

BEFORE A COMMISSION ON PROFESSIONAL COMPETENCE  
FRESNO UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of:

BARBARA FLORES,

A Permanent Certificated Employee,

Respondent.

OAH No. 2013030274

**DECISION**

This matter was heard before a Commission on Professional Competence (CPC) of the Fresno Unified School District in Fresno, California, on December 16, 17, 18, and 20, 2013. The CPC members were Kathryn Blackburn, Robert Jackson, and Karen J. Brandt, Administrative Law Judge, Office of Administrative Hearings.

David A. Moreno, Attorney at Law, represented Fresno Unified School District (District).

James F. McBrearty, Attorney at Law, represented Barbara Flores (respondent), who was present for the entire hearing.

This matter was submitted for decision when the CPC concluded its deliberations on December 23, 2013.

**SUMMARY**

Respondent is an elementary school teacher. The District seeks to terminate her employment due to unsatisfactory performance. The District established that, after evaluating respondent and giving her adequate assistance and opportunity to improve and address the charges against her, she failed to bring her performance up to a satisfactory level. The District's dismissal of respondent is therefore sustained.

## FACTUAL FINDINGS

1. Respondent is a permanent certificated employee in the District. She has a multiple subject teaching credential that authorizes her to teach grades kindergarten through eight. Since 1988, she has worked for the District as an elementary school teacher. From 1988 through 2008, respondent was rated as meeting expectations on all her performance evaluations.

### *Evaluations and Standards*

2. The Collective Bargaining Agreement between the District and the Fresno Teachers Association relating to the evaluation and professional standards to be used when the District evaluates a teacher stated:

The parties endorse a high level of professional preparation and competence for all members of the bargaining unit. Attaining and maintaining high professional standards requires a joint commitment to provide the assistance, support, and proper teaching environment needed for the success of the bargaining unit member. Standards shall be clear and consistent. Beginning with the 2000-2001 school year, the parties shall use the California Standards for the Teaching Profession (CSTP), or otherwise mutually agreed-to modifications of the CSTP. A jointly developed continuum of professional standards, based on the CSTP, will serve as a guide for reflective practice, continuous improvement, and evaluation.

3. At all times relevant to the charges in the Accusation, the Collective Bargaining Agreement defined the ratings to be used when the District evaluated a teacher as follows:

“Meets Standards-Proficient” means that the evaluatee has through observation of his/her professional practices, met the standards in the CSTP in a proficient<sup>1</sup> manner.

(<sup>1</sup> “Proficient,” from Webster’s New Collegiate Dictionary: well advanced in an art, occupation, or branch of knowledge; having or manifesting the knowledge and experience needed for success in a trade or profession.)

“Meets Standards-Minimally” means that the evaluatee has, through observation of his/her professional practices, met the standards in the CSTP at a level of basic competency, as

opposed to proficiency defined above. As such, the evaluatee must improve his/her standards of professional practice in order to achieve a level of proficiency.

“Does Not Meet Standards” means that the evaluatee has not met standards of professional practice as specified in the agreed-upon CSTP standards as determined by the direct observation of professional practices.

4. The six CSTP Standards in effect at all times relevant in this matter stated:<sup>1</sup>

- Standard I Engaging and supporting all students in learning.
- Standard II Creating and maintaining effective environments for learning.
- Standard III Understanding and organizing subject matter knowledge.
- Standard IV Planning instruction and designing learning experiences for all.
- Standard V Assessing student learning.
- Standard VI Developing as a professional educator.

5. For each of these six CSTP Standards, the District developed a continuum of professional standards upon which teachers were evaluated.

6. In or about 2008, the District implemented Skillful Leader, a training program for District administrators, including principals and vice principals. One of the goals of this program was to help principals and vice principals provide exact, data-based feedback for teachers to use to improve their instruction delivery. As part of this program, principals and vice principals observed teachers in the classroom, took literal notes of what the teachers and students said and did, and provided recommendations to teachers based upon the observations and literal notes.

7. Under the Skillful Leader program, the District began conducting more evaluations and lesson observations of teachers. For respondent, beginning in the 2009/10 school year, the District conducted two annual evaluations: the first, a preliminary evaluation

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<sup>1</sup> In its forms and documents, the District used both Roman and Arabic numerals to number the CSTP Standards. This decision will use Roman numerals.

at the end of the first semester, and the second, a summary evaluation at the end of the second semester. The District also observed respondent's classroom instruction on a more regular basis during pre-arranged formal observations and on multiple other occasions during classroom observations and walk-throughs.

8. As detailed below, during these evaluations and observations, respondent's principal or vice principal noted serious concerns with respondent's instruction delivery, which generally included, but was not limited to, that: (1) her instruction did not align with her teaching objectives; (2) she did not adequately demonstrate or model the lessons she was teaching to ensure her students would understand; (3) she appeared to lack sufficient knowledge of the curriculum content; (4) she did not adequately check for student understanding; (5) she did not adjust her instruction when her students indicated they were confused; (6) her lessons did not contain the required rigor for her students' grade level; and (7) she released her students for independent practice too soon after direct instruction without working with them to ensure that they understood what they were supposed to do. As described in the Findings, the District repeatedly shared these concerns with respondent and offered her assistance from instructional and peer coaches. Respondent did not, however, sufficiently improve her instruction delivery to raise her performance to a satisfactory level.

#### *Lesson Observations and Performance Evaluations – 2009/10 and 2010/11 School Years*

9. Larry Petersen worked for the District for 33 years, until his retirement in 2010. For the last three years before he retired, he was the principal at Figarden Elementary School (Figarden).

10. In the 2009/10 school year, respondent was a third grade teacher at Figarden. Mr. Petersen was respondent's supervisor.

11. October 13, 2009 Preliminary Conference. On October 13, 2009, Mr. Petersen and respondent met for a preliminary conference and signed a Certificated Preliminary Conference form. As set forth on the form, the purpose of the preliminary conference was to "reach agreement on an evaluation plan, which shall include the individual plan for advancement of professional practice by the bargaining unit member and the number of types of observations by the evaluator." The form listed the six CSTP Standards. Standards IV and VI were checked. The form noted that there would be two observations of performance by the principal. Handwritten in the box for teacher goals related to the selected standards was:

4.3 Developing and sequencing instructional activities and materials for student learning

4.5 Modifying instructional plans to adjust for student needs

## 6.1 Reflecting on teaching practice and planning professional development

Handwritten in the box for "Implementation Plan (Steps for improvement of selected teacher goals)" was:

Using class data and curriculum to plan lessons.  
Attend inservices on best teacher practices and implement them in class.

12. Mr. Peterson testified that the Preliminary Conference form was used at the beginning of the evaluation process to determine the priorities in that process. As Mr. Petersen explained, the completed form "sets the agenda." According to Mr. Petersen, he and respondent jointly selected the two CSTP Standards identified for primary consideration on respondent's October 13, 2009 form. Mr. Petersen recommended that respondent focus on Standard IV because respondent's performance in the classroom and her delivery of instruction were areas of concern, as reflected in Standard 4.3. Mr. Petersen's concern regarding Standard 4.5 related to the need for differentiation in respondent's instruction. As Mr. Petersen explained, respondent had some students whose proficiency in English was limited. He wanted respondent to be able to modify her instructional plans to accommodate all her students' needs. Mr. Petersen was concerned about respondent's instruction delivery because his review of the standardized test scores indicated that the scores of respondent's students showed the lowest rate of growth when compared to the other three third grade classes.<sup>2</sup>

13. November 10, 2009 Lesson Observation. On November 10, 2009, Mr. Petersen observed a math lesson delivered by respondent and completed a Lesson Observation Form. Mr. Petersen explained that the purpose of the lesson observation was to give respondent feedback on the CSTP Standards and how she was doing on the objectives listed on the October 13, 2009 Certificated Preliminary Conference form. During the lesson observation, Mr. Petersen took literal notes of respondent's math lesson.

14. On the November 10, 2009 Lesson Observation Form, Mr. Petersen rated respondent as "Meets Standards-Proficient" on all subsections of the first five of the six CSTP Standards, except four. He noted that he did not observe two subsections: III-5 "Uses materials, resources and technologies to make subject matter accessible to students," and IV-5 "Modifies instructional plans to adjust for student needs." He rated respondent as "Meets Standards-Minimally" on two subsections: I-4 "Engages students in problem solving, critical thinking and other activities that make subject matter meaningful," and II-5 "Plans and implements classroom procedures and routines that support learning." He noted that he did not observe any of the subsections under Standard VI.

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<sup>2</sup> The District did not submit any evidence that showed the tests scores of respondent's students as compared to other students.

(a) With regard to Standard I, Mr. Petersen noted that “[t]eacher talk consumed first 30 minutes of lesson,” except when a student sharpened her pencil, another needed to find his page, and three students gave “single response answers.” Mr. Petersen suggested that respondent “[m]ight work in use of elbow partners, more checking for understanding.”

(b) With regard to Standard II, Mr. Petersen noted that “[p]rocedures appeared to be inconsistently implemented. Teacher referred to: question, operation, process, several times but no indication of it charted in the room. POD<sup>3</sup>/objective was pasted in the journals but only for the day of the lesson observed. Good strategies should be consistently used throughout instructional planning.”

(c) With regard to Standard III, Mr. Petersen noted that the lesson “followed MLD.”<sup>4</sup> He also noted that respondent “demonstrated modeling, guided practice, consensus with presentation.” He noted further that, during closure, respondent “reread what the students learned.” He stated that, “[i]f learning is to be internalized what strategies will help to get the closure from the students themselves.”

(d) With regard to Standard IV, Mr. Petersen noted, “not observed – discuss universal access,” and “Standard for student neatness and numbering was inconsistent.”

15. At hearing, Mr. Petersen stated that the math lesson he observed took approximately 45 minutes to one hour. He thought that 30 minutes of teacher instruction was “excessive,” and that a maximum of 10 minutes would have been what he expected to have a “better balance” of student interaction in the lesson and more checking for student understanding. He commented on a student sharpening her pencil because he thought that respondent should have had procedures in place to address this “routine” conduct so that it would not interrupt a lesson. Mr. Petersen testified that, when he gave respondent ratings of “Meets Standards-Minimally,” it indicated that her performance required improvement in those areas.

16. March 10, 2010 Preliminary Evaluation. On March 12, 2010, respondent and Mr. Petersen signed a Preliminary Evaluation dated March 10, 2010. The Preliminary Evaluation was prepared by Mr. Petersen and rated respondent as “Meets Standards-Proficient” on all six CSTP Standards. The Preliminary Evaluation indicated that it was based on the following data sources: (1) classroom visitations on October 22 and November 20, 2009; (2) formal observation on November 10, 2009; and (3) “BBF journal review.”<sup>5</sup>

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<sup>3</sup> “POD” stands for problem of the day.

<sup>4</sup> “MLD” stands for math lesson design.

<sup>5</sup> “BBF” journals were “Beyond the Basic Facts” journals kept by the students.

The classroom visitations were unannounced, while the formal observation was preplanned with respondent.

(a) With regard to Standard I, Mr. Petersen found that respondent used “a variety of instructional techniques in order to support learner styles.” He noted that respondent modeled “tally marks, pictorial representations, journals and verbal drill and journaling.” He also noted that students “were allowed to work with elbow partners and small groups for support,” and that providing “multiple ways to input information increases student learning.”

(b) With regard to Standard II, Mr. Petersen noted that respondent “demonstrated engagement strategies by asking many higher level questions of students,” and that respondent’s questions “encouraged mental engagement yet some students were off task when not following procedures for bathrooming, pencils and following along with the materials.”

(c) With regard to Standard III, Mr. Petersen noted that respondent’s “lesson indicated that she has been utilizing lesson design format, MLD,” that students “utilized journals in an organized formatted way,” that respondent “was clear on objective and students knew what they were to be learning,” that students “participated in consensus building and presentation portions of lesson design,” and that respondent “incorporated a variety of activities during guided practice.”

(d) With regard to Standard IV, Mr. Petersen noted that an “increase in posted charts and didactic materials is indicated to help draw on student’s [sic] past knowledge.” He also noted that while student “work and commercially prepared materials [were] posted in the room,” there was “an absence of learning charts and teaching bulletin boards posted.” He noted further that teaching “time and reviews [could] be reduced and positively impact learning by posting important learning concepts in the classroom for reference.”

