

**BEFORE THE**  
**THE COMMISSION ON PROFESSIONAL COMPETENCE**  
**STATE OF CALIFORNIA**

In the Matter of the Dismissal of

OAH No. 2012050058

**LAKIESHA MILNER**  
Employee No. 672122

a Permanent Certificated Employee of  
the Los Angeles Unified School District,

Respondent.

**DECISION**

The Commission on Professional Competence (Commission) heard this matter on January 22-24, 28, and 29, 2013, in Los Angeles, California. The Commission consisted of members Deanna Clark, Phillip Anthony, and Mark Harman, Administrative Law Judge (ALJ) of the Office of Administrative Hearings, who presided.

Kristine E. Kwong, Attorney at Law, and Katrina M. Campbell, Assistant General Counsel, represented the Los Angeles Unified School District (District).

Leo James Terrell and Yasmin Youssef, Attorneys at Law, represented Lakiesha Milner (Respondent), who was present throughout the proceeding.

The District seeks to dismiss Respondent from employment as a special education teacher and bridge coordinator on several grounds. The most serious allegation pertains to an episode in which Respondent fired a handgun, striking another District employee, on the evening of August 16, 2010. Complainant asserts this incident involves immoral and unprofessional conduct and demonstrates evident unfitness for service. Respondent argues that she acted for her own protection under unique circumstances, the recurrence of which is unlikely, and therefore, the incident is not substantially related to her qualifications, functions, or duties as a special education teacher and support provider.

At the start of the administrative hearing, the District withdrew the allegations in paragraph 9 of the Accusation as a cause for dismissal. Oral and documentary evidence was received and the matter was argued. The record was closed and the matter was submitted for decision on January 29, 2013.

On May 3, 2013, Respondent submitted a Request for Judicial Notice (RJN) of a letter received by Respondent from the Commission on Teacher Credentialing (CTC) dated May 1, 2013. On May 7, 2013, the ALJ issued a notice of ex parte communication and re-opened the record to give both parties an opportunity to submit a brief regarding the RJN. Complainant's opposition was received and marked for identification as exhibit 52. The RJN and Respondent's reply were marked as exhibit "AN" for identification. (The ALJ's ruling on the RJN is set forth in legal conclusion number 1, *post.*) The matter was deemed re-submitted on May 17, 2013.

## FACTUAL FINDINGS

1. Acting in her official capacity, Vivian K. Ekchian, the Chief Human Resources Officer of the District, signed the Accusation and Statement of Charges.
2. Respondent has been a District employee for 17 years and has no prior record of discipline. She holds clear special education and elementary teaching credentials, and an administrative services credential. She completed a master's degree in Education in 2010. Between 2005 and 2010, Respondent was employed as a special education teacher and bridge coordinator at Edison Middle School (Edison). Respondent's duties, in addition to teaching, included: providing professional development for general and special education teachers, advocating and supporting full inclusion opportunities for students, providing evidence-based interventions, providing training to parents on how to educate their children and to resolve issues, reviewing individualized education plans, and finding and securing necessary resources for successful student outcomes. Respondent worked well with students. She has been described as an effective and efficient communicator who implemented programs to help students achieve their potential.

### *The August 16, 2010 Incident*

3. On August 16, 2010, at approximately 8:30 p.m., Respondent drove her vehicle from her home to a barbershop owned by her estranged husband, Joel Payne (Payne), also a District employee. Respondent's purported reason for going to Payne's barbershop was to receive money that he owed for a school trip taken by their four-year-old daughter and for a telephone bill. Their daughter was with Respondent in the vehicle.
4. Payne was waiting outside the barbershop when Respondent arrived. Respondent parked on the street, got out of her vehicle, and walked toward Payne, who was standing in a driveway. Payne handed Respondent some money, then walked over to the vehicle to see his daughter. Respondent went the other direction and entered the barbershop, purportedly because she wanted to say hello to a friend, James Wilridge. Three adults and four children were inside the barbershop, including Michelle Bishop (Bishop), Bishop's seven-year-old nephew and adopted son, Michael N., and Bishop's four-year-old daughter. Bishop had brought Michael N. to the barbershop to have his hair cut by Payne.

