

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CLAUDIA CONROY (EN 598852),
a permanent certificated employee,

Respondent.

OAH No. 2014030272

DECISION

The Commission on Professional Competence (Commission) heard this matter on April 30, May 1, 5 through 9, and 21, and June 2, 2014, and February 5, 2015, in Los Angeles, California. Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, State of California, Marlon Mendez, and Haywood Finder constituted the Commission. ALJ Cohen presided.

Ellen C. Wu, of Dannis Woliver Kelley, represented complainant Justo H. Avila, Interim Chief Human Resource Officer for the Los Angeles Unified School District (District).

Rosty G. Gore, of Trygstad, Schwab & Trygstad, represented respondent Claudia Conroy.

Prior to the presentation of evidence, the parties brought several pre-trial motions. The ALJ considered and ruled on those motions as well as on motions made during the course of the hearing, as reflected on the record. The District's Hearing Brief was marked as Exhibit 50, and its closing brief was marked as Exhibit 51. Respondent's closing brief was marked as Exhibit GG. The ALJ ordered that any testimonial reference to the name of a minor student be replaced in the hearing transcript by the student's first name or first name and last initial. Counsel for the parties represented that they had redacted students' names in all exhibits so that students are identified only by first name and last initial.

Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on February 5, 2015.

The Commission considered the entire record in executive session.

FACTUAL FINDINGS

Jurisdiction and Parties

1. On February 19, 2014, complainant filed and served on respondent a Notice of Intention to Dismiss and Placement on Immediate Unpaid Suspension, with a Statement of Charges. On March 5, 2014, respondent timely requested a hearing.

2. Acting in his official capacity, on March 12, 2014, complainant filed, and on March 14, 2014, complainant served on respondent, an Accusation and Statement to Respondent. Respondent timely served a Notice of Defense, which respondent amended on April 10, 2014.

3. Respondent, 53, is a permanent certificated employee of the District, on unpaid leave status. She taught elementary school in the District from 1988 to 2004, and then taught at Grover High School in the 2004/2005 school year. She has taught English, English as a Second Language, and World History at John F. Kennedy High School (Kennedy HS) since 2005. Respondent holds a clear multi-subject credential, single subject credentials in English and Social Studies, and a Bilingual Certificate of Competency-Spanish.

Complainant's Charges Against Respondent

4. In the Accusation and Statement of Charges against respondent, in 27 separate charging allegations, complainant alleges that cause exists to dismiss respondent from her employment as a permanent certificated employee of the District for, variously:

- a. Unprofessional conduct, under Education Code section 44932, subdivision (a)(1);¹
- b. Unsatisfactory performance, under section 44932, subdivision (a)(4);
- c. Immoral conduct, under sections 44932, subdivision (a)(1), and 44939;
- d. Evident unfitness for service, under section 44932, subdivision (a)(5);
- e. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing him, under section 44932, subdivision (a)(7); and
- f. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939.

¹ All further statutory references are to the Education Code unless otherwise specified.

Notices and Warnings Issued to Respondent

5. In spring and fall 2010, respondent received three conference memoranda from, variously, Christine Clark, then the principal, and Jose R. Castelo, then the assistant principal, regarding classroom management, student discipline, instruction, and respondent's attendance at and recording of conferences with administration. In the memoranda were certain assistance and guidance provided to respondent, directives issued to her, and a warning that disciplinary action might follow.

6. On January 10, 2011, respondent received a Notice of Unsatisfactory Act and a Notice of Suspension (7 Days) for 13 matters relating to classroom management and conduct toward students. On April 11, 2011, respondent received a Below Standard Evaluation. The suspension notice and evaluation noted deficiencies in various areas related to respondent's conduct toward students and parents and her sending students out of class unsupervised; it also noted deficiencies in two items related to classroom instruction.

7. During the 2011/2012 and the 2012/2013 school years, respondent received eight conference memoranda from, variously, Suzanne Blake, then the principal, and Yela Dirlam, then the assistant principal, after classroom observations and subsequent conferences with administration, all regarding classroom instruction. In the memoranda were certain assistance and guidance provided to respondent, directives issued to her, and a warning that disciplinary action might follow. Respondent provided administration with written responses to most of the conference memoranda.

8. On April 20, 2012, respondent received a Below Standard Evaluation, which noted deficiencies in 10 areas related to classroom instruction. On April 18, 2013, respondent received a Notice of Unsatisfactory Act and a Notice of Suspension (11 Days). On April 30, 2013, respondent received a Below Standard Evaluation. The suspension notice and the evaluation contained numerous "charges," all pertaining to classroom instruction.

9. The District provided respondent with the opportunity to participate in the Peer Assistance and Review (PAR) program, which provides to teachers who have either volunteered to participate or received a below standard evaluation with one-on-one support from a consulting teacher, for the 2011/2012 and the 2012/2013 school years. The District also afforded respondent the opportunity to participate in various professional development training programs and activities. Respondent availed herself of those opportunities.

Complainant's Charging Allegations 1 Through 4

10. These charges pertain to events that are alleged to have occurred in spring 2010, during the 2009/2010 school year.

11. Complainant alleges in Charges 1, 2, and 4 that, on March 4, March 5, and March 18, 2010, respectively, respondent "failed to prepare and/or provide lesson plans for substitute teachers."

12. The evidence did not support Charge 1, but it supported Charges 2 and 4. Respondent's colleagues, Ms. Kaskela and Ms. Johnson, testified credibly that on a few occasions when respondent was absent they were unable to find lesson plans in respondent's classroom, so they prepared lesson plans for respondent's substitutes. Respondent testified that it was her practice to leave lesson plans in the classroom and also to post lesson plans on SubFinder. There was uncontroverted corroborative written evidence that on March 4, 2010, respondent did leave a lesson plan for her substitute; there was no documentary evidence supporting respondent's testimony as to the other two dates. On those occasions when respondent did not leave lesson plans, or when she left plans that Kaskela and Johnson were unable to locate, the task of creating a plan for the substitute was simple. Respondent was using the California State University Expository Readers and Writers Handbook; the handbook's teacher's manual has daily lesson plans. Kaskela and Johnson found the spot in the handbook where respondent left off and told the substitute to use the next lesson plan.