17. At hearing, Mr. Petersen recognized that respondent had volunteered to teach students who were English Language Learners (ELL) during two of the three years he was principal. He also recognized that respondent had volunteered to attend the Math Academy offered by the District, and that math was an area in which respondent had “expertise.” According to Mr. Petersen, respondent was “always helpful and cooperative,” but at times he was concerned about her “motivation.” He was not concerned about respondent’s ability, but he thought that, “from time to time,” her implementation was “a little cloudy.”

18. May 10, 2010 Summary Evaluation. Lisa Shipman was the Vice Principal of Figarden during the 2009/10 and 2010/11 school years. On May 10, 2010, respondent received a Summary Evaluation prepared by Ms. Shipman, the designated evaluator, and signed by Mr. Petersen, respondent’s primary evaluator. The Summary Evaluation indicated that the data sources were: (1) informal observations on October 22, November 20, and

December 3, 2009, and January 13, February 12, March 17, and April 26, 28, and 30, 2010; (2) formal observations on November 10, 2009, and April 30, 2010; (3) BBF journals on October 5, 2009, and April 29, 2010; and (4) reflective conversations on December 4, 2009, and March 17, 2010.

19. In the May 10, 2010 Summary Evaluation, Ms. Shipman rated respondent as Meets Standards-Proficient on Standards I, IV, and V. She rated respondent as Meets Standards-Minimally on Standards II, III, and VI.

(a) With regard to Standard I, Ms. Shipman found that respondent "connects students' prior knowledge, life experience, and interests with learning goals..... [As a] result students are likely to connect previous lessons with current activities leading to greater understanding of the standards covered in class." But she also found that respondent "minimally uses a variety of instructional strategies and resources to respond to students' diverse needs," and that, as a result "students are less likely to learn or be able to apply the information presented during the lesson." Ms. Shipman noted that "[t]eacher talk took up more than 30 minutes of [respondent's] lesson during 2 formal observations," and that "[d]uring several walk-through visits [respondent] has been in the back of the room, on the computer while students work independently."

(b) With regard to Standard II, Ms. Shipman found that respondent "promotes social development and group responsibility," and that, "as a result students are more likely to feel comfortable working in both pairs and small group collaboratively which can lead to deeper understanding of content." In addition, Ms. Shipman found that respondent was "working towards using instructional time wisely." But Ms. Shipman also noted that: (1) during a walk-through visit to the library, respondent was observed "raising her voice to her class" and "using her instructional time reminding students to stop talking"; (2) during "several walk-through visits students have been observed off task and not listening and [respondent] has had to take her instructional time to re-direct those students"; (3) during a "formal observation on 4/30 [respondent] did not have all of the instructional materials prepped for her lesson, therefore, students had to wait in their groups for up to 4 minutes and 40 seconds for their colored tiles to begin their probability experiment"; and (4) "during a walk through lesson on 4/28 [respondent] talked over the students that were conducting side conversations and then had to take additional time to get them to stop talking." Ms. Shipman concluded that, "as a result valuable time is lost and students are missing out on instruction."

(c) With regard to Standard III, Ms. Shipman described how respondent organized the "curriculum to support student understanding of subject matter." Ms. Shipman noted that respondent: (1) conducted "[d]aily review of previous day's topic"; (2) built in "time for students to work with partners, allowing for deeper understanding of the objective"; (3) "used core curriculum and/or supplemental



materials to heighten student understanding”; (4) posted “[c]lear objectives” and “reviewed to ensure that students know what they are learning”; and (5) gave instructions that were “clear and students knew what they were going to be learning and what the expected outcome would be.” But Ms. Shipman also noted that: (1) a review of students’ BBF journals “reflected inconsistent form and lengthy gaps in usage”; (2) lessons observed “do not show that the MLD format is being consistently utilized”; (3) although respondent had “made progress in getting students more actively engaged in group activities,” she “was in the back of the room or on the computer and was unable to see or hear what conversations her students were engaged in”; and (4) “[d]ata indicate[d] that respondent’s students are not working to the same level of proficiency as the other students in 3rd grade.” Ms. Shipman concluded that, “[a]s a result, students do not always benefit from consistent structure and may not perform to the level of achievement they are capable of.”

(d) With regard to Standard IV, Ms. Shipman noted that respondent “modified instructional plans to adjust for student needs.” As a result, “students who did not understand initially are more likely to close the knowledge gap and access the information to complete further analysis.”

(e) With regard to Standard V, Ms. Shipman found that respondent “involved and guided all students in informally assessing their own learning.” As a result, “students are more likely to make connections in future lessons.” In addition, Ms. Shipman found that respondent used “results from multiple assessments to guide her instruction.”

(f) With regard to Standard VI, Ms. Shipman found that respondent “should continue to work with colleagues to improve her professional practice as well as establish professional goals and pursue opportunities to grow professionally.” Ms. Shipman noted that the “required coaching cycle has not yet been completed.” Ms. Shipman also noted that respondent “regularly communicates with families and peers in a timely manner” and that her “participation in site leadership and grade level meetings continues to be collaborative and professional.” Ms. Shipman stated that “[o]ngoing parent communication needs [to be] consistent and tie[d] to student learning goals,” and that “[c]ommunication with students who are not meeting learning goals needs to be documented, ... evidenced by weekly communications folders as well as Individual Student Learning Plans.”

20. At hearing, Ms. Shipman testified that she discussed the May 10, 2010 Summary Evaluation with both Mr. Petersen and respondent. She told respondent that respondent was on the “borderline” of not meeting standards. She testified that a “site coach” (also called an “instructional coach”) was available to Figarden teachers to help plan lessons, provide feedback, facilitate a lesson, and give on-the-spot assistance. According to Ms. Shipman, respondent did not complete a full “coaching cycle” with the site coach. A “coaching cycle” consisted of the site coach preplanning a lesson and modeling it for a teacher, and then the teacher preplanning a lesson, delivering it, and obtaining feedback from

the site coach. According to Ms. Shipman, respondent did not teach a lesson for the site coach and obtain feedback on it. Respondent asserted that, contrary to Ms. Shipman's testimony, she completed the coaching cycle with the instructional coach.

21. At the start of the 2010/11 school year, Michiko English was the assigned principal of Figarden.

22. January 18, 2011 Preliminary Evaluation. On January 21, 2011, respondent, Ms. Shipman, and Ms. English signed a Preliminary Evaluation dated January 18, 2011. This Preliminary Evaluation was prepared by Ms. Shipman. It was based upon: (1) informal observations on August 25, September 10, October 12 and 20, November 4 and 9, and December 3, 2010; (2) a formal observation on December 10, 2010; (3) a BBF journal check on December 17, 2010; (4) reflective conversations on December 9 and 10, 2010; (5) walk-through visits on August 16, 19, 23, and 27, September 1, 13, 16, 18, 20, 22, 27, and 29, and October 7, 18, 26, 27, and 29, 2010; and (6) email correspondence about lessons observed dated August 26, September 10 and 20, October 12, and December 3, 2010.

23. In the January 18, 2011 Preliminary Evaluation, Ms. Shipman rated respondent as Meets Standard-Proficient on Standards I, III, V, and VI. She rated respondent as Meets Standard-Minimally on Standards II and IV.

(a) On Standard I, Ms. Shipman found that respondent "connects students' prior knowledge, life experience, and interests with learning goals" and that, as a result, "students are likely to connect previous lessons with current activities leading to greater understanding of the standards covered in class." Ms. Shipman also found that respondent "engages students in a variety of ways that promote student learning" and that, as a result, "students are given multiple ways to learn the content."

(b) On Standard II, Ms. Shipman found that respondent "struggles to pace lessons appropriate for her grade level and is working to establish consistent classroom routines." Ms. Shipman noted that: (1) respondent "had objectives written and consistently reviewed her objectives for the day"; (2) during a walk-through visit on October 10, respondent had "her students coloring a Fresno Emblem"; (3) during walk-through visits, "students were off task and not listening and instructional time was used to re-direct these students"; and (4) during observations on September 20, October 12 and 20, November 9, and December 10, "math lessons went over 70 minutes with students not able to complete independent practice." Ms. Shipman concluded that, as a result, "students are missing out on instructional opportunities."

(c) On Standard III, Ms. Shipman found that respondent "continues to work towards organizing curriculum to support student understanding of subject matter." She noted that: (1) there was "[c]onsistent daily review of previous day's topic"; (2) respondent "used core curriculum and/or supplemental materials to

heighten students understanding”; (3) “MLD and BBF journals reflect consistent form however show a number of days that indicate the use of math academy lessons took the place of MLD and or BBF”; (4) the observed lessons did “not show that MLD format is being consistently utilized to the stage of consensus and presentation”; (5) respondent showed that she had “made progress in getting students more actively engaged [in] group activities through the use of grouping”; and (6) respondent used “Math Academy Strategies in conjunction with Math Lesson Design.” Ms. Shipman concluded that, as a result, “students may not always have a consistent structure and not perform to the level of achievement they are capable of.”

(d) On Standard IV, Ms. Shipman found that respondent was “working towards developing and sequencing long-term and short-term instructional plans to support student learning.” Ms. Shipman noted, among other things, that: (1) on September 22, although respondent noticed that a number of students did not understand the lesson, she did not modify it; (2) on October 22, when students had finished the independent practice problems, she asked them to wait patiently, “with no other direction or activity assigned”; and (3) during visits on September 10 and 22, “when closing the lessons, students were not given the opportunity to reflect upon their learning.” Ms. Shipman concluded that, as a result, “students who did not understand initially may not be able to access the information to complete further analysis without additional framing.”

(e) On Standard V, Ms. Shipman found that respondent used “results from multiple assessments to guide her instruction.” Ms. Shipman concluded that, as a result, “student achievement receive [*sic*] a more prescriptive academic program.”

(f) On Standard VI, Ms. Shipman found that respondent “should continue to work with colleagues to improve her professional practice as well as establish professional goals and pursue opportunities to grow professionally.” Ms. Shipman noted that: (1) respondent “regularly communicates with families and peers in a timely manner” and that her participation in grade level meetings was “collaborative and professional”; (2) at site meetings, respondent engaged in “professional collaboration with the grade level”; (3) respondent’s “[c]ommunication with students who are not meeting learning goals [was] documented, as evidenced by Individual Student Learning Plans.” Ms. Shipman concluded that, as a result, “families are given opportunities to be engaged in supporting student learning and grade level staff is open to cooperatively engage in grade level planning.”

24. May 6, 2011 Summary Evaluation. Ms. Shipman prepared and signed a Summary Evaluation dated May 6, 2011. On May 9, 2011, respondent and Ms. English signed the Summary Evaluation. The Summary Evaluation was based upon: (1) informal observations on August 25, September 10, October 12 and 20, November 4 and 9, and December 3, 2010, and March 14, and April 4 and 7, 2011; (2) formal observations on December 10, 2010, and March 30, and April 4 and 28, 2011; (3) a BBF journal check on December 17, 2010; (4) reflective conversations on December 9 and 10, 2010, and March 24,

and April 12, 2011; (5) walk-through visits on August 16, 19, 23, and 27, September 1, 13, 16, 18, 20, 22, 27, and 29, October 7, 18, 26, 27, and 29, 2010, and February 14 and 28, and March 17 and 31, 2011; and (6) email correspondence about lessons observed dated August 26, September 10 and 20, October 12, and December 3, 2010.

25. In the May 6, 2011 Summary Evaluating, Ms. Shipman rated respondent as Meets Standards-Proficient on Standards V and VI, Meets Standards-Minimally on Standards I and III, and Does Not Meet Standards on Standards II and IV.

(a) With regard to Standard I, Ms. Shipman found that respondent “connects students’ prior knowledge, life experience, and interests with learning goals” and, as a result, “students are likely to connect previous lessons with current activities leading to a greater understanding of the standards covered in class.” But Ms. Shipman also found that respondent “struggles to engage students in a variety of ways that promote student learning.” Ms. Shipman noted that respondent “frequently rel[ie]d on lecturing about subject matter without requiring any types of note taking or activities to reinforce the information.” Ms. Shipman concluded that, as a result, “students are less likely to have maximum access to the content.” Ms. Shipman also found that, during multiple observed lessons, respondent “had her students working with partners and sharing their answers and process for getting their answers,” but “students were having side conversations and drawing.” Ms. Shipman concluded that, as a result, “students are given multiple ways to learn the content but are at times distracted and not able to engage in the lesson.”