5. Bishop is a District employee. She and Payne worked as special education trainees at Fremont High School (Fremont). Bishop and Payne had been having a sexual relationship for an unspecified period. Respondent apparently knew this because, shortly after she entered the barbershop, she began saying that some "bitches" at Fremont were "messing" with her husband and one of them had a birthmark on the side of her cheek, which was a clear reference to Bishop, who has a birthmark on her face. Bishop was sitting near Fred Littleton (Littleton), a friend of Payne's and a former employee at Edison, who knew Respondent. Littleton testified that he did not know Bishop at the time, but as soon as Respondent made the reference, Littleton noticed a birthmark on Bishop's face. Respondent apparently repeated her remark and then exited the barbershop, shortly followed by Bishop. Payne was still outside with his daughter.

6. Bishop maintains that she walked down the driveway to retrieve a bottle of water from her car, which was parked on the street. Her children remained in the barbershop. Respondent was standing in the driveway, near the point where it joins the sidewalk that runs between the barbershop and the street. Payne was nearby with his daughter. Respondent said something to Payne. Bishop and Respondent began arguing. Bishop saw Respondent point a gun in her direction. A fight quickly ensued in the driveway and down the sidewalk, even spilling out onto the street adjacent to Payne's barbershop.

7. Shortly after Bishop saw the gun pointed at her, she tried to put both of her hands up near her face and head, as a means of deflecting the gunfire. A bullet struck Bishop near her left pinky and traveled under the skin to her wrist and along her arm to within a few inches of her elbow, where it lodged (until it was removed by surgery several months later). Respondent and Bishop then grappled and swung at each other. Respondent struck Bishop several times in the head with the butt of the handgun, inflicting small lacerations on the forehead and a blunt trauma to the back of the head that required several stitches. Payne, who saw the whole episode, stated that he tried to separate them. Respondent fired two or three or more gunshots at Bishop during the altercation.

8. Respondent's version of events was different. She denied she knew Bishop was in the barbershop. After she exited, her back was turned toward Bishop when Bishop attacked her. She said Bishop kicked her in the side of her back, grabbed her dreadlocks, held her head down, and scratched her face. Respondent felt threatened, withdrew a handgun from her right front pants pocket, aimed the gun away from Bishop, and fired twice as a warning. Respondent said Bishop grabbed for the gun, but let go after the first shot was fired. Bishop, however, denied she attacked Respondent or put her hand on the gun.

9. Littleton testified that he heard four gunshots while he was still inside the barbershop. He rushed outside, and saw Bishop crouched on the sidewalk, leaning against a wall. He went to her to provide assistance. Blood was streaming down her face. Respondent was standing a short distance away holding the gun. Payne wrapped his arms around Respondent in a "bear hug," held her arms upright, and attempted to take the gun away from her. Respondent fired off another round even while Payne was holding her. After Payne took the gun from Respondent, she got in her car and drove away.

10. Littleton testified he helped Bishop to her feet and took her back inside the barbershop. M [REDACTED] N. was aware that his mother and Respondent were fighting. He had heard gunshots. He and his sister began crying and yelling when they saw their injured mother. Sheriff's deputies arrived. Bishop was taken by an ambulance to a hospital. The deputies made telephone contact with Respondent, but she did not cooperate with their requests. She turned herself in to the authorities on the following day and was arrested.

### *Credibility Determinations*

11. The stories told by Bishop, Payne, Littleton, and Respondent are not consistent. Their testimonies raised credibility issues; however, it is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at pp. 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.)

12. Immediately following the incident, Bishop and Payne both denied having a sexual relationship with each other in their interviews with law enforcement. Bishop maintained this lie when she testified under oath at Respondent's preliminary hearing. Bishop's credibility was seriously compromised at Respondent's criminal trial, when she admitted she had lied to sheriff's deputies and during the preliminary hearing. Bishop testified about her reason for lying; she did not want her Fremont colleagues or her family, particularly her grandmother who attended the preliminary hearing, to know about her affair with Payne. Bishop's statements regarding the events of August 16, 2010, however, have remained remarkably consistent. She was credible during much of her testimony at the hearing, possibly because she no longer has something to hide.

