

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND A
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
WILLIAM S. HART UNION HIGH SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

DEBORAH HARRIS,
A Permanent Certificated Employee,

Respondent.

OAH No. 2017040988

DECISION

The Commission on Professional Competence (Commission) heard the above-captioned matter in Santa Clarita, California on October 16 through 20, 23, and 24, 2017, and on March 19 through 21, and March 26, 27, and 29, and May 16, 17, and 25, 2018. The Commission members were Davina Keiser, Sherri Prosser, and Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH).

William S. Hart Union High School District (District) was represented by Littler Mendelson P.C., Barrett K. Green, Laila S. Tafreshi, and Michelle M. Holmes.

Respondent Deborah Harris appeared on all hearing dates with her attorney, Tamra M. Smith, Equality Law Office.

After the case was argued on May 25, 2018, the record was held open so that further documents could be lodged with the Commission. The matter was submitted for decision on June 1, 2018.

Some exhibits, such as Respondent's medical records, will be sealed by a protective order that will issue separately from this decision.

The Commission hereby makes the following factual findings, legal conclusions, and order.

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INTRODUCTION AND STATEMENT OF THE CASE

In this proceeding the District took steps to terminate Respondent, and she demanded a hearing on the matter. Two statutory grounds were asserted in the Statement of Charges (SOC) as justifying termination: evident unfitness for service (Ed. Code, § 44932, subd. (a)(6)), and dishonesty (Ed. Code, § 44932, subd. (a)(4)).¹ The District amended the SOC to assert a claim that Respondent was unfitted to teach or associate with students due to abuse of alcohol or prescription drugs, but it later dropped that claim.

In the main, it is alleged that during parts of the 2015-2016, and 2016-2017 school years, Respondent engaged in “bizarre, inappropriate, and dishonest conduct in connection with classroom instruction and oversight.” (SOC, ex. 501, p. 1.) In support of that claim, a number of episodes were alleged, such as a claim that Respondent inappropriately provided quiz answers to students in advance of the quizzes, failed to provide instruction, required form over substance by telling her students to make sure their homework looked “pretty,” and gave all of the students in one of her classes an A+ grade when such was not warranted.

Prior to the commencement of the hearing, Respondent amended her Notice of Defense (NOD) to allege that the District was retaliating against her because she had physical disabilities and because she had sought accommodations for her disabilities. Substantial hearing time was devoted to establishing the nature of her disabilities and whether the District took adequate steps to accommodate her disability. Respondent also provided evidence in response to the core allegations against her, to support her retention by the District.

Notwithstanding the evidence provided by Respondent, the Commission finds, unanimously, that the District proved, by a preponderance of the evidence, that cause for termination has been established. The Commission also finds, unanimously, that Respondent has not established that the District was retaliating against her because she was disabled, or for her efforts to obtain accommodations. Therefore, she shall be terminated as a certificated employee of the District.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Michael Vierra, Ph.D, signed the SOC while acting in his official capacity as Assistant Superintendent, Human Resources, of the District.
2. Respondent is a certificated teacher employed by the District, and at the times relevant to this decision was teaching math to high school students at Valencia High School (Valencia High). Respondent holds a single subject math teaching credential.

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

3. After receiving the SOC, Respondent demanded a hearing.
4. All jurisdictional requirements have been met.

Other Procedural History

5. As noted in the introduction, Respondent filed an amended NOD asserting as an affirmative defense that the District had engaged in retaliation against her because of her disabilities and her requests for accommodation. That amendment was submitted on August 9, 2017.

6. Just prior to the start of the hearing, the District moved to amend the SOC to assert that Respondent was physically or mentally unfit to teach or associate with students as a result of her alleged abuse of prescription drugs and alcohol, within the meaning of section 44932, subdivisions (a)(7) and (a)(11). However, during the course of the hearing the District gave notice that it was dropping the claim, and the matter was submitted for decision on the original claims of evident unfitness to teach and dishonesty.

Background Information

7. The bulk of the relevant events that occurred in the classroom occurred during the fall semester of the 2015-2016 school year, and the fall semester of the 2016-2017 school year. In each of those semesters, Respondent was only in the classroom for a few weeks.

8. Respondent had been assigned to teach at Valencia High for several years before the start of the 2015-2016 school year. At the beginning of the 2014-2015 school year a new principal, John Costanzo was assigned to Valencia High. At that time, Respondent was teaching with some disability accommodations in place. This included allowing her to sit in a recliner chair, and to use a computer and projector to project work images, such as equations and drawings, onto a board for the students to see.