(b) With regard to Standard II, Ms. Shipman found that respondent “struggles to pace lessons appropriate for her grade level and is working to establish consistent classroom routines.” Ms. Shipman noted, among other things, that: (1) “[d]uring multiple walkthrough visitations objectives that were written on the board were from the prior week and no new objective was present for the students to review”; (2) “students were observed off task and not listening and instructional time was used to re-direct these students”; (3) on five occasions, “math lessons went over 70 minutes with students not able to complete independent practice, consensus, or presentation”; and (4) during one lesson, “students transitioned from a language arts activity to math with no closure activity.” Ms. Shipman concluded that respondent “struggles to maintain student engagement and focus throughout the lesson.” In addition, Ms. Shipman noted that: (1) during one lesson, respondent “stopped her instruction mid-sentence five times and addressed three or four students directly for their off task behavior”; (2) during another lesson, “students were re-directed 17 times during 9 minutes of her instruction”; and (3) “[d]uring multiple lessons, ... students continued to talk through instruction and or teacher directions.” Ms. Shipman concluded that, as a result, “students are missing out on targeted instruction.”

(c) With regard to Standard III, Ms. Shipman noted that respondent “continues to work towards organizing curriculum to support student understanding

of subject matter. Ms. Shipman noted that during a math lesson on April 28, students "were not able to answer teacher questions" and that during lessons on April 4 and 28, "students were confused." But Ms. Shipman also noted that there was "[c]onsistent daily review of previous day's topic," and that respondent had "made progress in getting students more actively engaged [in] group activities through the use of grouping." Ms. Shipman stated that students "may not always perform to the level of achievement they are capable of." But she also stated that, "Through the use [of] organized curriculum, multiple resources and materials, [respondent] ensure all students understand subject matter." In addition, she stated that, "During most walkthrough visitations as well as informal and formal observations, ... [respondent] incorporated the use of available technology such as the ELMO to enable students to be a part of the lesson and see the curriculum in a new way." Ms. Shipman concluded that, as a result, "students have opportunities both to master fundamental skills and to challenge themselves to apply new learning to a variety of increasingly rigorous academic tasks."

(d) With regard to Standard IV, Ms. Shipman found that respondent was "working towards adapting instructional plans and curricular material to meet the assessed learning needs of all students." Ms. Shipman noted that on five classroom visits, "when closing the lessons, students were not given the opportunity to reflect upon their learning." Ms. Shipman concluded that "students who did not understand initially may not be able to access the information to complete further analysis without additional framing."

(e) With regard to Standard V, Ms. Shipman found that respondent "uses results from multiple assessments to guide her instruction." As a result, "student achievement receive a more prescriptive academic program." Ms. Shipman also found that respondent "involved and guided all students in assessing their learning." As a result, "students are more likely to monitor their understanding and ability during independent math activity."

(f) With regard to Standard VI, Ms. Shipman found that respondent "should continue to work with colleagues to improve her professional practice as well as establish professional goals and pursue opportunities to grow professionally." She also found that respondent "regularly communicate[d] with families and peers in a timely manner," "engage[d] in professional collaboration with the grade level," and documented "[c]ommunication with students who [were] not meeting learning goals." As a result, "families are given opportunities to be engaged in supporting student learning and grade level staff is open to cooperatively engage in grade level planning."

26. At hearing, Ms. Shipman testified that she was concerned with the low level of rigor in respondent's classes. She was also concerned that respondent was lecturing too much and students were not given sufficient time to work independently or reflect upon their learning. And the number of times respondent had to redirect her students to get them to pay

attention took away from valuable teaching time. In addition, Ms. Shipman was concerned that respondent was not able to modify her instruction or switch her teaching method when students did not understand what respondent was teaching, and did not appear to have planned ahead to be able to address these challenges when they arose. Respondent appeared to be “thrown off” when students asked questions, and did not have sufficient ways to assess whether students understood the material. According to Ms. Shipman, she met with respondent and emailed her on multiple occasions to address these issues. Before the formal observations, she gave respondent suggestions to implement in order to address her concerns. But Ms. Shipman did not observe respondent implementing her suggestions.

#### *Change from Third Grade to Sixth Grade – 2011/12 School Year*

27. At the end of the 2010/11 school year, the teachers at Figarden were asked if they were willing to change grade levels or accept combination classes for the 2011/12 school years in light of changes in student enrollment numbers. Respondent thought the change might be beneficial for her and notified the school of her willingness to change.

28. Ms. English contacted respondent and told her that she would be switching from the third grade to the sixth grade for 2011/12 school year. Ms. English believed that respondent’s performance in the third grade had become “stagnant,” and that the change would “reinvigorate” her.

29. Respondent thought that the change from third to sixth grade was “quite a large jump” but “not uncommon,” and recognized that she had changed grade levels before. But respondent expressed her reluctance to the change to Ms. English given her recent evaluations. Respondent told Ms. English that she was concerned that being able to both learn a new curriculum and improve her teaching at the same time would be difficult. Ms. English told respondent that given her ongoing training in Math Academy, her content knowledge, and the support she had from family members, including her sister who was a sixth grade teacher in the District, respondent would be able to teach the sixth grade math content and help the other sixth grade teachers. Notwithstanding respondent’s initial reluctance, Ms. English made the final decision to move respondent to the sixth grade for the 2011/2012 school year.

30. At hearing, Ms. English recognized that respondent was initially not “happy” with the move to sixth grade, but accepted it as a “professional.”

#### *Assistance from Instructional Coaches During 2011/12 School Year*

31. Assistance from Gayle Spencer. In the 2011/12 school year, Gayle Spencer was employed by the District as a Beginning Teacher Support and Assessment (BTSA) provider. She also worked with veteran teachers, providing them with instructional support.

32. Ms. Spencer was respondent's teacher development coach during the 2011/12 school year. She provided support to respondent from September through May. Using the areas for growth specified in the Teacher Development Plans served on respondent (see Findings below), Ms. Spencer observed respondent teaching her class for about one hour, two to three times a month. Ms. Spencer made notes and provided suggestions in italics about what she observed during each class session. The purpose of Ms. Spencer's observations was to offer respondent suggestions to improve her instructional practices. After observing her classes, Ms. Spencer debriefed with respondent. Ms. Spencer did not help respondent compose her lesson plans, but she gave respondent suggestions about respondent's lessons based upon her observations.

33. Twice during the first semester and three times during the second semester, Ms. Spencer met with respondent and Ms. English to discuss what Ms. Spencer had observed. Ms. Spencer would provide written summaries of the discussions and send the summaries to Ms. English and respondent. For each semester, Ms. Spencer also noted on an observation template when she observed respondent providing instruction that fell within the areas identified for growth on respondent's Teacher Development Plans. Ms. Spencer did not evaluate the quality of respondent's teaching on these observation templates, but merely noted if she observed any instruction that fell within the areas identified for growth.

34. Ms. Spencer testified that, although it was not her job to evaluate respondent's performance, she saw evidence of improvement. According to Ms. Spencer, respondent tried "very hard to do what was asked of her."

35. Assistance from Paula Zamorski. Paula Zamorski is an Instructional Coach in the District. During the 2011/12 school year, Ms. Zamorski worked with respondent to assist her to implement new teaching strategies and to help her improve her instructional practices. Ms. Zamorski focused primarily on Write Tools, a new program the District had implemented to teach students to write. To assist respondent, Ms. Zamorski demonstrated lessons to teach a particular skill. Ms. Zamorski gave respondent teaching charts and PowerPoint presentations that Ms. Zamorski had created. Ms. Zamorski helped plan lessons with respondent a "couple of times." Ms. Zamorski and respondent "talked through" lesson plans and discussed what respondent wanted students to accomplish. Ms. Zamorski worked with respondent on "chunking" her instruction into smaller pieces.<sup>6</sup>

36. Ms. Zamorski visited one of respondent's classes. She thought respondent did a "great" job getting an RSP student,<sup>7</sup> who had not previously spoken in class, to speak. Ms.

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<sup>6</sup> At hearing, the term "chunking" was defined as dividing a lesson up into subparts. According to Ms. English, in order to ensure that students could absorb and understand a lesson, it was often helpful for a teacher to divide it up into subparts, and not try to teach "too much" at once.

<sup>7</sup> "RSP" stands for resource specialist program.

Zamorski testified that, although she did not visit respondent's class "a lot" and was not there to evaluate respondent's instructional practices, she did not notice anything "glaring" or "that bad" in respondent's instructional practices.

*Lesson Observations, Teacher Development Plans, and Performance Evaluations – 2011/12 School Year*

37. November 17, 2011 Lesson Observation. On November 17, 2011, Ms. English observed a sixth grade math class taught by respondent, and completed a Lesson Observation Form that rated respondent on each subpart of the CSTP Standards. In the Comments section after each CSTP Standard, she included specific and detailed examples from respondent's teaching to support her ratings.

On the November 17, 2011 Lesson Observation Form, Ms. English gave respondent Meets Standards-Minimally ratings on three of the six subparts of Standard I, two of the seven subparts of Standard II, three of the six subparts of Standard III, four of the five subparts of Standard IV, and one of the seven subparts of Standard V.

She rated respondent as Does Not Meet Standards on Standard II-7. "Using instructional time to optimize learning"; Standard III-2. "Applying knowledge to student development and proficiencies to ensure student understanding of subject matter"; and Standard III-4. "Utilizing instructional strategies that are appropriate to the subject matter." With regard to Standard III, Ms. English noted that respondent had not explained to her students the "math behind" a certain problem, and that "[n]o more than 10 problems were completed by the teacher and the students in an approximate 2 hour block of time."

38. December 7, 2011 Lesson Observation. On December 7, 2011, Ms. English observed a sixth grade math class taught by respondent, and completed a Lesson Observation Form that rated respondent on each subpart of the CSTP Standards. In the Comments section after each CSTP Standard, she included specific and detailed examples from respondent's teaching to support her ratings.

On the December 7, 2011 Lesson Observation Form, Ms. English gave respondent Meets Standards-Minimally ratings on five of the six subparts of Standard I, three of the seven subparts of Standard II, three of the six subparts of Standard III, one of the five subparts of Standard IV, and one of the seven subparts of Standard IV.

She rated respondent as Does Not Meet Standards on Standard I-4. "Using a variety of instructional strategies, resources, and technologies to meet students' diverse learning needs"; Standard III-2. "Applying knowledge to student development and proficiencies to ensure student understanding of subject matter"; Standard III-3. "Organizing curriculum to facilitate student understanding of the subject matter"; Standard III-5. "Using and adopting resources, technologies, and standards-aligned instructional materials, including adopted materials, to make subject matter accessible to all students"; Standard IV-1. "Using



knowledge of students' academic readiness, language, proficiency, cultural background, and individual development to plan instruction"; Standard VI-3. "Developing and sequencing long-term and short-term instructional plans to support student learning"; Standard IV-4. "Planning instruction that incorporates appropriate strategies to meet the learning needs of all students"; Standard IV-5. "Adapting instructional plans and curricular materials to meet the assessed learning needs of all students"; and Standard V-4. "Using assessment data to establish learning goals and to plan, differentiate, and modify instructions."

With regard to Standard I, Ms. English noted that "[n]o number line or teaching charts to support math displayed," and "[s]tudents completed 6 math problems in 1.5 hours of instruction."

39. August – December 2011 Teacher Development Plan. On December 14, 2011, respondent, Ms. English, and Ms. Spencer signed a Teacher Development Plan (TDP). TDPs are completed when a certificated employee receives a Does Not Meet Standards rating on an evaluation. The TDP covered the time period from August to December 2011. It stated that respondent required improvement in Standards II and IV. It also stated that respondent was to receive the assistance of a teacher development coach (Ms. Spencer) and her principal (Ms. English). The particular Standard II areas noted on the TDP were:

(a) "2.2 Creating physical or virtual learning environments that promote student learning, reflect diversity, and encourage constructive and productive interactions among students." The TDP included: "Classroom arrangement for student interaction i.e., cooperative groups, elbow partners."