13. Respondent's testimony had gaps and she appeared rehearsed, raising doubts as to her credibility. She testified that she brought her gun to the barbershop because it was in a dangerous part of town, but she did not explain why, after she arrived at the barbershop, she took the gun out of her purse (or from her vehicle's glove compartment), and placed the gun in her front pants pocket before entering the barbershop. A reasonable inference is that Respondent knew Bishop was in the barbershop, she expected a conflict between her and Bishop, and she entered the barbershop with a gun because she intended to engage in a fight.

14. Respondent testified that she did not recognize Bishop in the barbershop as the person who was having an affair with her husband. She admitted that she told Littleton about her husband "messing" with several "hoes" at Fremont, but she denied that she made any reference to Bishop's birthmark. Littleton, Bishop, and Michael N., however, consistently testified that Respondent specifically referred to the birthmark in the barbershop, and their testimony was more credible than Respondent's on this issue.

15. Respondent gave details of the fight that were inherently improbable.

Respondent is five feet eight inches, at least three or four inches taller than Bishop, and she considerably outweighs Bishop. Respondent claimed that, after Bishop was struck by a bullet in the hand, Bishop lifted Respondent off the ground and carried her nearly 15 feet,<sup>1</sup> which is unlikely. Ultimately, it is impossible to ascertain precisely what occurred that night, yet Respondent's portrayal of herself as the victim is not believed. Respondent disregarded multiple opportunities to avoid an altercation. She used a handgun to cause serious injury to Bishop while in the presence of her own young daughter. Respondent's use of deadly force, under these circumstances, was shocking, inexcusable, and unjustified.

16. The District Attorney charged Respondent with crimes in four counts, which included violations of the following Penal Code sections: Count 1 - sections 664/187, subdivision (a) (attempted murder) and 664/192, subdivision (a) (attempted voluntary manslaughter, a lesser included offense); Count 2 - sections 245, subdivision (a)(2) (assault upon the person of another with a firearm), 243, subdivision (a) (battery, a lesser included offense), and 240 (simple assault, a lesser included offense); Count 3 - section 246.3, subdivision (a) (discharge of a firearm in a grossly negligent manner); Count 4 - sections 245, subdivision (a) (assault by means likely to produce great bodily injury), 240 (simple assault, a lesser included offense), and 243 (battery, a lesser included offense). Respondent was placed on compulsory leave from the District during the pendency of the criminal matter. On February 4, 2011, in the Los Angeles Superior Court, case number TA114215, Respondent was acquitted by a jury of all criminal charges.

17. After her acquittal, Respondent obtained restraining orders against Bishop and Payne. She testified that she was afraid of Bishop and did not want to have anything to do with Payne except for matters involving their daughter. The incident's aftermath for Bishop was severe. Bishop had permanent physical injuries. Respondent's actions traumatized Bishop's two children, who currently have nightmares. M. N. has developed behavior problems. He has been angry and defiant, and he acts out both in school and at home.

#### *Respondent's Problems When She Returned to the District*

18. Respondent returned to service with the District. She was reassigned to the Local District 7 (LD7) office as a "housed"<sup>2</sup> employee on January 14, 2011. Michael Hopwood (Hopwood), a District administrator for employee relations who supervised the housed employees in the LD7 office, met with Respondent and conducted an orientation on the rules for housed employees. Hopwood provided Respondent a document, addressed to Respondent, which stated the policies and procedures to be followed at the LD7 office,

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<sup>1</sup> Respondent testified, "The girl came and grabbed me by one side. [She] lifted me . . . and carried me all the way down the sidewalk. She bit my breast, lifted me up. Turned me around 180 degrees down the sidewalk."

<sup>2</sup> The term "housed" refers to a temporarily reassigned employee pending a District investigation of alleged misconduct.

including the work hours, the designated lunch period (11:00 to 11:45 a.m.), the break times, and the specific requirements for signing in upon arrival with Olga Rodriguez (Rodriguez), Hopwood's secretary, and signing out upon leaving the location. Respondent was assigned to the third floor, conference room C, and was directed to remain there during her assigned hours. At hearing, Respondent maintained that Hopwood failed to provide her any document regarding the check-in/check-out procedure on January 14, 2011.<sup>3</sup> The District's document (Exh. 1) does not contain Respondent's signature acknowledging its receipt.