13. Complainant alleges in Charge 3 that, on March 16, 2010, respondent "sent a student to the Dean's office for defiance but failed to issue or send a referral. The student was instructed to return to the classroom to obtain a referral at which time [respondent] demanded that the student leave the classroom."

14. The evidence supported Charge 3, in part. The evidence did not establish that respondent sent student BH to the dean's office without a referral. Among other things, respondent testified that she always used written referrals when sending students to the dean's office. The District witnesses admitted that, because teachers did not retain a copy of referrals they issued, there was no way of determining whether students appearing at the dean's office had not been issued referrals or had simply discarded them and falsely claimed that no referral was issued.

Complainant's Charging Allegations 5 Through 19

15. These charges pertain to events that are alleged to have occurred in fall 2010, during the 2010/2011 school year.

16. Complainant alleges in Charges 5, 6, and 7 that, on September 15, 2010, respondent "kicked student J [REDACTED] M. out of class and yelled at her, 'Go find a new teacher' and 'Grab a chair and sit outside' after the student returned from the office because she did not have a referral," and "sent student, J [REDACTED] M. to sit outside of her classroom unsupervised during period. [Respondent] had previously been directed not to utilize this form of classroom management or discipline during conferences on, among other dates, October 3, 2006 and March 24, 2010." The evidence supported Charges 5, 6, and 7, and respondent's denial of the charges is not corroborated or credible. In memoranda respondent wrote to administration, in reply to a conference memo she received critical of her handling of student J [REDACTED] M., respondent did not dispute the charge or address the issue.

17. Complainant alleges in Charge 8 that, on September 16, 2010, respondent "harassed, bullied, mocked, mimicked and/or made fun of the accent of student, K [REDACTED] S. when the student volunteered to read an essay in class." The evidence did not support Charge

8. Student K [REDACTED] S. offered self-contradictory testimony and was not credible. Respondent testified that she was making appropriate inquiries into whether student K [REDACTED] S. was making fun of Italian-Americans; complainant did not establish otherwise.

18. Complainant alleges in Charge 9 that, on September 16, 2010, respondent "in the presence of other students, . . . got very close to student M [REDACTED] R.'s face and told her that she should not be laughing as her essay was not good. [Respondent's] conduct caused M [REDACTED] R, embarrassment and/or humiliation." The evidence did not support Charge 9; it did not establish that respondent did anything inappropriate or that she humiliated student M [REDACTED] R.

19. Complainant alleges in Charge 10 that, on September 17, 2010, respondent "directed M [REDACTED] R. to leave the classroom and sit outside in the hallway during the entire class. When the student asked to return to class so that she could learn, [respondent] informed her that she could not." The evidence supported Charge 10. There were detailed student statements regarding the incident, and respondent provided no written response addressing the charge after receipt of a memorandum about it from administration.

20. Complainant alleges in Charge 11 that, on September 17, 2010, respondent "rudely yelled . . . to student K [REDACTED] S.: 'Be quiet' and 'Get out of my class.'" The evidence did not support Charge 11. Respondent testified credibly that student K [REDACTED] S. was rude that day and that respondent offered to talk to K [REDACTED] S. before or after school. K [REDACTED] S.'s written statement and testimony were inconsistent and were not found to be credible.

21. Complainant alleges in Charge 12 that, on September 29, 2010, respondent "rudely entered the room during a previously scheduled parent conference with the parents of student M [REDACTED] R. and Jose Castelo, Assistant Principal. [Respondent] then demanded to tape record the conference. However, when she was told that she could not do so, [Respondent] rudely and abruptly walked out of the meeting. [Respondent] was previously advised that she could not tape record the meeting." The evidence did not support Charge 12. Respondent appeared at the meeting and was surprised to find Castelo there. She reasonably believed his presence signified that the meeting could lead to discipline. She believed that she could, therefore, have a union representative present or could record the meeting. The evidence did not establish that respondent acted rudely.

22. Complainant alleges in Charge 13 that, on October 1, 2010, respondent "refused to attend a scheduled conference with Assistant Principal Jose Castelo because she was not permitted to record the meeting." Uncontroverted evidence supported Charge 13.

23. Charges 14 through 17 are related and are here addressed together. Complainant alleges in Charge 14 that, on October 4, 2010, respondent stated to student M [REDACTED] R., in the presence of other students, "'You shouldn't even be in this school' and 'I will be glad if and when you get kicked out.'" Complainant alleges in Charge 15 that, on October 15, 2010, respondent stated to student M [REDACTED] R., in the presence of other students, "'You're lucky that I and the rest of the school allows you to be here,' 'If you keep defying me, I'll send you back to wherever you came from,' and 'I'm not going to listen to you[.]"

like you weren't there." Complainant alleges in Charge 16 that, on October 28, 2010, respondent "kicked student J[REDACTED] H. out of the classroom without supervision for approximately 10 minutes." Complainant alleges in Charge 17 that, on November 4, 2010, respondent stated to student M[REDACTED] R., in the presence of other students, that:

A. "I can comment about your mother, but I'm going to refrain . . . again I'm from Inglewood. We know how to get down.

B. "I'm so concerned about you that I'm talking to Ms. Clark to get you sent out of here.

C. "That's funny [M[REDACTED] R.,] because Ms. Clark knows that I have friends in the District and she wouldn't cross me like that.

D. "Really?! Can you get me the names of those people so I can talk to Ms. Clark about them? Or you can't because you're lying. You're just like Ms. S[.] (student), a liar"

24. The evidence supported Charges 14, 15, 16, and 17. Testimony and corroborative documentary evidence establish that respondent questioned student M[REDACTED] R.'s right to attend the school, that respondent sent student J[REDACTED] H. out of the classroom unsupervised, and that respondent made some of the statements alleged in Charge 17. Respondent's written response to memoranda from administration addressing the charges does not refute them.

25. Complainant alleges in Charge 18 that, on November 9, 2010, respondent "refused to attend a scheduled conference with Assistant Principal Jose Castelo because she was not permitted to record the meeting." The evidence did not support Charge 18. Respondent was not directed to attend a meeting with Castelo on November 9, 2010; she was unable to arrange for her union representative to appear, and did not wish to attend without the representative or the ability to tape record the meeting, which Castelo would not allow. The meeting was rescheduled for three days later, November 12, 2010, and respondent attended, accompanied by her union representative.