(b) "2.4 Creating a rigorous learning environment with high expectations and appropriate support for all students." The TDP included: "Various ways of monitoring students for differentiation of instruction."

(c) "2.7 Using instruction time to optimize learning." The TDP included: "Lesson is paced appropriately' [sic] phases of lesson design are easily distinguishable."

The particular Standard IV areas noted on the TDP were:

(a) "4.3 Developing and sequencing long-term and short-term instructional plans to support student learning." The TDP included: "Evidence of student knowledge of objective."

(b) "4.4 Planning instruction that incorporates appropriate strategies to meet the learning needs of all students." The TDP included: "Use of math manipulative to gain greater knowledge of content."

40. On the December 14, 2011 TDP, with regard to Standard II, it was noted that there was “[n]o evidence observed of cooperative learning structure or strategies.” In addition, “[m]onitoring consists of teacher moving from group to group re-teaching the lesson,” and “[c]heck for understanding/questioning consist[s] of whole class question and answer format. Use of random name calling by number and desk.” The TDP also noted that, “Lessons on 8/31, 9/23, 9/28, 10/5 went into recess and closure and assessment were not observed.”

With regard to Standard IV, the TDP noted that, “Lessons are planned but are not chunked appropriately for maximum student understanding.” The TDP also noted that, when “students were asked the objective of the lesson their responses were inconsistent with written or stated objectives.” In addition, the TDP noted that during eight observations, the “Smart Board is utilized predominantly” and “no other strategies were observed.”

41. December 16, 2011 Preliminary Evaluation. On December 16, 2011, respondent and Ms. English signed a Preliminary Evaluation prepared by Ms. English. The Preliminary Evaluation stated that the data sources on which the Preliminary Evaluation was based included: (1) formal observations on November 17 and December 7, 2011; (2) classroom observations on August 31, September 13, 23, and 28, October 5, and November 15, 2011; (3) classroom walk-throughs on August 22, 25 and 29, September 7, October 13, and 21, November 7, 9, and 30, 2011; (4) conversations on October 13, November 14 and 16, and December 6, 2011.

42. In the December 16, 2011 Preliminary Evaluation, Ms. English rated respondent as Meets Standards-Proficient on Standard VI; Meets Standards-Minimally on Standards I, II, and V; and Does Not Meet Standards on Standards III and IV.

(a) With regard to Standard I, Ms. English found that respondent “uses a limited number of engagement strategies and has difficulty adjusting her teaching during a lesson to meet the needs of her students.” As a result, “students are given limited ways to connect with the content and have a hard time connecting what they already know to the new content.”

(b) With regard to Standard II, Ms. English found that respondent had “arranged her classroom to promote student collaboration, but still had difficulty pacing her lessons for maximum growth and had few to no teaching charts up to assist students while they work.” Ms. English noted that lessons observed on four days “went into recess and no closure or assessment was completed.” Ms. English also observed that, during a formal observation, “students completed 6 problems in 1.5 hours of instruction.” Ms. English concluded that the “pacing of the instruction limits students and their ability to think, draw conclusions and apply their learning.”

(c) With regard to Standard III, Ms. English found that respondent had “difficulty organizing the content for maximum learning; lack of clarity and focus on

appropriate instructional 'chunks' of content are impeding student achievement." Ms. English noted that: (1) on September 28, the "stated directions did not match the written directions on the practice page"; (2) on September 13 and 23, October 5, and November 15 and 17, "after direct instruction, students had multiple questions" and "it was necessary for respondent to go from group to group to explain the lesson again"; (3) "[v]ocabulary development was not consistently observed"; and (4) respondent "made confusing statements." Ms. English concluded that, as a result, the "content [was] not organized in a meaningful way and students are not able to build their academic knowledge."

(d) With regard to Standard IV, Ms. English found that respondent had "difficulty aligning her instruction to a planned objective." As a result, students did "not get a clear understanding of what they are suppose[d] to learn and are not able to comprehend the content."

(e) With regard to Standard V, Ms. English found that respondent was "developing her skills to use assessment data to plan lessons and determine learning gaps in student's [sic] understanding of the content." As a result, "students and parents are kept informed of their progress, but assessment data is not used consistently to guide instructional decisions."

(f) With regard to Standard VI, Ms. English found that respondent worked "as a professional toward improving student achievement in her grade level and school-wide." Ms. English noted that respondent had "[p]rofessionally embraced a grade level change (3rd to 6th) and has been working to familiarize herself with the content." Ms. English concluded that, as a result, respondent "is working to improve her instructional practice."

43. The Preliminary Evaluation stated that, if an employee was rated as not meeting standards, she could choose one of three options set forth in the Collective Bargaining Agreement. Respondent chose Option 2. As set forth in the Collective Bargaining Agreement, Option 2 stated that an employee could "request structured administrative intervention and support, with optional peer assistance through the Professional Assistance Program" outlined in the agreement.

44. Ms. English met with respondent often before completing the December 16, 2011 Preliminary Evaluation. At hearing, Ms. English testified that she gave feedback to respondent on multiple occasions about her concerns with respondent's teaching, including that respondent: (1) provided "too much" in a lesson and did not "chunk" the information into subparts that students could understand; (2) failed to vary the way she checked for students' understanding to ensure that all students understood the material; (3) failed to model and work together with students after direct instruction to ensure that they understood what was expected of them before they were released for independent practice; (4) too often had to re-teach students after they were released for independent practice because her

delivery had been so confusing and disorganized that students did not understand what was expected of them; (5) failed to post “visual supports” in the classroom that would help students understand the content and remind them of the steps to follow to complete a lesson; (6) lacked content knowledge and organizational skills to allow for maximum student understanding; (7) failed to adjust her teaching methods to respond to students’ questions and confusion; (8) failed to teach at a rigorous enough level for the sixth grade; and (9) failed to assess students’ understanding and provide closure at the end of each lesson.

45. January to May 2012 Teacher Development Plan. On February 23, 2012, respondent, Ms. English and Ms. Spencer signed a TDP for the January to May 2012 time period. The TDP specified that respondent required improvement in Standards III and IV. It provided that, with the assistance of respondent’s teacher development coach (Ms. Spencer) and her principal (Ms. English), respondent would do the following with regard to Standard III:

- Use knowledge of subject content to reach students at different developmental levels by using a variety of strategies to present and differentiate instruction, (I.e., access prior knowledge, frontload information, use a variety of questioning techniques, small group instruction, review, repetition, one on one assistance, chunking information, monitoring through close proximity, etc...)
- Use a variety of resources, materials, and technologies (Smart Board, computers, CD player, student white boards, H.M. practice book pages, phonics cards, visuals, journals, etc.) to promote enthusiasm and to allow students access to subject content.
- Adjust presentation of lessons to foster understanding in all students and capitalize on “teachable moments”, (I.e., ask questions, clarify, review, restate, class discussions, dialogue, TPR, gestures, visuals, realia, provide more time, KWL charts,<sup>8</sup> graphic organizers, revisit focus wall, revisit objective, etc.)
- Use a variety of instructional strategies to accommodate the needs of all students, including, but not limited to:
  - SDAIE/Marzano strategies (provided)
  - Small group instruction/cooperative grouping

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<sup>8</sup> A “KWL chart” tracks what a student knows (K), wants to know (W), and has learned (L) about a topic

- Scaffolding – step by step instruction and visuals displayed for easy access
- Differentiated instruction/support (ongoing)

The TDP stated that respondent would do the following with regard to Standard IV:

- Integrate into lesson delivery a “set” to include goals/objectives, motivation and connection to prior knowledge at the beginning of each lesson. Revisit objectives throughout the lesson to allow students to gain a clear understanding of subject matter being presented.
- Clearly articulate and model goals/objectives and include students in stating objectives through chanting, reciting, repeating in small voice/big voice, etc. Check for understanding by asking individuals/groups/boys/girls, to tell teacher what they will be learning.
- Write weekly lesson plans in the content area of mathematics using Classroom Foundations format.
- Submit weekly lesson plans to principal/vice principal on Monday morning, prior to start of school, for feedback.
- Make connections and frontload information for student between what they have studied and what they are studying by way of KWL charts, accessing prior knowledge, questioning techniques, think-pair-share, etc.
- Modify and revise instruction based on the level of student understanding, (i.e. Differentiate instruction, condense content, slower pace, restate questions to check for understanding, scaffold/chunk instruction, etc.).
- Develop and sequence instructional activities and materials for student learning:
  - Instruction to support individual learning needs
  - School adopted curriculum incorporated
  - Activities logically sequenced for meaningful learning
- Establish short and long term instructional goals that are based on curriculum content standards.

- Develop a plan for the complete course and know what content the students should master by the end of the course. (i.. Utilize “Backward mapping” – “What do I want my students to know by the end of the first trimester/quarter/year?”).

The TDP also stated that additional assistance would be provided to respondent on: (1) “Lesson scripting for reflection”; (2) “Reflection on FUSD Continuum”; (3) “Conferencing”; (4) “3 Way conferencing with teacher and administrator as needed”; (5) “TDP Support”; (6) “CSTP Support”; and (7) “Lesson planning and curriculum support.”

46. May 14, 2012 Summary Evaluation. On May 14, 2012, respondent and Ms. English signed a Summary Evaluation dated May 14, 2012. Ms. English prepared the Summary Evaluation, which stated that it was based on the following data sources: (1) formal observations on November 17 and December 7, 2011, and March 14, and May 1 and 3, 2012; (2) classroom observations on August 31, September 13, 23, and 28, October 5, and November 15, 2011, and January 24, February 1, 9, 10, 22, and 28, March 9, and April 23, 2012; (3) classroom walk-throughs on August 22, 25 and 29, September 7, October 13 and 21, and November 7, 9 and 30, 2011, and January 26, March 6, 8, and 20, and April 19, 2012; and (4) conversations on October 13, November 14 and 16, and December 6, 2011, and February 23, March 20, April 13, and May 14, 2012.

47. In the May 14, 2012 Summary Evaluation, Ms. English rated respondent as Meets Standards-Proficient on Standard VI; Meets Standards-Minimally on Standards I, II, and V; and Does Not Meet Standards on Standards III and IV.

(a) With regard to Standard I, Ms. English found that respondent “uses a limited number of engagement strategies and has difficulty adjusting her teaching during a lesson to meet the needs of her students.” After providing a number of examples from her observations, Ms. English concluded that, “[a]s a result, students are given limited ways to connect with the content and have a hard time connecting what they already know to the new content.”

(b) With regard to Standard II, Ms. English found that respondent had “arranged her classroom to promote student collaboration and has made improvements in displaying teaching charts on her walls to better assist her students.” After giving a number of examples from her observations, Ms. English concluded that “students have some opportunities to strengthen their learning through collaboration and are given visual supports to assist them during lessons.”

(c) With regard to Standard III, Ms. English found that respondent had “difficulty organizing the content for maximum learning; lack of clarity and focus on appropriate instructional ‘chunks’ of content are impeding student achievement.” After giving examples from her observations, Ms. English concluded that, “[a]s a

result, the content is not organized in a meaningful way and students are not able to build their academic knowledge.”

(d) With regard to Standard IV, Ms. English found that respondent has “difficulty aligning her instruction to a planned objective.” Ms. English gave a number of examples from her observations. She noted that respondent’s “[l]esson objectives do not consistently align with the instruction,” and that “[l]esson objectives chunk many concepts into one lesson and this causes confusion.” Ms. English concluded that “students do not get a clear understanding of what they are suppose[d] to learn and are not able to comprehend the content. Students are given multiple concepts to learn in one lesson and get confused.”

(e) With regard to Standard V, Ms. English found that respondent was “developing her skills to use assessment data to plan lessons and determine learning gaps in her student’s [sic] understanding of the content.” Ms. English noted that “[s]ome lessons end abruptly without closure.” But Ms. English also noted that respondent “[c]ommunicates the progress of her students to parents through parent/teacher conferences and informally when needed.” Ms. English concluded that “students and parents are kept informed of their progress, but assessment data is not used consistently to guide instructional decisions.”