19. Rodriguez was responsible for maintaining the housed employees' attendance records and ensuring that they signed in and out appropriately. The daily time in/time out sheet was on a counter near Rodriguez's desk. Rodriguez, among other duties, would write down the time in a log book when an employee arrived late to LD7. Rodriguez also maintained sheets in a binder at the main desk for employees to sign out and sign in for their lunch periods. Respondent testified that she was never informed that she was required to sign out and sign in for the lunch period, and that she was not aware of any sheets maintained for this purpose. On March 9, 2011, Rodriguez observed Respondent leave for lunch at 11:10 a.m. and return at 1:00 p.m., in violation of Hopwood's directives. Respondent did not sign out when she left for lunch and did not sign in when she returned. Rodriguez reported this incident to Hopwood. Hopwood held a conference with Respondent on March 14, 2011. He told her that, in the future, she would not be paid for time she took in excess of her allotted lunch time and that she needed to sign out and sign back in for lunch periods.

20. Another rule prohibited housed employees from using computers, facsimile machines, or copiers at LD7. They also were not allowed to roam the halls except to use the restrooms. On June 22, 2011, Norma Berryman (Berryman), an administrative secretary in LD7, was in her work area located on the second floor near the office of LD7 Superintendent George McKenna (McKenna). Housed employees were not supposed to be in this area. Berryman saw Respondent and another housed employee walking in this area, which included District computer equipment and a copier. Berryman heard Respondent say to the other employee "not this machine, the next one," ostensibly pointing in the direction of the copier. Berryman saw the employee put back a document he had picked up from a printer in the area. Berryman reported this episode to Hopwood.

21. The housed employees were not allowed to use the employee lounge, which had a television, except during the designated lunch period. On October 7, 2010, Hopwood met Respondent in the lounge and instructed her to turn down the volume on the television. Respondent did not comply and, as she was leaving, told Hopwood something to the effect that "the only reason you are here is because your secretaries are always calling you on us."

22. On October 10, 2011, McKenna's administrative assistant, Veronica Aguilar (Aguilar), who was familiar with Respondent, heard Respondent addressing Rodriguez in a loud and angry voice, saying, "I don't have to listen to a secretary." Respondent's complaint

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<sup>3</sup> Respondent's testimony conflicted with a statement she made on November 14, 2011, in which she acknowledged receiving the "paper you originally gave me." (Exh. B.)

~~concerned a disputed entry that Rodriguez had made on her timecard indicating that she had~~ arrived tardy on a date in September 2011. Respondent told Rodriguez that she needed to speak to an administrator. Hopwood was not in the office. Rodriguez had looked for another administrator to meet with Respondent, without success; Respondent insisted that an administrator be called. Aguilar felt that Respondent was "out of control." She was concerned for Rodriguez's safety. Rodriguez also was concerned for her safety.

23. Aguilar approached Respondent and asked her to leave the area, or she would call the police. McKenna was in a meeting with two other administrators on another floor of LD7. Aguilar told Respondent that no administrator was available to speak with her. Respondent did not leave the area. Aguilar went to her desk and called for McKenna, who left his meeting and arrived with the two other administrators to address the situation. Respondent told McKenna that Rodriguez was always checking on her. McKenna took Respondent into his office and they were able to resolve the matter.

24. On October 25, 2011, Hopwood received another complaint that the television on the third floor was too loud. Hopwood saw Respondent and other employees watching television past 1:00 p.m. and well beyond the allotted time for lunch. When Hopwood spoke to Respondent, she told him that she had been in the employee lounge because someone in the conference room had "bumped" into her. Hopwood asked whether she had reported this problem, and she said no. She did not want to provide any more information to Hopwood about the allegedly inappropriate contact. Hopwood called the school police and reported Respondent's allegation, but she did not cooperate with the police's inquiry, either.