26. Complainant alleges in Charge 19 that, on November 10, 2010, "Lilia Postell, Assistant Principal, observed [respondent] photographing students during lunch without their or their parent's consent and without approval from the administration." The evidence did not support Charge 19. The charge, which was denied by respondent, was not supported by competent evidence.

27. All subsequent charges are based on allegations of unsatisfactory classroom instruction; there are no subsequent charges pertaining to respondent's behavior toward students and parents, which respondent appears to have corrected.

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Complainant's Charging Allegations 20 Through 23

28. These charges pertain to events that are alleged to have occurred during the 2011/2012 school year.

29. Complainant alleges in Charge 20 that, on December 12, 2011, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) Respondent distributed a graphic organizer for the pre-writing activity. All of the prompts were "what" questions. There was no evidence of analysis, evaluation or application in what the students were being asked to perform.

B. In the area of classroom performance:

(1) There was little to no evidence of classroom routines or procedures:

(a) There was no opening activity or warm-up.

(b) There was an agenda, yet it only reflected one item.

(c) Distribution of the writing prompt & graphic organizer (two pieces of paper) took five minutes. The writing activity began 18 minutes into class.

(d) There was no established process for answering student questions.

(e) Respondent took attendance 15 minutes into class while seated at her computer.

(f) Instructions were unclear. Many students asked, "What are we supposed to do?" Respondent failed to respond or clarify the instruction, thus prompting some students to ask each other for clarification.

(g) Respondent asked the class, "Is it clear?" However, she used a very low or soft voice such that most of the students failed to hear the question.

(h) There were no clear transitions.

(i) There was no clear product or assignment,

(j) Students were given thirty minutes to complete the graphic organizer, yet they were not collected and respondent made no marks or notations to verify that the students had completed the assignment.

(2) No graded student work was posted on any of the bulletin boards.

(3) Respondent circulated throughout the class, but repeatedly talked to the same students and did not notice that 7-10 students did no work and did not complete any portion of the graphic organizer.

30. The evidence did not support Charge 20. Blake chose to observe respondent's class on December 12, 2011, during the last period of the last day of the first semester, the day before final exams. Graded student work, which had been posted on the bulletin board, was returned to the students and books were collected. The period was dedicated to review for the final exams, with a focus on writing. The student assignment was to begin work on a graphic organizer, which, respondent had previously explained to them, the students were to take home with them and bring back the next day with their final essay attached. They would get credit for the graphic organizer and essay when they turned in their essay the next day, the day of the final. The purpose of organizer was to help the students glean examples for their essay, and respondent used appropriate instructional techniques in conducting the directed lesson, including a warmup of WOW words transitioning to students working independently in pods, as well as positive behavior supports, lesson sequencing, and circulating through the classroom.

31. Complainant alleges in Charge 21 that, on January 24, 2012, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) There was little to no evidence of engaging students in problem solving, critical thinking, and other activities that make the subject matter meaningful, the book, *Into the Wild*. Students were not asked to analyze, evaluate, synthesize, or predict from the book. Rather, during the "popcorn" reading, [respondent] focused on correcting mispronounced words and providing students the origin of certain words.

(2) There was little to no evidence of developing and sequencing instructional activities and materials for student learning:

a) Students read aloud in "popcorn" fashion, yet they did not take notes or discuss the text.

b) Respondent did not ask probing questions to verify and validate student understanding of the material.

c) The purpose of the WOW words was unclear and did not relate to the posted standard, or the book.

(3) There was little to no evidence of designing short-term and long-term plans to foster student learning, as [respondent]'s lecture lacked focus towards a specific objective. At one point respondent stated, "Stay focused," yet she went from one unrelated topic to another and 26 out of 39 students did not participate in the activity.

(4) There was little to no evidence of using California subject matter standards to establish learning goals, and even though a standard was posted for writing reflective compositions, [respondent] made no connection between the standard and the lesson.

(5) [Respondent] failed to use instructional time effectively:

a) [Respondent] took the first 10 minutes of class to take attendance.

b) The distribution (12:05 p.m.-12:12 p.m.) and collection (12:22 p.m.-12:27 p.m.) of the book, Into the Wild, resulted in a loss of 12 minutes of instructional time.

c) The collection of homework took five minutes.

d) The lecture activity (12:23 p.m.-12:36 p.m.) on the paragraph worksheet, resulted in a loss of 13 minutes of instructional time.

e) Transitions between activities took a total of 13 minutes, and [respondent]'s lack of urgency resulted in students sitting at their desks with nothing to do, waiting for the next activity.

B. In the area of classroom performance:

(1) There was little to no evidence of planning and implementing classroom routines and procedures that support student learning:

a) No opening activity or warm-up was posted.

b) There was an agenda and it had only one item - WOW words.

c) There was no established process for answering student questions, as students blurted out questions and comments.

(2) There was little to no evidence of establishing and communicating learning goals for students, as there was no connection

between what [respondent] asked students to do in class and any final product or objective.

C. In the area of support for student learning, there was little or no evidence of creating a physical environment that engages all students, as there was no graded student work posted on any of the bulletin boards.

32. The evidence did not support Charge 21. Respondent's testimony convincingly rebutted the charges and evidence introduced on behalf of complainant. The classroom observation was conducted on respondent's first day back at work after suffering a foot injury. She was on crutches, which hampered her ability to post student work on the bulletin boards. She made repeated requests to administration for assistance with that task, but received no response. Instead, she was charged with failure to post opening activities, warmups, and student work. Blake was only present for 38 minutes and was not present to see all the components of respondent's structured lesson. Moreover, Blake conceded that her timekeeping of activities in respondent's classroom that day, used to support the charges of instructional inefficiency, was inaccurate. Respondent used a variety of appropriate instructional techniques and teaching strategies.

33. Complainant alleges in Charge 22 that, on February 22, 2012, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(I) [Respondent] failed to use instructional time effectively:

(a) At 9:35 a.m., [respondent] said, "I have to find the right track," and then spent three minutes searching for the 'Alaska' chapter on the audio CD. Students watched [respondent] at the computer while she searched for and found the correct track.

(b) At 9:55 a.m. [Respondent] said "Take five minutes to write out the questions on page 55," yet she did not give a 'two-minute warning' until 8 minutes had elapsed. The activity lasted 10 minutes rather than five, resulting in a loss of five instructional minutes.

(c) Transitioning the class from writing the questions to the group presentations took six minutes, during which time the students were sitting at their desks with nothing to do except wait for the first group to start.