(f) With regard to Standard VI, Ms. English found that respondent “works as a professional toward improving student achievement in her grade level and school-wide.” Ms. English concluded that, “[a]s a result, [respondent] is working to improve her instructional practice.”

#### *90-Day Notice – September 4, 2012*

48. Pursuant to Education Code sections 44938 and 44932,<sup>9</sup> on September 4, 2012, the District personally served respondent with a Notice of Unsatisfactory Performance (90-Day Notice). The 90-Day Notice stated that it was “designed to provide [respondent] with sufficient information to understand the nature of [her] unsatisfactory performance and to illustrate specific instances of such behavior with such particularity as to provide [her] with an opportunity to correct these faults and overcome the grounds for potential dismissal.” Attached to the 90-Day Notice were all of the Lesson Observations, Preliminary Evaluations and Summary Evaluations summarized above, except for the March 10, 2010 Preliminary Evaluation. In an effort to assist respondent in overcoming her performance deficiencies, the 90-Day Notice stated that respondent was expected to comply with the following directives:

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<sup>9</sup> The relevant portions of these statutory provisions are set forth in the Legal Conclusions below.

1. Use knowledge of subject content to reach students at different developmental levels by using a variety of strategies to present and differentiate instruction.
2. Use a variety of resources, materials and technologies.
3. Adjust presentation of lessons to foster understanding in all students.
4. Make sure each lesson has time for closure and assessment.
5. Clearly articulate and model goals and objectives and include students in stating objectives through chanting, reciting, repeating in small/big voice, etc.
6. Write weekly lesson plans in the content area of mathematics using the Classroom Foundations format.
7. Make connections and frontload information for students between what they have studied and what they are studying by way of KWL charts, accessing prior knowledge, questioning techniques, think-pair-share, etc.
8. Modify and revise instruction based on level of student understanding.
9. Develop a plan for the complete course and know what content the students should master by the end of the course.

The 90-Day Notice notified respondent that she was expected to correct her unsatisfactory performance within 90 days, and that, if her deficiencies were not corrected within this time period, the District may institute disciplinary action against her, up to and including possible dismissal. Respondent acknowledged receipt of the 90-Day Notice on September 4, 2012.

#### *Assistance from Peer Support Coach*

49. Kelli Eoff was assigned as respondent's peer support coach during the 90-Day Notice period.<sup>10</sup> During the time Ms. Eoff was respondent's peer support coach, she also

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<sup>10</sup> Ms. Eoff was described by different titles during the hearing. During her testimony, Ms. Eoff described herself as respondent's "peer support coach." In the exhibits,



worked full time as an Intervention Teacher at Del Mar Elementary School. As a peer support coach, Ms. Eoff's duties were to support respondent in the areas designated for improvement in her TDP, including previewing upcoming topics for instruction and providing information to help respondent develop and present lesson plans, and to observe respondent's teaching performance in the classroom and provide suggestions and resources.

50. During the 90-Day Notice period, Ms. Eoff assisted respondent in creating lesson plans. She also observed classes respondent taught, and emailed respondent resources on topics such as closure and checking for understanding. Ms. Eoff helped respondent make an "objective poster" to help remind students of the focus of a lesson. Ms. Eoff testified that respondent did not use this poster in the lessons that Ms. Eoff observed because she helped respondent make it after those lessons were completed.

51. In order for Ms. Eoff to observe respondent's lessons, she had to obtain release time and a substitute to teach her classes. Ms. Eoff was allowed three release days to observe respondent. Upon request, she was granted an additional one-half release day. Because of a delay in obtaining the number to process a request for substitute, Ms. Eoff was unable to observe respondent in her classroom until October 4, 2012, one month after the 90-Day Notice went into effect.

52. During the 90-Day Notice period, Ms. Eoff met with respondent and Ms. English about every other week.

53. Based upon her work with respondent, Ms. Eoff felt that respondent was "moving in the right direction" in "planning areas." She believed that the lesson plans prepared by respondent that she reviewed were well-written. But Ms. Eoff did not see respondent deliver the lessons relating to the lesson plans she reviewed. When Ms. Eoff observed respondent's classes, it was with the idea of providing feedback to respondent for delivering instruction. For example, Ms. Eoff observed a lesson respondent taught during which there was student confusion about integers. Ms. Eoff suggested to respondent more effective ways to confirm student understanding.

54. Ms. Eoff kept a log of the time she spent working as respondent's peer support coach.

(a) Ms. Eoff's log for August 2012 indicates that she spent five hours and 50 minutes working as respondent's coach, including attending: (1) a one-hour meeting with respondent on August 14, during which she gave respondent a binder and had an informal conversation to explain the purpose of a peer coach; (2) a one-and-one-half-hour three-way conference with Ms. English and respondent on August

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she was sometimes referred to as the "district support provider." She was also sometimes referred to as "veteran support."

24; and (3) a two-hour planning meeting with respondent on August 30, during which they discussed checking for understanding strategies, “how to get all students involved during Math Student Presentation,” “ways to check for understanding (non-volunteers: sticks, etc.),” and “‘Big Ideas’ in ELA<sup>11</sup> to focus on R. 2.4 and R2.3.” Ms. Eoff also helped with a lesson on ordering decimals and a PowerPoint presentation on elements of foundation.

(b) Ms. Eoff’s log for September 2012 indicates that she spent eight hours and 50 minutes working as respondent’s coach, including attending: (1) a two-hour planning meeting with respondent on September 13, to work on math lessons; (2) a one-hour meeting with Ms. English and respondent on September 14 to discuss lesson observations for the week; (3) a one-hour meeting with Ms. English and respondent on September 20<sup>12</sup> regarding lesson observations for the week; (4) a two-hour planning meeting with respondent on September 25 during which notes from all the principal’s evaluations were summarized to “find common themes: Content Vocabulary, Student Engagement other than Smartboard, Rigor in lessons (what will I do when my kids know it, What will I do if they do not know it), Use of pre-assessments, Objective and taught curriculum are aligned.”; and (5) a one-hour meeting with Ms. English and respondent on September 27 regarding the lesson observations for the week, with discussion points on: (a) “Work on proper chunking of grade level standards (ex: chunk figurative language);” (b) “Focus on rigor”; and (c) Instruction and Assessment should always align to the objective.” Ms. Eoff also spent one hour on September 30, reviewing math lessons that respondent sent for the upcoming week.

(c) Ms. Eoff’s log for October 2012 indicates that she spent a total of 12 hours working as respondent’s peer support coach, including: (1) six hours on October 4, observing respondent’s class in the morning and planning with respondent in the afternoon; (2) two hours on October 8 meeting with Ms. English and respondent to review respondent’s math lessons for the week “that were turned in via email over the weekend”; (3) one hour planning an evaluation lesson for Ms. English’s evaluation on October 17; and (3) three hours observing respondent’s class.

(d) Ms. Eoff’s log for November 2012 indicates that she spent a total of 12.5 hours working as respondent’s peer support coach, including: (1) six hours with respondent on November 1, planning the upcoming week’s math lessons, talking about the focus areas in ELA for the second grading period, looking at the social studies and science curriculum and discussing “how to incorporate Write Tools as well as all areas of foundations,” and making “an objectives poster to display daily

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<sup>11</sup> “ELA” stands for English Language Arts.

<sup>12</sup> This date may be a typo. This meeting may have occurred on September 21. (See Findings below.)

objectives in all content areas”; (2) one hour going over the continuum in preparation for the three-way conference on November 8; (3) one and one-half hours on November 8 at a meeting with Ms. English, respondent, and respondent’s union representative; (4) three hours on November 14 planning with respondent; and (5) one hour on November 29 meeting with Ms. English and respondent to go over observations from the week.

55. Ms. Eoff believed that the number of hours she spent working as respondent’s peer support coach was sufficient for the task she had.

56. Teresa Marie Morales-Young was the District’s Director of Teacher Development during the 2012/13 school year. She assigned Ms. Eoff to work with respondent as a peer support coach. In addition, on October 16, 2012, at respondent’s request, Ms. Morales-Young observed respondent’s math class for one hour and gave her feedback for 30 minutes following the lesson. During that observation, Ms. Morales-Young observed that the students appeared to be “confused” and “not on task.” There appeared to be a “lack of classroom management,” and students were “blurting out.” It seemed to Ms. Morales-Young that respondent did not understand the “conceptual idea” behind the math property she was teaching. At the debriefing after the lesson, respondent recognized that the lesson “went terrible.” Ms. Morales-Young discussed teaching strategies with respondent in an effort to help her improve.

#### *Observations and Evaluations During 90-Day Notice Period*

57. September 21, 2012 Observation Logs. Ms. English observed respondent’s class on September 5, 11, 12, 17, and 19, 2012. Ms. English provided respondent with the literal notes from these observations shortly after her visits. Ms. English completed Observation Logs for these visits. She met with respondent and Ms. Eoff on September 21, 2012, to discuss her observations and provide respondent with copies of the logs. The Observation Logs include: (1) the CSTP Standard to be addressed and corrected; (2) the directives given to respondent “so that the CSTP [could] be addressed and corrected”; (3) the prior strategies provided to respondent in order to meet the directives; and (4) Ms. English’s observations from her classroom visits.

(a) With regard to Standard I, Ms. English’s commented that on September 5, for an ELA lesson, “[l]imited strategies were used to engage students and there was no attempt to connect them with their own writing or what they already know.” Ms. English found that “students did not get the opportunity to engage in the content in a meaningful way (connect to any prior or new learning).” For the September 11, 2012 lesson, Ms. English noted that respondent “used 3 strategies to engage her students” so they “had opportunities to engage in the content.” For the September 17 lesson, Ms. English noted that respondent “modeled the Addition Property of Equality and students were following along, but the activity planned to reinforce this property was

not aligned. Therefore students did not get an opportunity to practice the skill they were being taught.”

(b) With regard to Standard II, Ms. English’s commented that on September 5, respondent did “not create an environment with visuals that support student learning.” She noted that while the focus wall displayed the current theme, there were no other visuals or teaching charts on the walls. She found that “[a]s a result, students have no way to access information in a visual context.” On September 11, Ms. English noted that respondent had added one teaching chart, which students were able to refer to “when completing problems with multiple operations, but not able to access any other content.” On September 17, Ms. English noted that “students have limited access to teaching charts and visual aids” but they did have the “opportunity to engage in conversation with their peers to help deepen their knowledge of the content.”

(c) With regard to Standard III, on September 5, Ms. English noted that respondent’s “lesson on simple and complete predicates lacked the appropriate rigor and connection to 6<sup>th</sup> grade standards.” Ms. English concluded that, “[a]s a result, students spent 45 minutes on a lesson that did not connect with 6<sup>th</sup> grade standards nor did it connect with student’s *[sic]* prior understanding or new learning.” On September 11, Ms. English noted that respondent “confused the definition of evaluate as it relates to an expression and an equation.” On September 12, Ms. English noted that respondent “confused math properties and missed an opportunity to show students how to write a pattern in algebraic terms.” Ms. English concluded that “students get mis-information about important math concepts and are unable to get a clear idea of the math concepts being taught and students are not challenged to think critically about the patterns (math).” For the lesson observed on September 17, Ms. English noted that the “[i]nstruction was not aligned to the objective.” For the September 19 lesson on writing, Ms. English noted that, contrary to the instructions of the writing program used in the District, “the concept of writing a plan before students write their sample, is not being taught or re-enforced.”

(d) With regard to Standard IV, for the September 5 lesson, Ms. English noted that respondent’s lesson plans “included ELA lessons that were not appropriate for 6<sup>th</sup> grade and were not listed in the [District] curriculum.” Ms. English concluded that, as a result, “students spent more than 45 minutes of their instructional day on content that was at a lower academic level (3<sup>rd</sup> grade).” For the September 11 and 12 lessons, Ms. English noted that respondent articulated the lesson objective at the beginning of the lesson, but the September 12 lesson’s “lack of rigor limited students ability to access grade level content.” On September 17, Ms. English found that respondent “planned an objective that was grade level appropriate, but her instruction/activity was not aligned to that objective.”