25. On November 7, 2011, Hopwood met with Respondent and discussed his findings. He said Respondent had engaged in disrespectful and disruptive behavior, had failed to follow written directives and procedures on several occasions, and had arrived late to work 12 times. Respondent disputed most of their findings and alleged that Rodriguez's "mishandling of my timecard on a continual basis is in my opinion harassment." (Exh. B.)

26. While Respondent was temporarily re-assigned to LD7, Detective Ray Jordan, a District police officer with the Employee Relations Investigations Unit, conducted an administrative investigation of the events of August 16, 2010. He completed his report on July 29, 2011. McKenna reviewed the report and determined that Respondent's violent acts at the barbershop evidenced a substantial risk of harm to District students and staff. McKenna recommended that Respondent not be reassigned to a work setting. (Exh. 6.)

27. Hopwood reviewed Detective Jordan's report and McKenna's recommendation, and prepared a Notice of Unsatisfactory Acts, which he signed on November 15, 2011. Hopwood recommended both dismissal and a 15-day suspension, and he issued a Notice of Suspension for 15 days Without Pay on the same date. On December 14, 2011, Hopwood prepared a second Notice of Unsatisfactory Acts, based on his findings that had been discussed with Respondent on November 7, 2011. (See factual finding number 23, *ante*.) This was accompanied by a Notice of Suspension for 15 days Without Pay.

28. On April 10, 2012, the Governing Board of the District took action to dismiss Respondent, and served notice of this action and a statement of charges upon Respondent on April 11, 2012. Respondent requested a hearing on the charges, and this matter ensued.

### *Mitigation and Rehabilitation*

29. Coleen Kaiwi (Kaiwi) has been principal of Edison for the past six years. She has recommended that Respondent retain her position at the school because "I value her as an educator. I felt she brought a high quality to our school." Kaiwi was not aware of many of the circumstances of August 16, 2010. It was her understanding that Respondent had acted lawfully and in self-defense. Kaiwi said Respondent was very knowledgeable about special education. She said Respondent was passionate about her work and had worked well with students and parents to help students succeed. Kaiwi has not seen Respondent lose her temper and she does not think Respondent would pose a risk to students, teachers or parents.

30. Aaron Jeffery is a Coordinator for the District Office of Transition Services. He has written a recommendation letter, and he testified at the hearing. He also believes Respondent is well versed in the law and mechanics of special education and has excellent skills, which she uses to educate teachers and parents about all aspects of special education services at school. Heather Karuza, Edison's Administrator of Curriculum, also wrote a letter of recommendation, dated May 1, 2012.

31. Respondent has been a volunteer representative on the school site council at her daughter's elementary school during the 2011/2012 school year. She has often been at the school after hours, helping her daughter with her homework, and some parents have asked her to tutor their children. Respondent maintains that these parents are aware of the events of August 16, 2010, and that her presence at school has not generated any complaints.

32. Linda M. Sakurai (Sakurai), the principal of the school attended by Respondent's daughter, testified that she had heard a rumor that Respondent had shot someone. She said that Respondent had "self-nominated" herself to the site council committee. Respondent lives across the street from the school. Sakurai was afraid there could be consequences if she testified in this matter. She has concerns about allowing Respondent to be on a school site, because "firearms and children don't mix."

### *The "Morrison" Factors*

33. Respondent's conduct must be evaluated in terms of her fitness to teach pursuant to the pertinent criteria, first set forth by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*).<sup>4</sup> Application of the *Morrison*

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<sup>4</sup> The Court set forth the following factors: the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the



~~factors in this matter indicates unfitness to teach.~~ As a special education teacher and bridge coordinator, Respondent serves under difficult and emotional circumstances, whether she must defuse a student on the playground or mediate with parents of special needs kids over tough decisions about getting the best services for their children. Respondent engaged in a serious act of violence, which demonstrates dangerous volatility and a lack of self-control. The brutality of aiming and firing a gun at another human being became amplified when it occurred, as here, in the presence of children. Her behavior caused extreme physical and emotional harm to the victims. Her conduct demonstrated a flaw in her temperament.

