Seaman had been employed by the district for a period of eight years, and there is no evidence in the record to prove that she ever violated a school law or regulation of the governing board prior to the incident in question; before leaving on her trip, appellant requested a leave of absence and gave sound academic reasons in support of the request; . . .

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<sup>30</sup> The same language is contained in Education Code section 44932, subdivision (a)(8), which is at issue here.

To hold that Mrs. Seaman was guilty of “persistent” violation of the school board’s regulations under the evidence presented in this case, even though the violation resulted in an absence of several school days, is to distort the meaning of the term “persistent,” no matter what acceptable definition is used. The word “persistent” is defined by lexicographers as “refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.” (Webster’s New World Dict. (College ed.); see Webster’s Third New Internat. Dict.) And in the judicial decisions of this, as well as other states, the word has been interpreted to mean “continuing or constant.” [Citations omitted.]

The court found that Mrs. Seaman engaged in a single violation of the school’s rules, which was not enough to support dismissal of a permanent teacher, and reasoned (*Id.* at p. 84):

We do not quarrel with respondent’s contention that the school district board had the right to adopt rules governing the conduct of its employees and to require the employees to observe the rules. We hold, only, that a single violation of a school board’s rules is not of itself cause for the dismissal of a permanent teacher under subdivision (g) of section 13403. The subdivision pertains to unintentional as well as intentional transgressions, and hence the Legislature, apparently to allow opportunity for a correction, has decreed that a single violation is not sufficient to warrant dismissal; “it is the persistent disregard” of school rules that the subdivision is designed to regulate.

27. *San Dieguito Union High School District v. Commission on Professional Competence* (1982) 135 Cal.App.3d 278 also concerned whether cause existed to dismiss a teacher for persistent violation of or refusal to obey school laws. In that case, over a four-year period, the teacher was absent 21 percent of the time and she failed to supply lesson plans to substitute teachers numerous times, despite having received several written and oral communications instructing her to provide thorough lesson plans when she planned to be absent. The appellate court concluded that “[w]ithout question a persistent refusal to prepare lesson plans for substitute teachers, viewed in light of the number of absences Harris [the teacher] was experiencing, might be sufficient to constitute ‘persistent violation . . . of school rules’ within the meaning of Education Code section 44932, . . .” (*Id.* at p.287-288.)

#### MORRISON FACTORS

28. *Morrison, supra*, articulated seven factors relevant to a determination of whether a teacher is unfit to teach which are considered in teacher dismissal and suspension cases, as well as in disciplinary actions regarding a teacher’s credentials. (*San Diego Unified*

*School District, supra*, 194 Cal.App.4th at 1462; *Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 466 and 473; *Woodland, supra*, 2 Cal.App.4th at 1456-1457; *Governing Board of ABC Unified School District v. Haar* (1994) 28 Cal.App.4th 369, 383; *Sunnyvale, supra*, 102 Cal.App.3d at 560; *Fontana Unified School District, supra*, 45 Cal.3d at 220, fn. 12.)

29. The seven *Morrison* factors are (*Morrison, supra*, 1 Cal.3d at 229-230, footnotes omitted):

- “[T]he likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated”;
- “[T]he proximity or remoteness in time of the conduct”;
- “[T]he type of teaching certificate held by the party involved”;
- “[T]he extenuating or aggravating circumstances, if any, surrounding the conduct”;
- “[T]he praiseworthiness or blameworthiness of the motives resulting in the conduct”;
- “[T]he likelihood of the recurrence of the questioned conduct”; and
- “[T]he extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.”

30. The *Morrison* factors “are relevant to the extent that they assist the board in determining whether the teacher’s [sic] fitness to teach, i.e., in determining whether the teacher’s future classroom performance and overall impact on his students are likely to meet the board’s standards.” (*Id.* at p. 229.)

31. Only the pertinent *Morrison* factors need to be analyzed. (*Broney, supra*, 184 Cal.App.4th at 476.)

32. In addition to the seven *Morrison* factors, the commission may also consider the “notoriety and publicity accorded a teacher’s conduct,” if any. (*Jack M., supra*, 19 Cal.3d at 701, fn. 5.) “[I]f the teacher’s conduct is sufficiently notorious that the students know or are likely to learn of it, and if the teacher continues to model his past conduct, the Commission may infer that the teacher’s conduct may result in student emulation, but such an inference is disputable. [Citation.]” (*Broney, supra*, 184 Cal.App.4th at 474.)