(e) On Standard V, on September 5, Ms. English noted that respondent “failed to pre-assess her students before delivering her lesson on complete and simple predicates,” and “[n]o closure was observed.” On September 11, Ms. English noted that respondent “checked for understanding during their lesson but it was not evident that a pre-assessment was used to determine if there were any gaps in student learning or if students already knew the content.” Ms. English also noted that students “were not given problems of appropriate rigor and were not challenged at their grade level.” On September 12, Ms. English noted that respondent “checked for understanding throughout the lesson” and that “student progress toward mastering the objective was monitored.” On September 17, Ms. English noted that respondent’s closure activity “did not assess whether or not the students know and can apply” the math property taught.

(f) For Standard VI, on September 5, Ms. English noted that respondent attended all site meetings. As a result, respondent was “given opportunities to share and learn from her colleagues to better meet the needs of her students.” On September 17, Ms. English noted that respondent “continue[d] to work to improve her practice.”

In the “Summary/Comments of conference regarding this document” section, the Observation Log advised respondent to:

Read all background information in the teacher’s edition before you plan and teach. Make sure to align your instruction to your objective; especially align your instruction to the practice problems you give your students. Pre-assessment must be used to determine what concepts need to be taught and to what depth. Hang teaching charts on the wall.

In the “Strategies provided: (to be used for future observations)” section, the Observation log stated:

Support in planning with instruction coach and peer coach to develop lesson[s] that are aligned to objectives and chunked appropriate[ly]. Access to Oars is being worked on. Look and see how to hook Elmo to projector.

58. September 27, 2012 Observation Log. Ms. English observed respondent’s class on September 25, 26, and 27, 2012. Ms. English provided respondent with her literal notes shortly after these observations. Ms. English prepared an Observation Log for these observations. On September 27, 2012, respondent met with Ms. English and Ms. Eoff to discuss Ms. English’s observations. Respondent signed and received a copy of the Observation Log. In the Summary/Comments section, the log stated:

Written objective did not match lived objective. Chunk content into appropriate instructional lessons so that students have a greater opportunity to learn. Align you[r] objective to the lessons and the practice you give students. Ms. English to preview lesson plans and point out any discrepancies in alignment.

59. October 1, 2012 Formal Lesson Observation. On October 1, 2012, Ms. English observed a sixth grade math class taught by respondent, and completed a Lesson Observation Form that rated respondent on each subpart of the CSTP Standards. In the Comments section after each CSTP Standard, she included specific and detailed examples from respondent's teaching to support her ratings.

On the October 1, 2012 Lesson Observation Form, Ms. English gave respondent Meets Standards-Minimally ratings on two of the six subparts of Standard I, three of the seven subparts of Standard II, three of the six subparts of Standard III, two of the five subparts of Standard IV, two of the six subparts of Standard V, and two of the seven subparts of Standard VI.

She rated respondent as Does Not Meet Standards on Standard I-1. "Using knowledge of students to engage them in learning"; Standard I-5. "Promoting critical thinking through inquiry, problem solving, and reflection"; Standard II-4. "Creating a rigorous learning environment with high expectations and appropriate support of all students"; Standard III-1. "Demonstrating knowledge of subject matter, academic content standards, and curriculum frameworks"; and Standard III-2. "Applying knowledge of student development and proficiencies to ensure student understanding of subject matter."

On Standard I, Ms. English commented that, although respondent "attempted to use several engagement strategies," "student opportunities were limited and did not allow student[s] to be engaged in a meaningful way, connect to the content or think critically." On Standard II, Ms. English stated that "[a]lthough the classroom has additional visuals and is arranged for positive student interaction, students are not given the opportunity to consistently interact and solve problems at the academic rigor of the 6<sup>th</sup> grade." On Standard III, Ms. English noted that "student instruction on conceptual understanding was inconsistent and lacked the clarity needed to provide students with [an] understanding of the content." On Standard IV, Ms. English commented that "students were given problems to practice their new learning, but were not given the opportunity to exten[d] their learning through problems given in context." On Standard V, Ms. English stated that "student progress was monitored throughout the lesson and student[s] received feedback on their progress." And on Standard VI, Ms. English commented that respondent was "working to improve her instructional practice," and that "minimal improvements have been made."

60. October 3, 2012 Lesson Observation. On October 3, 2012, Tina Rodriguez, Figarden's Vice Principal, observed a class on similes and metaphors taught by respondent.

Ms. Rodriguez took literal notes of her observation and prepared an Observation Log. On October 8, 2012, respondent met with Ms. English and Ms. Rodriguez to discuss the observation. Ms. Rodriguez noted that, although the objective of the lesson was to learn about similes and metaphors, respondent used a PowerPoint presentation that also discussed idioms, which were not taught. During the class, one student pulled out her earlier notes on the topic, but the other students did not pull out their notes, and respondent did not ask them to do so. Students identified words in sentences, but not in the poems they were asked to read. Ms. Rodriguez concluded that an “opportunity to extend learning to a more rigorous level was missed when students did not identify similes and metaphors in the context of the poems read after the lesson.” Ms. Rodriguez also commented that, because respondent delivered the lesson orally and did not provide a teaching chart, “strategies to ensure all students would meet their learning goals were not utilized.” Ms. Rodriguez concluded that “[a]s a result of the lesson presented, students did not achieve mastery of the lesson objective.”

61. October and November 2012 Lesson Observations. Ms. English observed respondent’s class on October 23, November 15 and November 26, 2012. She took literal notes of these observations and prepared Observation Logs. On October 29, 2012, Ms. English met with respondent to review Ms. English’s October 23 observation. On November 29, Ms. English met with respondent and Ms. Eoff to review Ms. English’s November 15 and 26 observations. In these observations, Ms. English commented on respondent’s: (1) failure to model; (2) failure to “provide direct instruction to engage her students in the lesson”; (3) use of a “limited number of strategies” to “engage students and connect them to the content”; (4) lack of “lesson organization, direct instruction, and modeling” which “limited students’ ability to connect to and make sense of the content”; (5) lack of “planning and a clearly stated objective” which “resulted in mistakes in the direct instruction”; (6) failure to “make adjustments to the instructional time so that all students remained engaged and challenged”; and (7) failure to have “visual support[s] to assist [students] in their learning.”

62. December 3, 2012 Preliminary Evaluation. On December 3, 2012, Ms. English gave respondent a Preliminary Evaluation. The data sources on which the Preliminary Evaluation was based included: (1) the meeting with the administrator of Human Resources to deliver the 90-Day Notice on September 5, 2012; (2) the literal notes taken on visits on August 20 and 30, September 9, 11, 12, 17, 26, and 27, October 2, 23, and 24, and November 15 and 26, 2012; (3) literal notes taken by Ms. Rodriguez on October 3, 2012; (4) walk-through notes taken on September 25, and October 12 and 31, 2012; (5) “Debrief notes” with Ms. Rodriguez and “district support provider” on October 8, 2012; (6) conferences with “district support provider – Weekly Logs discussed and feedback given” on September 14, 21 and 27, October 29, and November 29, 2012; (7) “Formal Observation debrief” on October 4 and 19, 2012; and (8) “Three way conference with district support provider” on August 24 and November 8, 2012.

63. On the December 3, 2012 Preliminary Evaluation, Ms. English rated respondent as Meets Standards-Minimally on Standards II, V, and VI. She rated respondent as Does Not Meet Standards on Standards I, II, and IV. In the Comments sections, Ms. English included specific and detailed examples from her observations to support her ratings.

(a) With regard to Standard I, Ms. English found that respondent “fails to consistently provide her students with: strategies that connect her students to the content, a variety of effective ways to explain and introduce new content, and instructional strategies that promote student learning.” Ms. English concluded that, as a result, “students who receive instruction in [respondent’s] classroom struggle to make sense of the content presented and are not given the opportunity to attach their new learning to what they already know. Student progress is limited due to the lack of connections to content presented and use of instructional strategies that promote student learning.”

(b) With regard to Standard II, Ms. English found that respondent was “working to create a positive classroom environment that includes visual supports and positive student/teacher, student/student integration; however, some lessons lack[ed] the rigor necessary for students to learn grade level content.” Ms. English concluded that, while “students have a safe environment in which to learn,” at times “learning expectations are not rigorous enough to challenge students to a higher level of achievement.”

(c) With regard to Standard III, Ms. Flores found that respondent “lacks the content knowledge and the skills to consistently organize and prepare lessons to meet the needs of her students.” She found that respondent’s “[l]ack of content knowledge created confusion [for] students.” Ms. English concluded that, as a result of respondent’s “lack of organization, direct instruction, and correctly modeling the content, students are not making the academic gains necessary to be successful in their current grade.”

(d) With regard to Standard IV, Ms. English found that respondent “fails to plan and organize lessons that link the learning objective to the instruction and to make connections that build on and extend students['] knowledge.” Ms. English concluded that, “[a]s a result of instruction that is not aligned to clear learning goals and sequential logical planning, students cannot build on and construct their own knowledge to effectively learn the content.”

(e) With regard to Standard V, Ms. English found that respondent was “developing her skills to use assessment data to make instructional decisions that support her students’ academic achievement; however she needs to examine how to utilize grading to include a multitude of sources that reflect student learning.” Ms. English concluded that “[a]s a result of [respondent’s] developing skills with using assessment to improve and inform her instruction, students are beginning to monitor and reflect on their learning.”



(f) With regard to Standard VI, Ms. English found that respondent “participates in a variety of professional learning opportunities to assist her in developing her skills as a professional.” Ms. English concluded that while respondent was making efforts to improve her “professional practice,” respondent had not made “consistent and sustained improvements.”

64. The December 3, 2012 Preliminary Evaluation was respondent’s final evaluation before she was placed on administrative leave.

#### *Respondent’s Testimony*

65. Respondent testified that she has lived in Fresno her entire life. She attended the District’s public schools through high school. She then attended Fresno City College and Fresno State College, graduating in 1987. She has a multiple subject teaching credential, which allows her to teach grades kindergarten through eight. She began teaching in the District in 1988. Her family is “immersed” in teaching. She has two brothers who are school administrators, and a sister who is an elementary school teacher for the District.

66. Respondent began her teaching career in the District teaching in the third grade. She then taught first grade for two years, a third/fourth grade combination class, and a fifth/sixth grade combination class. When she was assigned by Ms. English to teach the sixth grade in the 2011/12 school year, she had not taught sixth grade for 19 years.

67. Respondent engaged in professional development. She attended the Math Academy offered by the District for three years, until the 2011/12 school year. This program met for two weeks in the summer and two Saturdays during the school year, and respondent attended a monthly meeting with the lead coach. The purpose of Math Academy was to supplement the District’s existing math teaching program. Respondent volunteered to attend this program and Mr. Petersen approved it. In addition, during the 2012-13 school year, respondent attended Algebra University, a District-wide program to help train sixth grade teachers.

68. Respondent testified that, although she expressed her willingness at the end of the 2010/11 school year to change grade levels, when Ms. English asked her to teach the sixth grade in the 2011/12 school year, she was initially reluctant. She was concerned that it would be difficult for her to grasp the more rigorous sixth grade curriculum at the same time she was trying to improve her teaching. Ms. English told her that the move would benefit her and she would receive assistance from her sixth grade colleagues. Ms. English told her that the decision to move her to the sixth grade was “final.” Respondent testified that, at many meetings during the 2011/12 school year, she told Ms. English that she was trying to “wrap” herself around the sixth grade curriculum in order to understand it enough to teach it, and asked for Ms. English’s help to do so. According to respondent, Ms. English told her that she did not need to “wrap herself around” the curriculum, she just needed to know it.

Ms. English expected respondent to be able to “go right in” and teach sixth grade at a proficient level immediately given her K-8 teaching credential.

69. Respondent attended in-services at the school site and throughout the District to learn about “best teaching practices.” She asserted that she tried to implement these practices in a manner that would best help her students achieve levels of proficiency. She believed that it was important to get to know her students academically. Before a school year began, she would review the testing data from the previous school year to determine where each of her students stood academically, and would note the academic levels and needs of each student. She contacted parents to introduce herself and obtain additional background information on her students.