34. Respondent continued to act inappropriately toward colleagues and coworkers at LD7. She engaged in loud and threatening outbursts when she was dissatisfied by a person's response to her. She continued to act in a manner antithetical to teaching by flaunting or disobeying school policies and procedures. She did not question the propriety of her behaviors. These behaviors, by themselves, are insufficient evidence to dismiss her. But they demonstrate aggravating circumstances.

35. This is unfortunate, because Respondent has been a good teacher and a resource person. Respondent's violent conduct arose under a stressful and emotional situation with her husband. The problem is that Respondent's behavior at LD7 shows her attitude and temperament issues are not confined to this emotional situation, which might otherwise be termed an isolated incident or domestic dispute. The District is responsible for protecting campuses from any person who poses a risk of actual harm to the school community.

36. Respondent's acts were not mere negligence. Her violent behavior evidenced a conscious and selfish disregard for the law and for the rights of others. Respondent did not establish that personal circumstances, such as a traumatic event or its aftermath, precipitated her loss of self-control. Respondent's motives are largely unknown; however, she appears to have reacted to intense feelings of jealousy, anger, and betrayal. Her behavior cannot be excused. Further, she does not see any need to make changes in her behavior. Based on these circumstances, and in the absence of substantial evidence of rehabilitation, it is likely Respondent will react similarly in the future.

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conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. Not all factors may apply in each case and only the pertinent ones need to be examined. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384 (*Haar*).) The determination of fitness for service required by *Morrison* is a factual one. (*Board of Education v. Jack M.* (1977) 19 C.3d 691, 698, fn. 3; *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 220-221; *Haar*, *supra*, 28 Cal.App.4th at p. 384.)

~~37. Respondent's serious and violent misconduct is evident and is the result of an inadequacy or defect in temperament.~~

38. Except for those previously found to have merit, all other allegations in the Accusation and Statement of Charges and all other contentions of the parties at the hearing are found to lack merit or to be surplusage.

## LEGAL CONCLUSIONS

### *Respondent's Request for Judicial Notice*

1a. Respondent has requested that judicial notice be taken of the CTC's letter dated May 1, 2013, which states that the "Committee of Credentials, after careful review and consideration of the materials contained in your file, has determined to close its investigation and to recommend no adverse action at this time." Respondent argues that the CTC's determination not to discipline Respondent's teaching credentials "at this time" reasonably infers that the District's determination to initiate Respondent's dismissal was erroneous. Having considered the written arguments, the ALJ has denied the RJN, because the CTC's determination to close its investigation without bringing any disciplinary action does not have a tendency in reason "to prove or disprove any disputed fact that is of consequence to the determination" of this administrative action. (Evid. Code, §§ 210 & 350.)

1b. The inference proffered by Respondent requires proof of many facts that have not been established by the record in this proceeding, not least of which is the different jurisdictions of separate government agencies. The CTC enforces and administers the law with regard to teachers' credential. The CTC's letter is a statement about its action, or non-action, regarding Respondent's teaching credentials. This action has no binding effect on the Commission in this proceeding. The CTC's Committee did not conduct a hearing on the merits or apply the standard of proof used in this proceeding. The CTC's letter does not give the reasons for the Committee's determination. The CTC's letter does not describe the evidence the Committee reviewed. The mere fact that the CTC, following its review of unspecified material, determined not to initiate disciplinary proceedings "at this time" has no direct or indirect connection with a determination of the disputed facts of this administrative proceeding. In sum, the CTC's determination is not probative of the matters at issue.

### *Burden of Proof*

2. The District has the burden of proof. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

### *Definitions*

3. "Immoral conduct," of which Respondent has been accused, has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is willful, flagrant, or shameless, or conduct showing moral indifference to the opinions of respectable members of the community, or as an inconsiderate attitude toward good order and the public welfare. (*Board of Education v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).)

4. "Evident unfitness for service," within the meaning of Education Code section 44932, subdivision (a)(5), requires that the unfitness for service be attributable to a defect or inadequacy in temperament, presumably not remediable merely on receipt of notice that the teacher's conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School District v. Commission on Professional Competence* (Zuber) (1992) 2 Cal.App.4th 1429, 1444-1445.)