(d) The first group presented for less than one minute and the next group did not begin until five minutes later.

(e) Transitions between activities took a total of 15 minutes and [respondent]'s lack of urgency resulted in students sitting at their desks with nothing to do, waiting for the next activity.

(2) Respondent failed to engage students in problem solving, critical thinking, and other activities that make subject matter meaningful:

(a) Students were not asked to analyze, evaluate, synthesize, or predict from the book.

(b) The group presentations lacked rigor as both groups read from their papers and neither group spoke for more than 90 seconds.

(3) [Respondent] failed to develop and sequence instructional activities and materials for student learning or use a variety of instructional strategies and resources to respond to students' diverse needs:

(a) The passage from the book on audio CD included references to Jack London and Ernest Hemingway, yet there was no explanation about those writers, their significance, or the reasons they were referenced in the reading materials.

(b) Chapter 9 of Into the Wild included several vocabulary words, yet there was no reference to or explanation of the words.

(c) [Respondent] did not ask probing questions to verify and validate student understanding of the material.

(d) Many students did not participate either by reading or answering questions and they were permitted to sit and not produce any work during the period.

(4) There was little to no evidence of designing short-term and long-term plans to foster student learning:

(a) The posted agenda listed "Literary Circles," however there was no such activity. Two groups made very brief presentations to the rest of the class.

(b) There was no specific objective or clear focus to [respondent]'s lecture and she often went on tangents into one-on-one conversations with students. Many students stopped working whenever [respondent] spoke.

34. The evidence did not support Charge 22, with the exception of paragraph A.3.d.

35. Complainant alleges in Charge 23 that, on March 9, 2012, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) There was little to no evidence of engaging students in problem solving, critical thinking, and other activities that make subject material meaningful:

(a) [Respondent] did not structure activities or ask students to analyze, evaluate, synthesize, or predict in preparation for writing the essay.

(b) [Respondent] had students seated in rows facing towards the front of the classroom and did not provide students an opportunity to work collaboratively in pairs or small groups for the purpose of interacting with and learning from their peers.

(2) There was little to no evidence of developing and sequencing instructional activities and materials for student learning. [Respondent] did not provide students any pre-writing exercises such as quick-write, note review or outlining, nor did she structure any collaborative activities such as Think/Pair/Share, literary circles or small group-discussion groups.

(3) There was little to no evidence of designing short-term and long-term plans to foster student learning, as [respondent]'s talk about the potential essay topics lacked focus, and she frequently mentioned subjects unrelated to Expository Composition or participated in 'one-on-one' side conversations with students. [Respondent] did not instruct students to take any notes during this activity and as a result of not participating in the lesson, many students engaged in off-topic behaviors as soon as [respondent] began speaking.

B. In the area of classroom performance:

(1) [Respondent] failed to use instructional time effectively:

(a) From 11:23 a.m.-11:29 a.m., (6 minutes from the 11:23 a.m. tardy bell), [respondent] did not provide students with an opening or instructional activity, and as a result, students were engaged in off-task behaviors such as, but not limited to, having off-topic, personal conversations.

(b) From 11:30 a.m.-11:50 a.m. (20 minutes), [respondent] told students about the writing prompt and possible topics for the essay, however her attempt to foster a discussion was ineffective as she consistently utilized the "teacher-to-student-to-teacher" delivery model. [Respondent] did not involve all of the students in her talk about potential essay topics and she allowed students to disengage from the subject material and not participate.

(c) From 11:40 a.m.-11:48 a.m. (8 minutes), a student had his head down on the desk and [respondent] did not redirect him to participate in the activity.

(d) From 11:52 a.m. - 11:57 a.m. (5 minutes), [respondent]'s attempt to efficiently transition from her talk about the essay topics to the WOW words was ineffective as students lost 5 minutes of instructional time before beginning the quiz.

(2) There was little to no evidence of establishing a climate that promotes fairness and respect, as [respondent] did not structure her introduction of the writing prompt to raise the discussion to the level of a meaningful and thoughtful examination of prejudice and stereotypes. [Respondent]'s talk to students elicited comments from students that were offensive and the unstructured conversation devolved into and reinforced negative stereotypes, such as (1) Mexicans and Latinos eating beans and (2) African-Americans eating collard greens.

(3) There was little to no evidence of planning and implementing classroom routines and procedures that support student learning, as [respondent]'s attempts to include all students in the discussion by drawing names from a cup was time consuming and distracting to students. While drawing a name from the cup [respondent] stated with a sarcastic tone, "I am drawing a name from the cup so that everyone has a turn which is what I was told to do."

(4) There was little to no evidence of establishing and maintaining standards for student behavior, as [respondent] did not wait for the class to be quiet before she began speaking and she consistently attempted to speak over students and their off-topic, personal conversations. As a result of the high noise level from the off-topic conversations, many students could not hear [respondent].

C. In the area of support for student learning, [respondent] failed to use a variety of instructional strategies and resources to respond to students' diverse needs:

(1) [Respondent] did not provide students with any differentiated instruction and/or activities, or address the unique needs of English learner or Special Education students, contrary to prior directives. The lecture continued to be [respondent]'s primary mode of instructional delivery rather than utilizing a variety of teaching strategies designed to make subject matter meaningful.

(2) [Respondent] did not provide students any opportunities for critical thinking, collaborative or group learning or reflecting upon their own work or that of their peers.

36. The evidence did not support Charge 23, with the exception of paragraph (B)(1)(c).

Complainant's Charging Allegations 24 Through 27

37. These charges pertain to events that are all alleged to have occurred during the 2012/2013 school year.

38. Complainant alleges in Charge 24 that, on September 6, 2012, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction, there was no evidence of designing short-term and long-term plans to foster student learning and achievement. [Respondent] failed to ensure that each instructional activity was related to rigorous learning goals as evidenced by the following:

(1) The Learning Objective stated, "Students will evaluate two speeches by reading Check Questions to prepare for the final essay." It was unclear how reading the Check Questions helped students evaluate the two speeches and how copying the definitions and questions from a book were connected to the standard [respondent] posted.

(2) The warm-up activity consisted of defining the Wow word *dermatitis*. [Respondent] did not establish or make clear to students the relationship of defining the terms to the learning objective, standards, or the lesson.