70. Before 2009, all of respondent’s performance evaluations indicated that she met all the District’s standards. During her testimony, respondent disputed the criticisms set forth in the evaluations and lesson observations she received starting in 2009. Respondent disagreed with all the Meets Standards-Minimally and Does Not Meet Standards ratings she received. She believed that she always met the District’s standards proficiently. In summary, her testimony in response to the negative comments included in the evaluations and lesson observations she received during the 2009/10, 2010/11, and 2011/12 school years, was as follows:

(a) In response to the criticism that “teacher talk” consumed too much class time, respondent believed that she instructed for the amount of time necessary to teach each lesson, and took the time that was needed for students to grasp the concepts.

(b) She disagreed that she did not have charts or visuals to assist the students in understanding lessons. She asserted that there were charts and visuals in her classroom, and she pointed them out to her supervisors.

(c) She disputed that her lessons were not rigorous enough for her students. She asserted that, sometimes, in order for students to grasp new material, a teacher has to “go back to go forward,” and re-teach an earlier standard at a lower grade level before moving to the more rigorous grade-level standard. She believed that she was “doing a good job” of presenting the curriculum so that her students would understand it.

(d) She disputed that she was not using a sufficient variety of instructional strategies and resources to respond to students’ diverse needs. She believed that she had learned new strategies for teaching math when she attended Math Academy and was using those strategies effectively.

(e) She admitted that during the 2010/11 school year some of her students were off-task and had to be redirected, but testified that she had several students that school year with behavior problems, including one student who was eventually diagnosed as deaf. She asserted that, although she informed Ms. Shipman about this issue, Ms. Shipman did not offer assistance.

(f) She disputed the criticisms regarding planning instruction and designing learning experiences for all students. She believed that she was using specific data about her students to plan her instruction, and had both long and short-term goals to help her students succeed.

(g) She acknowledged Ms. English's criticisms that, at the beginning of the 2011/12 school year, when she was first assigned to teach the sixth grade, she did not have sufficient knowledge of the sixth grade curriculum or ability to engage students in sixth grade math lessons. But she testified that the first semester of that school year she tried "very hard" to better understand the sixth grade curriculum. She was obtaining help from her sister and her colleagues who taught sixth grade. She tried to become more proficient by accessing lesson plans online and utilizing the services of Ms. Zamorski. She was doing her best to "embrace" the new sixth grade curriculum while trying to improve upon her teaching practices. She believed that she was utilizing all the resources and support materials available to teach the sixth grade. She was trying to grasp how to best "chunk" the learning for her students. She believed that she needed more time to transition from the third grade to the sixth grade to be able to grasp the sixth grade "mentality." But she believed that she was working diligently on grasping that mentality and obtaining help from Ms. Zamorski, who provided files for learning the subject matter and strategies for organizing the curriculum.

(h) She disputed Ms. English's criticisms that she failed to create a learning environment that promoted student learning. She prided herself on conducting a class that was geared to helping all students at all levels understand the material.

(i) She disputed that she failed to understand and organize the subject matter for student learning, and that she was not doing enough to plan her instruction. She was using information she learned from Math Academy, the online planning information made available to the District's teachers, and information in the teachers' manual to plan her lessons.

(j) She tried "very hard" to maintain the rigor of the sixth grade curriculum. She tried to pace her instruction to meet the needs to the students, slowing down, referring back to earlier lessons and re-teaching as needed to address

students' questions. In addition, she used both the Smartboard and the students' white boards to help explain lessons.

(k) She used both pre-assessment and post-assessment data to determine whether her students understood the concepts she was teaching. She discussed the assessments at the weekly grade-level meetings with her colleagues, and worked with her colleagues on lesson planning.

71. Respondent received the first Teacher Development Plan, which focused on Standards II and IV, at the beginning of the 2011/12 school year. She received the second Teacher Development Plan, which focused on Standards III and IV, one month into the second semester. Respondent testified that she attempted to comply with the requirements set forth in both Teacher Development Plans. She utilized the assistance of Ms. Spencer. She believed her objectives were clearly written and posted. During the lessons, she referred to the objectives to make sure that the students knew where they were going. They engaged in chanting and repeating to reinforce the lessons. She had students work with partners to share and discuss the objectives.

72. Respondent received the Summary Evaluation on May 14, 2012, that rated her as not meeting Standard III, understanding and organizing the subject matter for student learning, and Standard IV, planning instruction and designing learning experiences for all students. She disagreed with Ms. English's evaluation that she used a limited number of engagement strategies. She believed that she used a variety of strategies to meet the needs of her students. She also believed that Ms. English had not observed enough of her lessons to see all the strategies she was using. By the end of the 2011/12 school year, respondent had developed the notion that Ms. English would be dissatisfied with anything that respondent did.

73. Ms. English did not tell respondent that she would be getting a 90-Day Notice when she received the May 14, 2012 Summary Evaluation. But respondent was called into the office of Maria Mazzoni, the District's Human Resources (HR) Administrator, approximately two to three weeks before the end of the school year and informed that she would be getting a 90-Day Notice at the beginning of the 2012/13 school year. Ms. Mazzoni explained what a 90-Day Notice was and the reason for it. She stated that respondent would be given 90 days to make improvements. At the end of the 90 days, she would either be given an additional 90 days to make further improvements, taken out of the process because she had improved sufficiently, or dismissed.

74. Respondent believed that, by the beginning of the 2012/13 school year, she had made improvements in the delivery of her lessons. It was her second year teaching sixth grade. She understood the areas on which she should concentrate for further improvement. She had contacted her family members and colleagues for materials to help her. She felt more confident that she could deliver the sixth grade lesson content. Although Ms. Zamorski

had been reassigned from Figarden, she was still available to assist respondent with lesson planning briefly at the beginning of the school year, but due to her new duties, she soon became unavailable.

75. During the 90-Day Notice period, respondent utilized the services of Ms. Eoff as her peer support coach. Ms. Eoff met with respondent weekly to plan lessons for the following week. Ms. Eoff reviewed Ms. English's concerns, the sixth grade standards, and pre- and post-assessments, and chose certain areas and lessons that needed more emphasis. Ms. Eoff assisted respondent in providing students with a variety of ways to access content. Respondent described Ms. Eoff as "definitely helpful." With Ms. Eoff's help, respondent believed that she was addressing Ms. English's concerns, but she believed that it did not make any difference in the way Ms. English felt about her. Respondent asserted that, although Ms. English included both positive and negative comments in her written evaluations and observations, during their face-to-face meetings, Ms. English was unerringly negative, and did not provide constructive feedback.

76. As required by the second semester Teacher Development Plan, respondent submitted her math lesson plans to Ms. English. According to respondent, she worked four to six hours every weekend on her lesson plans and emailed them to Ms. English on Sunday. Ms. English did not, however, review the lesson plans and complained to respondent about receiving them on Sunday. Although the Teacher Development Plan required respondent to submit her math lesson plans to the principal or vice principal on "Monday morning, prior to [the] start of school, for feedback," Ms. English told respondent that receiving them on Sunday was too late for her to review them, given the press of her other duties as principal, and asked for them by Thursday of the week before.

77. Respondent also sent her lesson plans to Ms. Eoff. She incorporated into her lesson plans the feedback she received from Ms. Eoff. The only time that Ms. English gave respondent any feedback on her lesson plans was at the meetings she, Ms. English and Ms. Eoff had on Thursdays. Respondent did not receive any other feedback on her lesson plans from Ms. English. Respondent contended that Ms. English could not complain that the teaching activities she conducted with the students did not align to the lesson objective if she had included those activities in the lesson plans that she had earlier submitted to Ms. English, when Ms. English did not review them. If Ms. English had reviewed the lesson plans ahead of time and provided feedback, respondent believed that she could have adjusted the planned activities to better align with the lesson objectives. According to respondent, without such feedback, she could not improve on alignment.

78. During the 90-Day Notice, respondent completed reports regarding her adherence to the directives set forth in the 90-Day Notice. At hearing, respondent submitted three such reports. Those reports were for the periods from October 1 through 3, October 8 through 12, and October 15 through 19, 2012. They were all dated November 27, 2012, and indicated that they were received by HR on December 3, 2012. These reports stated that it was respondent's belief that she has "adhered to each and every directive placed upon [her]

by the District....” They requested that the District put any questions or concerns in writing and respondent would do her “best to address them.”

79. At hearing, respondent disputed the criticisms Ms. English included in her observation logs during the 90-Day Notice period. She asserted that when she taught at a level lower than the sixth grade curriculum, she was doing so to support the students at the “lower end of the spectrum” and bring them up to sixth grade standards. She also disputed that she confused math definitions or failed to take an opportunity to bring in algebra concepts. According to respondent, she was using definitions she learned in Math Academy and did not believe that her students were ready to learn algebra concepts. She testified that she sometimes taught lessons at a less rigorous level to “build students’ confidence” before moving to the next level. Respondent also disputed Ms. English’s criticism that she did not conduct pre-assessments. According to respondent, she did not need to conduct formal pre-assessments if she was aware of her students’ level of understanding based on prior lessons.

80. With regard to the criticism that she still did not post “visuals” to assist students, she explained that she had “major foot surgery” in July 2012 and was using a scooter to get around during the first five weeks of the semester. As a result, she could not get into the classroom to put up any visuals. When respondent explained to Ms. English why she could not put up any visuals, Ms. English stated that she would get someone to assist her. But that assistance was not provided, even after repeated requests.

81. Respondent criticized Ms. English’s delay in providing formal feedback on her observations on September 5, 11, 12, 17 and 19 until September 21, 2012. Although Ms. English provided her literal notes shortly after these observations, respondent asserted that she did not find the literal notes helpful. According to respondent, the literal notes did not include sufficient concrete feedback that she could reflect and act upon. Respondent was also concerned that Ms. Eoff was not released to observe her class until October 4, one month after the start of the 90-Day Notice period.

82. Respondent testified that her students reacted negatively to Ms. English’s frequent presence in her classroom. According to respondent, it was a “difficult” time for them. They became quiet and did not respond to questions as easily. They were more timid doing activities that they would normally do automatically.

In sum, respondent asserted that she was prepared for every lesson, and that she understood the content sufficiently to ensure that her students would meet every lesson’s objective. She denied that she lacked confidence in her teaching, but admitted that she was not afraid to tell her students when she made mistakes. She disagreed with Ms. English’s criticism that she often re-taught the lesson during independent practice, asserting that she would use that time to provide clarity and give the students the support they needed. She asserted that when she was criticized, she tried “even harder” to do a better job.

### *Discussion of Respondent's Arguments*

83. Respondent argued that: (1) Ms. English was biased against her; (2) the District did not provide her with adequate and timely feedback and support during the 90-Day Notice period to give her a sufficient opportunity to correct her deficiencies; (3) the District improperly reassigned her from the third grade to the sixth grade at a time when she was struggling to improve her teaching; (4) Ms. English did not review her lesson plans as required and agreed in the Teacher Development Plan; and (5) respondent worked hard to meet the District's expectations and improve her teaching. Each of these arguments is addressed below.

84. Ms. English's Alleged Bias Against Respondent. Respondent argued that once Ms. English decided that respondent "couldn't pass muster," she "went out of her way" to document that respondent was incompetent. Respondent argued further that Ms. English was "unerringly negative" in her feedback and criticisms. Respondent's arguments were not persuasive.

85. While Ms. English appeared to be a tough and demanding principal, the evidence did not support that she harbored any bias against respondent. Respondent did not explain what she believed to be the source of Ms. English's alleged bias. There was no evidence to provide any reason for Ms. English to be biased against respondent. All of Ms. English's evaluations and observations contained both positive and negative feedback. Her feedback was supported by specific examples from her classroom visits during respondent's lessons. The number of times Ms. English visited respondent's classroom and met with her to provide feedback demonstrated strong dedication and effort on Ms. English's part to provide respondent with substantial and helpful input to improve her teaching.

86. Feedback and Support During the 90-Day Notice Period. The 90-Day Notice was served on respondent on September 4, 2012. Ms. English did not meet with respondent to discuss her first five observations until September 21, 2012. Ms. Eoff did not get release time to observe respondent's class until October 4, 2012. Respondent argued that these delays deprived her of an adequate opportunity to improve her performance during the 90-Day Notice period. Respondent's argument was not persuasive.