33. The *Morrison* factors may be applied to the charges in the aggregate. “When a camel’s back is broken,” the trier of fact “need not weigh each straw in its load to see which one could have done the deed.” A trier of fact may consider “the totality of the offensive conduct.” (*Woodland, supra*, 2 Cal.App.4th at 1456-1457.)

34. “[A]n individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” (*Morrison, supra*, 1 Cal.3d at 235.) The inquiry is “whether any adverse inferences can be drawn from” the teacher’s conduct as to his teaching ability, or “as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher.” (*Ibid.*)

#### OTHER CONSIDERATIONS

35. An administrator’s loss of confidence in the educator and doubt regarding the educator’s ability to serve as a role model for students are factors that may be considered in determining whether a teacher is unfit to teach and should be dismissed. (*San Diego Unified School District, supra*, 194 Cal.App.4th at 1460 and 1463.) In *San Diego Unified School District*, the principal testified that based on the teacher’s conduct, she had lost confidence in him and “questioned his ability to serve as a role model for students.” (*Id.* at p. 1460.) On appeal, the court considered the principal’s testimony as substantial evidence of the adverse impact the teacher’s conduct had on his on-campus relationships and that the teacher’s relationship with the principal “had been sufficiently impaired to render him unfit for service as a teacher or administrator.” (*Id.* at p. 1463.)

36. The Commission is vested with discretion not to dismiss an employee even if grounds for dismissal exist. (*Fontana Unified School District, supra*, 45 Cal.3d at 219-223.) As the California Supreme Court explained, “nothing in the statutory scheme indicates that the commission must be bound by the district’s choice to the extent that it is required to approve an employee’s dismissal if it is not persuaded, in the exercise of its discretion, that an offense is serious enough to warrant that step. [¶] We thus cannot accept the proposition that discipline *must* be imposed, when a finding is made that cause for discipline exists.” (*Id.* at p. 219, italicized emphasis in original.)

#### SUSPENSION WITHOUT PAY UNDER EDUCATION CODE SECTION 44939, SUBDIVISION (B), AND REINSTATEMENT OF BACK PAY

37. If a commission on professional competence clears an employee of the charges upon which the suspension was based, then the employee must be paid back pay for the period of suspension, even if she is dismissed on other charges that do not support cause for suspension without pay. (*Von Durjais v. Board of Trustees* (1978) 83 Cal.App.3d 681, 686-687.) In *Von Durjais*, the employee was charged with immoral conduct and evident unfitness for service based on her possession of marijuana. The commission expressly found that the employee’s conduct did not amount to immoral conduct, but it found she was

evidently unfit for service. Because immoral conduct was not found, the appellate court concluded the employee was entitled to back pay for the period of suspension. (*Ibid.*)

*Evaluation Regarding the Existence of Cause to Dismiss Ms. Honeyfield*

38. As a teacher, Ms. Honeyfield was required to set an example, and she did not set a good one when she took I.N. off campus, without authorization from the school or I.N.'s parent, when I.N. should have been in class, and then lied about it. Ms. Honeyfield does not dispute that what she did was wrong. Her misconduct occurred over the course of three days, after having a lengthy and impressive career working as a teacher. Ms. Honeyfield was trying to help an anxious student who was so stressed out that she felt she could not attend her classes and was reluctant to talk to her counselor. The student told Ms. Honeyfield she might be kicked out of her home and sent to foster care, she had a probation monitor, and she had to submit to drug testing. The student had also asked Ms. Honeyfield several times if she could live with her, and she had previously told Ms. Honeyfield that she wanted to be emancipated. The things this student was telling Ms. Honeyfield, regardless of whether they were true or not, raised serious issues which should have prompted Ms. Honeyfield to alert the student's parent and counselor and the school's administrators. Instead, Ms. Honeyfield, who was not trained as a counselor, but fashioned herself as a person to whom children could talk, made the huge mistake of deciding to take the student to lunch off campus, during class time, without her mother's permission or school authorization, so the student could talk. Then, after they were seen off campus, Ms. Honeyfield agreed with the student to lie about it. Ms. Honeyfield went along with the plan to lie, which she stated during this hearing was suggested by the student, when she was confronted the next day by school administrators. Ms. Honeyfield clearly exercised serious lapses in judgment.