(3) The warm-up activity was from approximately 8:20 a.m. to 8:36 a.m. and lasted approximately 16 minutes. [Respondent] did not review the activity, make reference to it, or collect it.

(4) A connection between reading, the copying and answering of the questions at the end of the reading and the learning objectives was not communicated to students.

(5) There were many poster-sized Post-its all over the room. Students in the back of the classroom could not read them. The connection between those Post-its and the lesson objectives was unclear.

B. [Respondent] also failed to plan instruction to ensure that all groups of students had equal access to the curriculum. She did not frontload and/or introduce the academic vocabulary as students struggled with the choral reading activity.

C. [Respondent] also did not use state subject matter content standards to establish rigorous learning goals for students. She assigned low level activities such as copying definitions and copying questions from a book.

D. There was no evidence of effective strategies to address the different needs of different students.

E. In the area of classroom performance, [respondent] demonstrated a lack of (1) using instructional time effectively; (2) establishing a climate that promotes fairness and respect; (3) planning and implementing classroom routines and procedures that support student learning; (4) establishing and maintaining standards for student behavior; and (5) designing lessons to engage students in active, intellectual, and rigorous activity as made evident by the following:

(1) At approximately 8:38 a.m., students read aloud one at a time. Within two minutes, a majority of the class was disengaged and [respondent] failed to notice or address this behavior.

(2) At approximately 8:40 a.m., a student in the front row was making faces at a student in the back. The student in the back was not following the reading and was twirling his pen.

(3) At approximately 8:46 a.m., several students were yawning frequently, two students had their heads down, and three students were slouching in their chairs and doodling on a sheet of paper.

(4) At approximately 8:54 a.m., a young lady in purple put her head down and two young men in the front row were making funny faces at each other and began to intentionally rub their tennis shoes on the floor causing a screeching sound. [Respondent] was unaware of this conduct and failed to address it.

(5) At approximately 9:02 a.m., the reading, which lasted 24 minutes, was completed but there was no discussion of the reading. Instead [respondent] had students copy the questions at the end of the reading and answer the questions individually.

(6) From approximately 8:25 a.m. to 9:10 a.m. (45 minutes), there was no student- to-student interaction. Students worked individually on the warm-up activity defining words, they read one at a time during the choral reading, and then they copied and answered questions from the book.

(7) At approximately 9:11 a.m., [respondent] told students, "Feel free to work with a partner," but did not provide any norms on what working with a partner should look like or what the expectation of submitting work was. The entire class ignored the statement, immediately stopped working and began to socialize.

(8) At approximately 9:14 am., a student made a comment to another student, "This is boring." Students appeared to be restless and anxious to leave the class as they stopped working and did not seem concerned to complete the assignment.

(9) At approximately 9:15 a.m., [respondent] stated to the class, "A few of you are finished. The rest of you finish for homework." Students began to pack up their belongings and left when the bell rang without [respondent] dismissing them.

(10) [Respondent] did not review or collect any assignments from students and did not evaluate to see if the learning objectives for the day had been met. There was no closure to the lesson.

(11) [Respondent] did not establish and maintain standards for student behavior nor did she create a climate that promoted fairness and respect. There was no evidence of her creating a positive rapport with students.

(a) On September 12, 2012, the mother of D [REDACTED] R. reported to administrators that [respondent] had previously informed her that her son had an "attitude." D [REDACTED] R. reported to his mother that [respondent] would never say hello and would simply make notes in a book.

(b) On September 13, 2012, the mother of C [REDACTED] A. reported to administrators that she was concerned because of the way [respondent] treated her son. C [REDACTED] A. had been told to check in with [respondent] during Homeroom and then to report back to the counselor's office (Mrs. Dreyer). According to C [REDACTED] A., [respondent] stated to him, "No, (you cannot go back to the office), I am not breaking any rules for you or for Mrs. Dreyer." C [REDACTED] A. reported that [respondent] was constantly rude and talked down to him.

F. In the area of support of student learning:

(1) [Respondent] failed to use a variety of instructional strategies to respond to student's diverse needs.

(a) [Respondent] did not deliver a teacher directed lesson. The interaction between the teacher and the students was very limited and consisted primarily of [respondent] going around with a clipboard checking for something or calling on students asking them to answer a question or read.

(b) [Respondent] did not frontload, promote, or model the use of academic vocabulary relevant to the reading assignment.

(c) [Respondent] failed to guide students to be self-directed and assess their own learning. At approximately 8:41 a.m., [respondent] asked student Michelle, out loud in the presence of the class, "Do you know how to pronounce it?" (Referring to a word in the reading material). [Respondent] did not allow sufficient pause time for the student to answer. Rather, [respondent] answered the question for the student and engaged in similar conduct with other students.

(d) [Respondent] did not integrate students' prior knowledge, life experiences, and interests into the instructional program. She did not tie in students' experience about evaluating the credibility of an author and person and make the connection to the lesson, learning objective or standard.

39. The evidence supported Charge 24, paragraphs A.2 through 4, C, E.1 through 4 and 6 through 10, and F; the evidence did not support the other parts of the charge. The proven portions of the charge are partly mitigated by the fact that September 6, 2012, the day Dirlam chose to observe respondent's class, was the day respondent returned from bereavement leave after her father's death.

40. Complainant alleges in Charge 25 that, on February 22, 2012, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) There was minimal evidence of designing short-term and long-term plans to foster student learning and achievement of the State Standards.

(a) Notwithstanding the fact that [respondent] had various State Standards (Reading Comprehension 2.1 and 2.2) and learning objectives posted on the board, she failed to review, or make reference to any of the posted materials during a period of 45 minutes.

(b) [Respondent] failed to effectively communicate to students the purpose of the lesson. She did not review what the students were learning, how the activities she had planned would help the students accomplish the Learning Objective and meet the State Standards, and why it is important or relevant to the students.

(2) [Respondent] did not plan rigorous learning activities that would help students meet the Learning Objective and State Standards, nor did she make a connection between the assignments she asked students to complete and the Learning Objectives. The agenda stated, "Warm-up Academic Vocabulary. Define and Delineate. 5 min. Class work: Text based grammar exer. 3-15 min. Activity 9 pg. 42 Structure and Text, Questions 15 min. Descriptive Outlining. Evaluate 5-min." [Respondent] did not review or

address the warm-up, nor did she make a connection between the assignments and the Learning Objectives or Standards.