9. Respondent received unsatisfactory performance reviews in the fall of 2014 and early part of 2015. She was pressed to participate in the Peer Assistance and Review program, known as PAR. The record discloses that Respondent was given a chance to volunteer for the program, which had the advantage of giving her two years to improve her teaching skills. A teacher required to participate could have only one year. Nina Zamora, an experienced math teacher, was assigned to work with Respondent.

10. In the fall of 2015, within a few weeks of the start of school, it was agreed that Respondent would change assignments, moving out of the classroom to the opportunity room. This change came about in the context of numerous complaints about her teaching, and requests from students (or their parents) to have the students transferred out of her math classes. She did not engage in meaningful instruction in that latter post. Thereafter, in early 2016, she went out of work on a disability claim.

11. Late in the summer of 2016, Respondent communicated to the District that she was able to return to work, and her doctor had reduced the restrictions upon her activities, which implicated the amount of accommodations that would be necessary. Respondent was unable to teach during the first few school days, in part because of an issue of needed training, and also because she claimed illness. Later, in September 2016, she was also absent on several days, in part due to attendance at court proceedings related to the dissolution of her marriage. Within weeks of the semester start, complaints were coming in from students and parents, to the effect that when Respondent was in the classroom, her instruction was deficient, the students did not understand the material, she was going over the same material over and over, and it was asserted she was giving out quiz answers ahead of the quizzes. Students and their parents demanded transfers from Respondent's classes.

12. Respondent was relieved of her teaching assignments on September 19, 2016, and placed on administrative leave. Thereafter, the District commenced this proceeding.

Findings on the Allegations of the SOC

13. It was established, as alleged, that Respondent threatened to have student L.M. removed from class for asking questions about the instructional material, and that she threatened to suspend the student from further attendance at the class. Respondent claimed that this would happen at the college level.

14. It was established, as alleged, that in August 2016, Respondent told a class to enjoy their weekend and to not drink or do drugs during the weekend. While this was established, it does not provide a basis for termination under the two statutory categories asserted by the District.

15. It was also established that during back to school night, Respondent appeared flustered, and she appeared unprepared. It should be noted that during back to school night in 2016, when parents voiced concerns and asked questions about extra credit, that their children did not understand the material, and sometimes could not read the notes she was posting on the board, she deflected those questions and concerns, rather than squarely addressing them.

16. It was established that Respondent provided quiz answers to students in advance of the tests during the fall 2016 time period. A number of students credibly testified to this matter, and they testified that Respondent repeatedly instructed them to memorize problems and answers.

17. It was established, as alleged, that in September 2016, student A.H. asked to use the restroom and Respondent denied the request without explanation. The student renewed her request, and was again denied. Respondent then went to the student, and began whispering to her about the upcoming Valencia High football game, including where was the student going to sit. Respondent then gave the student a paper with Respondent's phone number on it, and asked her to text her during the game.

18. It was established, as alleged, that on September 2, 2016, during an Algebra 1A class, Respondent gave confusing instructions to the students, and that several students appeared confused, while others were off task during class. Respondent started the class late, and failed to take roll or enter attendance into the Infinite Campus system. Respondent provided incorrect instruction to the students regarding commutative and associate properties, and she used inappropriate vocabulary, including “binkity bink.” Respondent ended the class late, two minutes into the passing period.

19. It was established, as alleged, that on or about September 13, 2016, student T.R. quietly got up and grabbed her backpack, and tried to quietly leave the class. It was established that she did so because she needed to use the restroom. The student apologized, and made her need clear, but Respondent cut her off. Respondent asked for the student’s name, but Respondent cut her off when she tried to speak. The student finally just left the class.

20. (A) It was established that in September 2016, a parent emailed Respondent, asking for a copy of her child’s graded quiz, and a copy of a graded make-up quiz that the student, L.M., had taken that day at lunch. Two days later, Respondent announced to the class that a parent had requested copies of the quizzes, and Respondent stated to the class that she was not going to give them out.

(B) It was established that the parent complained to the school about Respondent’s failure to give her copies of the two quizzes, and that Respondent thereafter announced to the class that L.M., the student in question, “needed to get a life.” Respondent told L.M. that she needed to better represent Valencia High softball.

(C) Respondent never provided the copies of the quizzes to the parent in question.

21. In connection with the make-up quiz referenced above, Respondent allowed L.M. to memorize the answers before the student retook the quiz.

22. (A) It was established as alleged in paragraphs k and l of the SOC that when Respondent was teaching, she was providing little instruction. Students were told to copy what was on the board, and they were told to memorize the problems, and were told that the problems would be on the quiz. Respondent’s teaching methods failed to promote student learning; rather, her methods promoted memorization of the problems and their answers.