39. However, in light of all the evidence presented, the district failed to prove that Ms. Honeyfield's serious, but isolated, lapses in judgment amounted to immoral conduct or demonstrated that Ms. Honeyfield was unfit to teach. The evidence showed that until October 26, 2017, Ms. Honeyfield had demonstrated her skill and competence as a health and physical education teacher and coach, and she had earned the right to five-year evaluations following an impressive project in which she skillfully incorporated the Common Core subjects into her high school health class. Ms. Honeyfield had never engaged in similar conduct, and she had never been disciplined before. The fact that I.N. trusted, confided in, and sought Ms. Honeyfield out, when I.N. was suffering episodes of anxiety, did not prove that Ms. Honeyfield engaged in inappropriate "grooming behavior." While Dr. Jacks's testimony tended to show that Ms. Honeyfield may have crossed the appropriate boundaries of a teacher/student relationship, when she attempted to provide counsel to I.N., his testimony that her conduct "could have been grooming behavior" that is known to be used by sexual predators, was speculative and was not persuasive.

In finding that Ms. Honeyfield did not engage in immoral conduct, weight was given to the praiseworthiness of her motivation to help an anxious student and to the fact that this was an isolated incident, which tended to show that it would not recur. Although dishonesty

may amount to immoral conduct, as was found in the *Weiland*, *supra*, case, that matter is distinguishable from this case because it involved Weiland's attempt to defraud her employer to continue to employ her despite a lack of enrollment in the program she taught. Weiland's conduct was an attempt to steal wages, and she did not acknowledge the wrongfulness of her actions. In this case, Ms. Honeyfield admitted that what she did was wrong and her conduct based, in part, by a sincere, albeit misguided, belief that she was helping the student.

Accordingly, cause does not exist to dismiss Ms. Honeyfield pursuant to Education Code section 44932, subdivision (a)(1), because the district did not prove by a preponderance of the evidence that Ms. Honeyfield engaged in immoral conduct.

40. Similarly, the district did not establish that Ms. Honeyfield is evidently unfit to teach. Her bad judgment in taking I.N. off campus without permission and then lying about it did not rise to the level of demonstrating that she is unsuitable, incapable, incompetent or unfit to teach. The evidence did not show that Ms. Honeyfield suffers from a defect in temperament, or a fixed character trait, nor did it demonstrate that retaining Ms. Honeyfield as an employee would pose a significant danger of psychological harm to students and fellow teachers. Ms. Honeyfield acknowledged that what she did was wrong, and she apologized for her misconduct. Thus, it was not established that she was incapable of remediation. Rather, her behavior was an aberrant, isolated act in an otherwise distinguished teaching career. On balance, Ms. Honeyfield possesses the qualities of character necessary to serve as a competent teacher and the likelihood that she would ever take a student off campus without permission or lie about it again is extremely remote.

Accordingly, cause does not exist to dismiss Ms. Honeyfield pursuant to Education Code section 44932, subdivision (a)(6), because the district did not prove by a preponderance of the evidence that Ms. Honeyfield is evidently unfit for service.

41. The district also did not establish that Ms. Honeyfield's conduct amounted to a persistent violation of or refusal to obey school laws. While Ms. Honeyfield knowingly violated the school's rules when she took I.N. off campus, without permission from I.N.'s mother or school administrators, and when she later lied to school staff about it, the evidence did not establish that those violations or refusals to obey the rules were "persistent." Her violations were all part of a single incident that spanned over several days. Consistent with the court's determination and analysis in the *Seaman*, *supra*, case, merely breaking the incident into subparts in order to add up a higher number of violations is not enough to make the violations "persistent." Indeed, to read the Education Code section 44932, subdivision (a)(8), in the fashion suggested by the district, would be adverse the intent of the statute "to allow opportunity for a correction," such that a single violation is not sufficient to warrant dismissal; rather, "'it is the persistent disregard' of school rules that the subdivision is designed to regulate." (*Seaman*, *supra*, 28 Cal.App.3d at 84.)