87. While these delays raise some concerns, they do not establish that respondent was deprived of an adequate opportunity during the 90-Day Notice period to correct her deficiencies. Ms. Eoff began working with respondent beginning in August 2012. While her first classroom observation was not until October 4, she provided respondent with adequate other support during the 90-Day Notice period to afford respondent a reasonable opportunity to address the deficiencies noted in the 90-Day Notice and improve her teaching.

88. The 17-day delay between when the 90-Day Notice was served and Ms. English first met formally with respondent to discuss her classroom observations also did not

deprive respondent of an adequate opportunity to correct her deficiencies during the 90-Day Notice period. Ms. English gave respondent copies of her literal notes from her classroom observations soon after she conducted those observations. While respondent testified that she did not find the literal notes useful, a review of these notes indicates that Ms. English wrote comments that could be utilized to apprise respondent of Ms. English's concerns and guide her toward improvement.

89. Respondent pointed to other factors that she asserted showed that the District had already made up its mind to dismiss her when it served the 90-Day Notice: (a) incorrect language in the 90-Day Notice to indicate that the March 10, 2010 Preliminary Evaluation contained Does Not Meet Standards ratings and the failure of the District to include that evaluation as an attachment; and (b) an email from Ms. English to Ms. Mazzoni dated August 6, 2012, indicating that Ms. English was making plans to replace respondent if she were dismissed.

(a) While the incorrect information about the March 10, 2010 Preliminary Evaluation included in the 90-Day Notice and the failure to include that evaluation as an attachment were unfortunate, they do not indicate that the District had made up its mind before it served the 90-Day Notice to dismiss respondent. Given all the time and effort Ms. English dedicated to observing respondent's classroom and writing her observations, and the support provided by Ms. Eoff to assist respondent, it cannot be found that the District had definitively decided to dismiss respondent before it gave her the 90-Day Notice. The District's failure to attach the March 10, 2010 Preliminary Evaluation to the 90-Day Notice was, at most, harmless error.

(b) In addition, the August 6, 2012 email from Ms. English to Ms. Mazzoni does not demonstrate that the District had decided to dismiss respondent before it served the 90-Day Notice on her. Instead, the email indicated that Ms. English was just making contingency plans in the event that respondent was ultimately dismissed, in order to ensure that she would have adequate teacher coverage for her students.

90. In sum, respondent did not establish that the District deprived her of an adequate opportunity to improve her performance during the 90-Day Notice period.

91. Reassignment from the Third to the Sixth Grade. Respondent argued that Ms. English's reassignment of respondent from the third to the sixth grade at a time when she was struggling to improve her teaching added undue pressure and made her performance more difficult. While this defense raised serious concerns, respondent's own testimony at hearing undermined her argument. Respondent admitted that she volunteered for a change in classroom assignment at the end of the 2010/11 school year, believing that it might be of benefit to her. She testified that, although she expressed her reluctance about the reassignment to Ms. English, she accepted it. She also testified that, by her second year of teaching in the sixth grade, she was feeling more confident about her ability to teach the sixth



grade curriculum. She conceded that, while the grade change from third to sixth was a challenge, she believed that she was still able to meet proficiently the CSTP Standards, and that the reassignment did not negatively impact her performance. Given respondent's own testimony, it cannot be found that respondent's reassignment from third to sixth grade caused her to be unable to meet the District's standards for proficient teaching.

92. Ms. English's Failure to Review Respondent's Lesson Plans. The Teacher Development Plan signed on February 23, 2012, stated that respondent would submit weekly math lesson plans to the principal or vice principal on Monday morning, prior to the start of school, for feedback. Respondent complied with this directive. Ms. English did not review respondent's lesson plans. Her reason for not doing so was not convincing. Respondent's argument that Ms. English could not validly criticize her for presenting an activity that did not align to a lesson objective if she had described that activity in her lesson plans was persuasive.

93. But the evidence did not establish that Ms. English's failure to review respondent's lesson plans as agreed caused respondent to be unable to respond adequately to the District's concerns with her teaching. Respondent submitted a sampling of the lesson plans she prepared during the 90-Day Notice period. None of these lesson plans were for the lessons that Ms. English observed. Because respondent did not present any lesson plans for the lessons Ms. English observed, it is difficult to assess whether and to what extent respondent described in her lesson plans the unaligned activities that Ms. English observed such that Ms. English may have been able to give respondent feedback and an opportunity to change the lessons before their delivery had she timely reviewed the plans.

94. In addition, as the District argued during the hearing, respondent's lesson plans were not a primary focus of the District's concerns about respondent's performance. The primary focus was the nature of respondent's instruction delivery. Thus, while respondent's argument regarding the lesson plans was persuasive, it was not of sufficient relevance to address the primary concerns raised by the District about respondent's teaching.

95. Respondent's Efforts to Comply with the District's Feedback and Directives. All of the District's witnesses agreed that respondent accepted the criticisms that she was given and made an effort to comply with her supervisors' directives. There was agreement that, throughout the four years prior to the District's filing the notice of intent to dismiss against her, respondent acted professionally. The only allegation against respondent in this matter was unsatisfactory performance. There were no allegations that respondent engaged in any unprofessional conduct or was unfit to teach.

### *Unsatisfactory Performance*

96. The evidence established that for the first 20 years she was employed by the District as an elementary school teacher, all of her performance evaluations rated her as meeting expectations. It was not until the District implemented the Skillful Leader program and changed the way it evaluated teachers that respondent's performance as a teacher came under criticism.

97. With the implementation of the Skillful Leader program, administrators visited classrooms on a more regular basis. They took literal notes of what they observed, and provided specific and direct feedback to the teachers. The amount of detailed information included in the evaluations respondent received after the implementation of the Skillful Leader program was significantly greater than the information included in her earlier evaluations. The newer evaluations were also based on significantly more classroom observations and visitations.

98. During the four years prior to receiving the notice of intent to dismiss, respondent was repeatedly advised of the concerns the District had with the way she was delivering her instruction to her students. On numerous occasions the District informed respondent that: (1) her instruction did not align with her objectives; (2) she did not adequately model the lessons she was teaching; (3) she lacked sufficient content knowledge; (4) she did not adequately check for student understanding; (5) she did not adjust her teaching when her students indicated that they were confused; (6) her lessons did not contain the required rigor for her students' grade level; and (7) she released her students for independent practice too soon after her direct instruction without working through problems with them to ensure that they understood what they were supposed to do.

99. In the evaluations and lesson observations given to respondent, her principals and vice principals repeatedly made specific recommendations as to areas of improvement in her performance and endeavored to assist her. The Teacher Development Plans she received, in specific detail, delineated the concerns the District had with her teaching and gave her clear direction on the District's expectations. The 90-Day Notice also clearly and specifically set forth the District's concerns with respondent's performance and the steps she was directed to take to improve it.

100. Respondent was provided with adequate assistance to meet the District's standards. She was given a sufficient opportunity both before and during the 90-Day Notice period to correct her deficiencies. She had the assistance of two instructional coaches (Ms. Spencer and Ms. Zamorski) and a peer support coach (Ms. Eoff). Ms. Shipman and Ms. English observed her classroom on numerous occasions, and gave her detailed and specific feedback and guidance. Notwithstanding all this feedback and assistance, respondent did not demonstrate sufficient improvement to bring her performance up to a satisfactory level.

101. There is no dispute that respondent acted professionally and made an effort to comply with the District's directives. During her testimony, however, she did demonstrate insight into the concerns the District repeatedly raised about her teaching. She asserted that she, at all times, met the District's standards proficiently. She showed little understanding of the District's concerns about her instruction delivery. She also failed to demonstrate that she took adequate steps to address the District's concerns, despite the numerous opportunities she was provided. Given respondent's lack of improvement and insight, it would be contrary to the best interests of the District's students to return respondent to her teaching position. The District established, by a preponderance of the evidence, that respondent's performance was unsatisfactory. It's dismissal of respondent must therefore be sustained.

### LEGAL CONCLUSIONS

1. Pursuant to Education Code section 44932, subdivision (a)(4), a school district may dismiss a permanent certificated employee for unsatisfactory performance. When reviewing a school district's dismissal action against a certificated employee based solely upon unsatisfactory performance under Education Code section 44932, subdivision (a)(4), there is no need to apply the standards of fitness to teach set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1175-1176.)

2. Education Code section 44944 sets forth the procedures that must be followed when a school district brings a dismissal action against a permanent certificated employee. Subdivision (a)(5), in relevant part, provides:

No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.

3. Education Code sections 44660 through 44665 set forth the requirements with which a school district must comply when evaluating certificated employees. Education Code section 44662, in relevant part provides:

(b) The governing board of each school district shall evaluate and assess certificated employee performance as it reasonably relates to:

(1) The progress of pupils toward the standards established

pursuant to subdivision (a) and, if applicable, the state adopted academic content standards as measured by state adopted criterion referenced assessments.

(2) The instructional techniques and strategies used by the employee.

(3) The employee's adherence to curricular objectives.

(4) The establishment and maintenance of a suitable learning environment, within the scope of the employee's responsibilities.

Education Code section 44664, in relevant part, provides:

(b) The evaluation shall include recommendations, if necessary, as to areas of improvement in the performance of the employee. If an employee is not performing his or her duties in a satisfactory manner according to the standards prescribed by the governing board, the employing authority shall notify the employee in writing of that fact and describe the unsatisfactory performance. The employing authority shall thereafter confer with the employee making specific recommendations as to areas of improvement in the employee's performance and endeavor to assist the employee in his or her performance. If any permanent certificated employee has received an unsatisfactory evaluation, the employing authority shall annually evaluate the employee until the employee achieves a positive evaluation or is separated from the district.

4. Before a school district may dismiss a permanent certificated employee for unsatisfactory performance, it must comply with Education Code section 44938, subdivision (b), which, in relevant part, provides:

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

5. Within the four-year period prescribed by Education Code section 44944, subdivision (a)(5), the District evaluated respondent in accordance with Education Code sections 44660 through 44665. Its evaluations included recommendations as to areas of improvement in respondent's performance. It notified respondent that she was not performing her duties in a satisfactory manner according to the District's standards and described her unsatisfactory performance. The District thereafter conferred with respondent and made specific recommendations as to areas of improvement in her performance. It endeavored to assist respondent in her performance. After respondent received an unsatisfactory evaluation, the District annually evaluated her. (Ed. Code, § 44664, subd. (b). Findings 6 through 45.)

6. At least 90 days before it served a notice of intent to dismiss, the District gave respondent written notice of her unsatisfactory performance, specifying its nature with specific instances of behavior and particularity as to furnish her with an adequate opportunity to correct her faults and overcome the grounds for the charges. (Findings 46 through 62.) The written notice included all the evaluations the District had given to respondent since November 10, 2009, except the preliminary evaluation she received on March 12, 2010. The District's failure to include that preliminary evaluation was, at most, harmless error.

7. When all the evidence is considered, the District established by a preponderance of the evidence that, notwithstanding the assistance and opportunity it provided to respondent to correct her faults and address the grounds for the unsatisfactory performance charges against her, respondent did not improve her performance to a satisfactory level. Respondent did not demonstrate during the hearing that she has adequate insight into the District's concerns about the quality of her teaching to provide sufficient assurances that, if she were returned to the classroom, her teaching would improve to a satisfactory level. As a result, the District established that respondent should be dismissed from her employment as a teacher with the District for unsatisfactory performance pursuant to Education Code section 44932, subdivision (a)(4).


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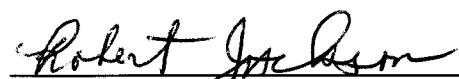
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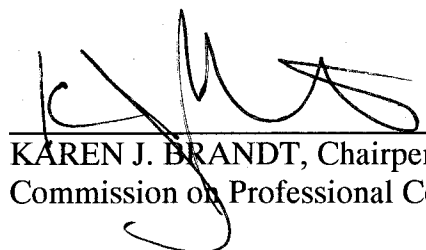
ORDER

Respondent Barbara Flores is DISMISSED as a permanent certificated employee of Fresno Unified School District.

DATED: February 3, 2014

  
KATHRYN BLACKBURN, Member  
Commission on Professional Competence

  
ROBERT JACKSON, Member  
Commission on Professional Competence

  
KAREN J. BRANDT, Chairperson  
Commission on Professional Competence