(B) Students testified credibly during the hearing that they were not learning how to solve the problems presented by the course, whether it was algebra or geometry. One student testified that he would like to become an engineer, and though he was an underclassman, he knew that he needed to learn the subject matter of Respondent’s class, not just to get a good grade, but so that he could put the knowledge to work in subsequent classes, and in other endeavors. He perceived that he was not learning the material. Other

students believed they were not learning the material either. This caused students and parents to question Respondent's ability to teach her courses.

23. It was established that Respondent told her students to redo the same page as homework multiple times so that it was "neat and pretty." As a result, sometimes the students were redoing the same homework more than once.

24. It was established that Respondent failed to ensure that homework assignments had correct answers. The evidence established that Respondent rarely reviewed or corrected the homework, and often had one student simply check other students homework to verify some had been done. The situation devolved to the point that homework was credited if it showed any effort, even if the answers were incorrect.

25. Some of Respondent's students went to tutors for help in learning the subject matter of Respondent's classes. Respondent told such students that they would have to redo their assignments because they weren't doing it Respondent's way. However, the students didn't understand just what Respondent's way was, given her poor teaching.

26. It was established that during the Fall 2016 semester, Respondent entered an A+ grade for every student in her Geometry 1A class. Such grades were not supported or warranted. Respondent has provided various explanations for this. At one point, she stated that these outstanding grades were just "place holders," and that the correct grades would be entered later. At another point she told Principal Costanzo about the grades, to show how well the students were doing. The grades, however, were submitted into the system and they cannot be justified for all students in the class, if any of them.

27. It was established that Respondent told her students to go home and tell their parents that they were doing fine in Respondent's class, and the parents did not need to be concerned. She also told students that everyone would pass the class. That was not an accurate state of affairs given the evidence that numerous students were not learning the material, and what they were learning tended to be how to memorize questions and answers for quizzes.

Respondent's Disability Claims

28. Respondent suffers from a physical disability. As a result of surgery that occurred years before the events in this case, she developed a large hernia that has not been repaired. Her physician, Dr. John Barstis, provided evidence that it may, at this point, be inoperable. The hernia affects her entire midsection.

29. Respondent's physical condition plainly presents challenges for her. She wore, and still wears, a large binder to give her trunk area support, and to help hold her body together. According to Respondent, her legs often go numb, and she has to worry about falling, as a fall could literally open up her body, leading to serious injury or death.

30. Notwithstanding the serious nature of her condition, it appears that Respondent was generally ambulatory. How much endurance she had at any one time is not clear, but she could get around her classrooms. She had a wheelchair which she sometimes used, but there were times she did not use it. For example, she recounted parking in front of the school, and walking into the office.

31. The District took steps to accommodate her disabilities. As noted above, she could sit in a recliner chair and use technology to instruct, projecting images to a white board with a projector. She was encouraged to move about the classroom, to review students' work. When she asserted that such was difficult or not possible, the District obtained small erasable white boards so the students could show their work to Respondent, by holding them up for her to see what they had written.

32. This is not to say that the accommodation process went smoothly. At some point, it devolved so that Respondent would not talk directly to administrators, instead calling her attorney to have that person speak to the District's counsel. And, the record is replete with written communications between the attorneys on each side, often accusatory.

33. Throughout the hearing, much evidence was adduced regarding the efforts to make the accommodation process work, or as claimed by Respondent, the District taking steps to not have it work. If the District's efforts were not perfect, those efforts were made. For example, at one point, District staff was taking Respondent's recliner from her room to the library on a golf cart so she could participate in a meeting. Efforts were made to hold some smaller meetings in her classroom. When staff suggested moving a smaller chair that Respondent had in her classroom—more of a typical office chair by size and weight—she would not agree, as it was her personal property, specially made, and she feared damaging it. But, rather than leave it in her classroom where she could continue to use it some of the time to work from her desk, she took it home. The District took steps to buy a similar chair, which did not come to fruition before she was placed on leave.

34. (A) Respondent asserted during the events in question, and during the hearing, that the technology provided to her as an accommodation failed her, and that the District could not or would not make it work. Thus, she claimed to have problems with her laptop and her tablet, and hence had problems using her projection system.

(B) The record shows that the District did make efforts to make the technology work. Mr. Costanzo authorized obtaining a new computer. Ms. Zamora was present one day in Respondent's classroom when staff appeared there to work with the computer and/or projection gear. Ms. Zamora took steps to obtain technical support, communicating with administrators and staff to assist. She offered to help Respondent with her equipment, but Respondent refused her help.

(C) Respondent asserted while still teaching, and during the hearing, that she lacked access to the school's computer system, the Infinite Campus program and the District's e-mail. However, an audit by the IT staff disproved this. Further, even if her

laptop or pad were balky, Respondent had access to a desktop computer that could access the system. Respondent was capable of standing for short periods, and could have used that computer. Until she took her customized office-style chair home, she could have used it to work at her desk. Respondent had enough access to the system that she was able to put all of the A+ grades into the system on or about September 19, 2016.