(3) There was no evidence of strategies to address the individual needs of students.

B. In the area of classroom performance:

[Respondent] did not create an effective learning environment that engaged students in active intellectual learning. Many students were not paying attention to [respondent] and were off-task during the majority of the time that the administrator observed the class.

(a) From approximately 1:06 p.m. to 1:20 p.m., a student sat reading a novel instead of doing the warm-up and class work,

(b) At approximately 1:25 p.m., a student was organizing his backpack instead of copying sentences from the worksheet displayed on the overhead projector. [Respondent] did not redirect or address the student.

(c) At approximately 1:27 p.m., three students were yawning frequently, four students had their heads down, five students were playing with their pens or doodling on their papers. [Respondent] failed to intervene or address the students' behavior,

(d) At approximately 1:40 p.m., a majority of the class was socializing. [Respondent] made a comment to the class, "I hear a lot of chatter. I hope we are doing what we are supposed to be doing." The class continued to socialize until the bell rang at 1:50 p.m. (10 minutes). [Respondent] did not redirect or address the students/class.

(2) [Respondent] did not utilize instructional time effectively.

(a) From approximately 1:12 p.m. to 1:24 p.m. (12 minutes), [respondent] asked students to copy the sentences from a grammar worksheet displayed on the overhead projector. The students did not need to copy the worksheet since [respondent] subsequently asked individual students to share their answers aloud. [Respondent] did not give credit or collect the assignment, thus resulting in a loss of 12 instructional minutes.

(b) [Respondent] spent an excessive amount of time walking around the room with her clipboard, but did not seem to be keeping record of students' work as she walked by them. [Respondent] did not assess student work or offer constructive feedback.

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C. In the area of support of student learning:

(1) [Respondent] did not effectively monitor for student learning or check for student understanding. Although she circulated around the room to check if students had copied the sentences displayed on the overhead projector, [respondent] did not ask students to explain, summarize or demonstrate that they understood the content.

(2) [Respondent] did not use a variety of instructional strategies and resources to respond to students' diverse needs. She did not plan activities that would have allowed for collaborative learning. The teacher-to-student interaction was limited and there was no evidence of student-to-student interaction. [Respondent] also failed to use or promote the use of academic vocabulary with the exception of the warm-up which she did not review or address.

D. [Respondent] also failed to guide students to be self-directed learners and assess their own learning. She did not provide scaffolds to help students answer the questions on their own for the class work that she assigned. Instead [respondent] gave students a graph of where they could find the answers and advised the class, "Write this table to help make this a little simple."

41. The evidence did not support Charge 25, with the exception of paragraph A.2, a charge partly mitigated by the fact that the class period was shortened that day.

42. Complainant alleges in Charge 26 that, on January 22, 2013, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) [Respondent] did not demonstrate evidence of short-term plans to foster the activities she planned for the day.

(a) The Standards posted were not connected to the learning objective or the activities she planned for the day.

(b) The learning objective posted stated, "You (students) will complete Literary Analysis Form of Questioning for Final Essay."

(c) The Agenda items were; "Warm-Up Clear desks ready for vocabulary quiz-3 min. Class work 3 pg. 30 miii. To Kill A Mockingbird. Reflection 5 Min. Homework: Bring PML Review Expository Vocab."

(2) [Respondent]'s explanation of the instructional purpose was unclear to students. At approximately 8:44a.m., 19 minutes into the period,

[respondent] read the standards in a very soft inaudible voice and while facing the board. It appeared as if she read the standards to herself rather than the class. [Respondent] did not review the standards or learning objective with students nor did she demonstrate their connection to the day's learning.

(a) At approximately 8:41 a.m., [respondent] asked students to take out the book, *To Kill a Mockingbird*, and their Class Structure Thinking Maps.

(b) [Respondent] asked the class, "Who can give me an example of socialization?" There was no response.

(c) [Respondent] went to a cup with sticks that contained students' names and pulled out the name R [REDACTED] Q. He had no response.

(d) [Respondent] then asked, "What's the definition? Do you remember the example I gave you on Friday?" There was no response.

(3) The student group activity [respondent] assigned did not support the instructional outcomes, nor did she clearly explain the purpose of the group work. As a result, students became confused.

(a) At approximately 8:51 a.m., [respondent] told students, "You will work in groups. I need one of each in each group, director is in charge, summarizer takes notes, word watcher looks for new vocabulary, and the illustrator draws."

(b) At approximately 8:52 a.m., [respondent] said, "If anyone has any questions, now is the time to ask." A student asked, "Ms., what are we doing?" Rather than clarify the task for him, [respondent] responded, "I will give you one minute to decide your roles."

(c) At approximately 8:59 a.m., [respondent] asked students to move their desks, but they ignored her and instead socialized. One group of three girls moved their desks about 30 seconds later.

B. In the area of classroom performance:

(1) [Respondent] did not implement classroom procedures and routines that support student learning.

(a) From approximately 8:28 a.m. to 8:40 a.m., students took a quiz which consisted of defining seven words that were written on the board.

(b) At approximately 8:33 a.m., four students were sharing answers during the quiz while [respondent] wrote something on the board and walked back and forth from her desk to the board. She was either unaware or chose to ignore the students who were sharing answers.

(c) At approximately 9:12 a.m., [respondent] asked students to do a reflection on two prompts: (1) "What did you learn today?" (2) "How did you learn it?" [Respondent] told students that they would be doing the reflection of these two prompts every day and would receive 5 points for every day. A majority of the students did not do the reflection. Instead they laughed and socialized. They appeared to not take the assignment seriously. [Respondent] did not review or discuss the reflection with students. She collected them when the bell rang.

(2) [Respondent] did not create an effective learning environment that engaged students in active intellectual activity.

(a) At approximately 9:00 a.m., two students in the back of the room did not appear to be working in a group, but instead sat independently reading *To Kill a Mockingbird*. [Respondent] redirected them at approximately 9:05 a.m.

(b) At approximately 9:01 a.m., four female students were engaged in a social conversation, giggling, instead of doing the assignment of completing the Literary Analysis Form. [Respondent] approached the group of girls at approximately 9:08 a.m., and told them she would give them a zero for the day. A student replied, "No, Ms. we were talking about what to do." [Respondent] walked away and they continued to socialize. She did not address the behavior any further.