#### *Cause for Dismissal*

5. Cause for dismissal exists under Education Code section 44932, subdivisions (a)(1) and (a)(5),<sup>5</sup> for immoral or unprofessional conduct, and evident unfitness for service. The District has established that Respondent has engaged in immoral conduct as this term is defined by *Weiland*. Respondent's volatile and violent natures, and her indifference to the consequences of her actions, indicate a defect or inadequacy of temperament. Further, her violent action is sufficient to establish her "unfitness to teach" under the *Morrison* principle.

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<sup>5</sup> The District has alleged five grounds for discipline under Education Code section 44932, which provides, in pertinent part, as follows:

(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

[¶] . . . [¶]

(4) Unsatisfactory performance.

(5) Evident unfitness for service.

[¶] . . . [¶]

(7) 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 or her.

*Other Matters*

6. Cause for dismissal does not exist under Education Code section 44932, subdivisions (a)(4) and (a)(7). Although Respondent was unwilling to obey the reasonable policies and procedures of the District while she was assigned to LD7, and her behaviors at times were disruptive and intimidating to other employees, these behaviors were not sufficiently serious to establish her "unfitness to teach" under the *Morrison* principle, and are insufficient by themselves to warrant her dismissal. Similarly, the District has failed to establish cause for dismissal under Education Code section 44939, for willful refusal to perform regular assignments without reasonable cause. Respondent's failure to act appropriately at LD7, however, is an aggravating factor, because it tends to show that Respondent has a temperamental defect. Further, Respondent's behaviors at LD7 indicate a lack of rehabilitation, which makes her unsuitable for return to the classroom.


7. In sum, Respondent's violent behavior significantly affected the adults and children who were present on the evening of the incident. Almost all of them were District employees or students. Respondent by physical force inflicted serious bodily harm upon Bishop, and caused emotional trauma to her children, who have continued to suffer nightmares and to engage in acting-out behaviors. The altercation with Bishop, although off-campus, indicates that Respondent cannot be expected to use good judgment and self-control in extreme circumstances involving conflicts. Respondent's behavior at LD7 and her lack of remorse further show that her conduct on August 16, 2010, was not an isolated event.

8. Dismissal of Respondent from her position as a special education teacher and bridge coordinator is warranted.

ORDER

The Accusation and Statement of Charges are sustained. Respondent Lakiesha Milner is dismissed from her position as a permanent certificated employee of the Los Angeles Unified School District.

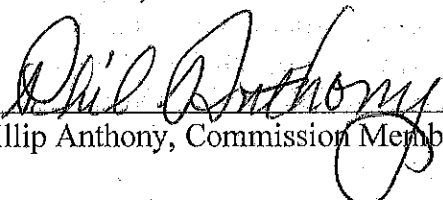
Dated: June 11, 2013

  
Mark Harman, Commission Member  
Administrative Law Judge

Dated: June \_\_\_\_, 2013

\_\_\_\_\_  
Deanna Clark, Commission Member

Dated: June 6, 2013

  
Phillip Anthony, Commission Member

6. Cause for dismissal does not exist under Education Code section 44932, subdivisions (a)(4) and (a)(7). Although Respondent was unwilling to obey the reasonable policies and procedures of the District while she was assigned to LD7, and her behaviors at times were disruptive and intimidating to other employees, these behaviors were not sufficiently serious to establish her "unfitness to teach" under the *Morrison* principle, and are insufficient by themselves to warrant her dismissal. Similarly, the District has failed to establish cause for dismissal under Education Code section 44939, for willful refusal to perform regular assignments without reasonable cause. Respondent's failure to act appropriately at LD7, however, is an aggravating factor, because it tends to show that Respondent has a temperamental defect. Further, Respondent's behaviors at LD7 indicate a lack of rehabilitation, which makes her unsuitable for return to the classroom.

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Dated: June \_\_\_\_, 2013

\_\_\_\_\_  
Mark Harman, Commission Member  
Administrative Law Judge

Dated: June 08, 2013

\_\_\_\_\_  
  
Deanna Clark, Commission Member

Dated: June \_\_\_\_, 2013

\_\_\_\_\_  
Phillip Anthony, Commission Member