Accordingly, cause does not exist to dismiss Ms. Honeyfield pursuant to Education Code section 44932, subdivision (a)(8), because the district did not prove by a preponderance of the evidence that Ms. Honeyfield engaged in "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.”

42. The district met its burden of proof to establish that cause exists to dismiss Ms. Honeyfield for engaging in dishonesty. Possibly the most troubling aspect of Ms. Honeyfield’s conduct was that she conspired with I.N. to lie. As a teacher and role model, she set a poor example for I.N. when she chose to lie instead of immediately telling the truth. Then, not only did Ms. Honeyfield lie, but she concocted a detailed story about having lunch with someone whom she had never met, which included untrue details about that person caring for Ms. Honeyfield’s son. Ms. Honeyfield then allowed the school’s administration to remain uninformed of the true facts over the weekend and through almost the entire day on Monday, October 30, 2017. Although she claimed at this hearing that she decided over the weekend to tell the truth, she did not do so until she was told she was being placed on leave pending an investigation. As such, her testimony that she planned to tell the truth was not credible, as it appeared more likely that she only confessed when she realized there would be further inquiries made about what had occurred on October 26, 2017. It was also concerning that after I.N. told Ms. Honeyfield about her extreme anxiety, that she was afraid she might be kicked out of her mother’s home and sent to foster care, and possibly that she had a probation monitor and was required to submit to drug tests, Ms. Honeyfield did not alert the school’s administration, I.N.’s mother, or I.N.’s counselor. Ms. Honeyfield’s dishonesty therefore could very well have resulted in adverse consequences for I.N. had she needed professional intervention, as well as serving as a poor exemplar for I.N. Ms. Honeyfield’s claim that she lied to protect the student was not entirely credible, as the student’s best interests would have been better served by alerting the school, so the student could receive help for her problems. It was more credible Ms. Honeyfield also lied to protect herself, which is blameworthy, particularly when she should have been telling the school the things I.N. had told her. Due to the extent of Ms. Honeyfield’s dishonesty, it is difficult to conceive how REV’s administrators to whom she lied, or the district, could trust her going forward.

Accordingly, cause exists to dismiss Ms. Honeyfield pursuant to Education Code section 44932, subdivision (a)(4), because the district proved by a preponderance of the evidence that Ms. Honeyfield was dishonest. The circumstances surrounding, and the extent of, Ms. Honeyfield’s dishonesty warrants her dismissal.

*Evaluation Regarding the Existence of Cause to Suspend Ms. Honeyfield Without Pay Pending her Dismissal*

43. Ms. Honeyfield was suspended without pay based on assertions that she engaged in immoral conduct and willfully refused to perform regular assignments without reasonable cause. As was discussed above, the district failed to establish that Ms. Honeyfield engaged in immoral conduct. The district also failed to prove that Ms. Honeyfield willfully refused to perform regular assignments. There was no evidence presented to prove that she refused to perform regular assignments, and the district’s argument that taking I.N. to lunch off campus, during Ms. Honeyfield’s prep time, and then

lying about it, somehow amounted to a willful refusal to perform regular assignments was not persuasive. Therefore, cause did not exist to suspend her without pay, and Ms. Honeyfield shall be given back pay for the period of time she was suspended without pay up to the date of this decision.

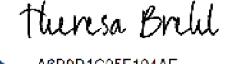
## ORDER

1. Ms. Honeyfield's appeal from the Redlands Unified School District's decision to suspend her without pay and dismiss her from employment with the district is granted in part and denied in part.

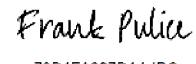
2. Ms. Honeyfield's appeal from the district's decision to dismiss her employment is denied. The district's decision to dismiss Ms. Honeyfield is affirmed.

3. Ms. Honeyfield's appeal from the district's decision to suspend her without pay pending her dismissal is granted. The district's decision to suspend Ms. Honeyfield without pay pending her dismissal is reversed. The district shall pay Ms. Honeyfield backpay from the time she was suspended without pay until the date of this decision.

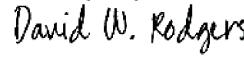
DATED: October 4, 2018

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THERESA M. BREHL  
Administrative Law Judge  
Office of Administrative Hearings

DATED: October 4, 2018

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FRANK PULICE  
Commission Member

DATED: October 4, 2018

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DAVID W. RODGERS  
Commission Member