(3) [Respondent] did not maintain or establish standards for student behavior or redirect them when several exhibited disrespect for one another. At approximately 9:04 a.m., a student (#1) yelled out, "R [REDACTED] what am I supposed to draw?" R [REDACTED] replied to the student sarcastically, "Draw a kid holding a pumpkin." Several students laughed. A third student then stated, "He's lying to you fool. I'm going to draw the cover of the book." Several students laughed. At approximately 9:13 a.m., a majority of the class was socializing rather than working on the assignment.

C. In the area of support of student learning:

(I) Rather than monitor for student learning, [respondent] walked around the room and simply checked to see if students were on task.

(a) At approximately 8:52 a.m., [respondent] stated to the class, "If anyone has any questions, now is the time to ask." [Respondent] did not ask students questions that allowed them to demonstrate they understood the task at hand, what the purpose of the assignment was, or any key concepts.

(b) At approximately 9:02 a.m., [respondent] asked a student, "Mr. Dominguez, what are we working on?" He did not respond. [Respondent] then walked to her desk.

(2) [Respondent] did not integrate students' prior knowledge, life experiences, and interests into the instructional program. At approximately 8:45 a.m., [respondent] briefly mentioned that there was a theme of race and socialization in the book, *To Kill a Mockingbird*, and she mentioned Martin Luther King day and the Civil Rights movement, but did she did not encourage students to participate in a discussion or share their experience with race or the theme of socialization.

(3) [Respondent] did not use or promote the use of academic vocabulary with the exception of the quiz which she did not review. It appeared that many students were not able to define the words as there were many blanks where there should have been definitions.

43. The evidence did not support Charge 26, with the exception of paragraph A.2.d.

44. Complainant alleges in Charge 27 that, on February 19, 2013, respondent failed to perform her duties satisfactorily, as classroom observation revealed:

A. In the area of planning and designing instruction:

(1) [Respondent] failed to demonstrate evidence of short-term and long-term plans to foster student learning and achievement in the State Standards.

(2) [Respondent] did not use state subject matter content Standards to establish rigorous learning goals for students.

(a) The learning goal [respondent] established for students consisted of completing a chart and creating a timeline of three events that occurred in a chapter in *To Kill a Mockingbird*. Although the students had been reading the book for over a month, [respondent] did not make a connection to the State Standard that was posted.

(b) The objective [respondent] posted stated, "You (students) will complete chart (sic) for culminating assignment and timeline for your chapter In TKM (*To Kill a Mockingbird*)."

(c) A majority of students who completed the low rigor timeline assignment wrote three simple sentences describing three moments in one chapter. [Respondent] collected the assignment and did not review their responses.

(d) [Respondent] failed to provide opportunities for more students to become involved in answering questions or participating in a discussion.

(3) [Respondent] did not clearly communicate to students what the learning expectation was for the day. At approximately 10:32 a.m., [respondent] read the Standards and the Objective she posted on the board to the class. She did not ask students to demonstrate that they understood the learning expectation for the day. She also failed to monitor student learning when she did not ask students questions that would demonstrate if they understood the assignment, key terms or key concepts.

B. In the area of classroom performance:

(1) [Respondent] failed to create an effective learning environment that engaged students in active intellectual activity,

(a) At approximately 10:39 a.m., [respondent] asked the class, "How do the characters in these chapters model socialization?" Only one student, R■■■, answered. The rest of the class sat quietly and did not offer any responses, [respondent] addressed only the one student.

(b) At approximately 10:40 a.m., two students were slouching and one had her hand on her cheek and elbow on the desk. Several students had a glazed look in their eyes and appeared to be bored.

(c) At approximately 10:50 a.m., one student stated, "I don't get it."

(d) At approximately 11:05 a.m., several students were observed not working and instead were socializing. Five out of the 31 students in the class were working on their timelines but the remaining 26 students had blank papers and were not working.

(2) [Respondent] did not create a climate that promoted fairness and respect. At 10:45 a.m., she used a strategy of pulling small sticks with names on them from a cup to select students to answer questions. In one instance, [respondent] pulled out a stick, looked at the name and stated, "No, that's one of my usual suspects." She then pulled out another stick and called on that particular student,

(3) [Respondent] did not establish classroom procedures and routines that support student learning.

(a) At approximately 10:46 a.m., [respondent] asked students to find three examples of socialization in chapters 1-3.

(b) [Respondent] set a timer for five minutes. When it went off, she asked if the students required more time. She then reset the timer multiple times.

(c) It was unclear what the purpose of the timer was since she repeatedly reset it without expecting students to have completed the assignment.

(d) At approximately 10:50 a.m., [respondent] allowed student M [REDACTED] who had a history of truancy or absenteeism, to go to the restroom. The student was gone for over ten minutes. [Respondent] failed to address the issue of the student being gone for so long.

C. In the area of support of student learning:

(I) [Respondent] did not monitor for student learning, instead she walked around the room and simply checked to see if students were on task. She did not ask students questions that allowed them to demonstrate that they understood the assignment, the key concepts or key terms. It was evident by a lack of responses and participation that students did not understand the assignment. [Respondent] did not reteach or clarify.

(2) [Respondent] did not use a variety of instructional strategies and resources to respond to student's diverse needs.

(a) [Respondent] did not pre-view academic vocabulary. She asked students to provide examples of socialization in the chapters of *To Kill a Mockingbird*, but failed to implement teaching strategies to ensure that students would be able to define or explain what socialization is.

(b) [Respondent] did not allow sufficient pause time for students to generate their responses when she asked them questions. At approximately 10:42 a.m., [respondent] asked the class if anyone had any examples of socialization. Instead of pausing to give students an opportunity to think, [respondent] immediately provided an example from chapter 3.

45. The evidence did not support Charge 27.

46. Blake's and Dirlam's pattern of choosing classroom observation days that administration could anticipate would prove difficult for respondent—after her return, on crutches, from injury, and on her first day in class after bereavement leave—and evaluating respondent's performance by standards that are not fully applicable to the day's lesson—such as the last period before final exams, or on shortened class days—raises serious questions about the credibility of evidence introduced to support the charges against respondent.

LEGAL CONCLUSIONS

Jurisdiction

1. The Commission has jurisdiction to proceed in this matter under section 44944. (Factual Findings 1 through 3.)

Burden of Proof

2. The District has the burden of proof in this matter, since it is seeking to dismiss respondent from employment as a certificated employee. The District must prove its case by a preponderance of the evidence. (*Gardiner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035, 1040.)

Statutory Grounds for Dismissal

3. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in section 44932, subdivision (a), or 44939 are established. In the Accusation and Statement of Charges, the District alleged five of those causes: unprofessional conduct, unsatisfactory performance, evident unfitness for service, persistent violation of school laws or regulations, and willful refusal to perform regular assignments without reasonable cause. (Factual Finding 4.)

4. The District's Accusation and Statement of Charges charged respondent with various acts to support the five statutory grounds for dismissal. (Factual Finding 5.) The Commission examined each charged act to determine whether it was proven; for each charged act proven, the Commission considered whether the charged acts violated one or more of the statutory bases for dismissal, as alleged.

5. The Commission determined that the District established that the acts alleged in the following charges occurred: 2; 4; 5; 6; 7; 10; 13; 14; 15; 16; 17; 22(A)(3)(d); 23(B)(1)(c); 24(A)(2) through (4), C, E(1) through (4), (6) through (10), and F; 25(A)(2); and 26(A)(2)(d). The District did not establish that the other charged acts occurred as alleged. (Factual Findings 10-45.)

6. Cause for dismissal of respondent does not exist under section 44932, subdivision (a)(1), based on unprofessional conduct, as set forth in Factual Findings 10 through 45 and Legal Conclusions 3 through 5.

7. Cause for dismissal of respondent exists under section 44932, subdivision (a)(4), based on unsatisfactory performance, as set forth in Factual Findings 11 through 17, 10 through 45 and Legal Conclusions 3 through 5.

8. Cause for dismissal of respondent does not exist under section 44932, subdivision (a)(5), based on evident unfitness for service, as set forth in Factual Findings 10 through 45 and Legal Conclusions 3 through 5.

9. Cause for dismissal of respondent does not exist under section 44939, based on willful refusal to perform regular assignments without reasonable cause, as set forth in Factual Findings 10 through 45 and Legal Conclusions 3 through 5.

10. Cause for dismissal of respondent does not exist under section 44932, subdivision (a)(7), based on persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her, as set forth in Factual Findings 10 through 45 and Legal Conclusions 3 through 5.

Analysis of the Morrison Factors

11. As a threshold matter, courts require an evaluation of whether a teacher's alleged misconduct demonstrates the teacher's unfitness for service, using the following criteria, which the Supreme Court enunciated in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These criteria are commonly referred to as "the *Morrison* factors." The *Morrison* court held that "an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher." (*Id.*, at p. 235.)

12. The *Morrison* factors analysis applies to causes for dismissal for unprofessional conduct. "Unprofessional conduct," as used in section 44932, subdivision (a)(1), is conduct that violates the rules or ethical code of a profession or that is unbecoming a member of a profession in good standing. (*Bd. of Ed. v. Swan* (1953) 41 Cal.2d 546, 553.) The conduct in question, to amount to unprofessional conduct, must demonstrate unfitness to teach. (*Perez v. Com. on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) The *Morrison* analysis also applies to causes for dismissal for evident unfitness for service, under section 44932, subdivision (a)(5). Evident unfitness for service is established by conduct demonstrating that the teacher is "clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Com. on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) There is no reason to apply the *Morrison* factors to analyze causes for dismissal for unsatisfactory performance or for persistent violation of laws and regulations (*Morrison, supra*, 1 Cal.3d at pp. 227-230); it is presumed that such conduct is related to fitness to teach.²

² None of respondent's acts constituted persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public

13. Some of respondent's acts constituted unprofessional conduct. (Factual Findings 11-14, 16, 19, 23, & 24.)³ Applying the *Morrison* factors, the evidence did not establish, however, that respondent is unfit to teach. The incidents adversely affected students, but are remote in time and are not likely to recur. Respondent was able to and did correct her behavior toward students and parents, and was not again cited for her behavior after November 2010. (See, e.g., *Bd. of Ed. v. Swan* (1953) 41 Cal.2d 546, 553 (unprofessional conduct); *Woodland Joint Unified School Dist. v. Com. on Prof. Competence* (1992) 2 Cal.App.4th 1429 (evident unfitness).)

14. Some of respondent's acts, alleged in Charges 2, 4, 24(C) to (F), 25(A)(2), and 26(A)(2)(d) (Factual Findings 11, 12, 37-43), constituted unsatisfactory performance. The Commission determined that those instances of unsatisfactory performance, although constituting cause for dismissal under section 44932, subdivision (a)(4), were insufficient, separately and in the aggregate, to warrant dismissal or to demonstrate that respondent is unfit to serve as a teacher. Other charged acts, though proven (see Legal Conclusion 5), were insufficiently significant to constitute unsatisfactory performance. Moreover, the reliability of the District's evidence pertaining to its unsatisfactory performance charges was compromised by a lack of credibility resulting from the nature and timing of classroom observations, as set forth at Factual Finding 46.

15. Even where cause for dismissal has been established, the Commission has broad discretion to determine whether discipline is warranted. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 220-222.) "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citing *Fontana, supra*, 45 Cal.3d at pp. 220-222.] '[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.' [Citation]." (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 343-344.) Complainant did not establish that dismissal is necessary to protect students, school employees, or others or to deter respondent from engaging in similar conduct in the future. The Commission members agree unanimously.

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schools by the State Board of Education or by the governing board of the school district employing her, or willful refusal to perform regular assignments without reasonable cause, based on Factual Findings 10 through 46. (See, e.g., *Woodland Joint Unified School Dist. v. Com. on Prof. Competence* (1992) 2 Cal.App.4th 1429 (evident unfitness); *Governing Bd. of Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77 (violation of school laws).)

³ With respect to Charges 13 and 18 (see Factual Findings 22 and 25), respondent did not engage in unprofessional conduct. It is not unprofessional conduct for respondent to insist on either having a union representative present at, or being allowed to record, a meeting that could have disciplinary repercussions.

ORDER

The Accusation and Statement of Charges against respondent Claudia Conroy are dismissed.

DATED: May 8, 2015



HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

I concur with the Decision and Order set forth above:

DATED: May __, 2015

MARLON MENDEZ
Commission Member

I concur with the Decision and Order set forth above:

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HAYWOOD FINDER
Commission Member

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