(D) It must be noted that the students who were complaining about, and testified to, the poor instruction, and the fact that they were not learning in Respondent's classes did not bring up issues with the technology. They could see what was being projected on the board, but they could not read Respondent's notes, or they did not understand what she was teaching. The parents who wrote complaints and demanded transfer of their children from Respondent's classes didn't complain that the projector wasn't working; again, the claims were that the instruction provided by Respondent was deficient, that she kept teaching the same thing. Of further note is the testimony of Ms. Johnson, a parent who attended a back-to-school night with Respondent. She recounted that on that night Respondent was having a problem getting her pad synched up with the projector, and Ms. Johnson got it working for Respondent. This leads to the inference that any problems that existed were not insurmountable, if a parent who likely had not seen the system before could make the technology work in short order.

35. (A) It is found that Respondent's physical disabilities and any failure by the District to wholly accommodate them do not excuse her poor teaching and dishonest conduct. It appeared that at times she used her disability as an excuse for noncompliance on her part. There were times that she avoided meetings or interactions claiming that she had to leave early, or could not get to the meeting. At times the District took steps to accommodate Respondent, and she then made new demands for some other accommodation.

(B) It is found that any problems that Respondent's supportive technology presented does not excuse her poor teaching and her dishonesty.

36. It is found that the District, in bringing this termination proceeding, was not retaliating against Respondent due to her disabilities, or for her efforts to obtain accommodations for her disabilities.

Other Matters

37. Respondent told her students that if an administrator or other teacher came to the class that they should look busy and look as if they were engaged.

38. Respondent on numerous occasions told her students to "fake it till you make it." Some of the students placed this in the context of her telling them to look busy if an administrator was present. To others it appeared she was telling them to "fake it" if they didn't understand the material.

39. Respondent generally would not answer questions in class, and discouraged such. She told the students that they could e-mail her with questions in the evening, but she told them she would not respond when football games were on the television. Some students did send her e-mails, but did not get responses. Ms. Zamora counseled Respondent regarding taking questions in class, but Respondent was not persuaded.

40. Respondent would not use the District's e-mail system, despite being told it was a requirement. Thus, she often used her personal e-mail address. In late August 2016, Ms. Zamora advised Respondent she should not have students contact her on the personal e-mail, and Ms. Zamora informed her that communications regarding the PAR program had to go through the District's system. It got to the point that Jayme Allsman, president of the Hart District Teachers' Association advised Respondent in writing that she was required to use the District's system, or be in danger of being found insubordinate.

Credibility

41. The students who testified were all credible in their demeanor, and in the content of their testimony. There was consistency in their testimony about Respondent's classroom conduct. The parents who testified were credible in their demeanor as well.

42. Nina Zamora, the PAR coach, was credible in her testimony, both in her demeanor and in the content of her testimony. She was plainly a highly qualified teacher who was attempting to improve Respondent's skills and performance.

43. Mr. Costanzo's credibility suffered from what appeared, during cross examination, to be a selective memory. Further, his testimony regarding his attitude toward Respondent was severely impeached by the testimony of Edward A. Colley.

44. Respondent was not credible in a number of areas, and it harmed her defense and her affirmative claims as well. For example, she testified to attending court proceedings in Chatsworth, California to deal with her divorce on more than one day in September 2016, and to going from there (after court) to her doctor's office. This claim was not credible in that her physician's medical records did not support the claim, and further, because traffic conditions when travelling from the West San Fernando Valley to the Santa Clarita Valley are typically poor during the rush hour that occurs after court sessions end, i.e., after 4:30 in the afternoon. Respondent's claims of disability were belied by the surveillance video of her activities, taken between the October 2017 and March 2018 hearing sessions. Those films show that she was much more capable of movement than she had led others to believe, and that she was not disabled to the extent asserted by her. Respondent's claims regarding the A+ grades she put into the Infinite Campus system also strained credulity, as she has told different stories about why those grades were put in the system. Given the pressure she was under from students and parents who found her teaching inadequate, it is inferred that she was motivated to inflate the students' grades to relieve that pressure. Further, Respondent's claims that she could not access the Infinite Campus and the e-mail system were shown to lack credibility after an audit was run by the District IT staff. That audit showed she was

able to access the system. Finding 34, pertaining to claimed technology problems also negatively implicates Respondent's credibility. Other examples of her diminished credibility are found in the record.

The Morrison Factors

45. (A) Where there is conduct that might justify termination of a teacher, an examination must still be made of whether or not that conduct indicates that the teacher in question is unfit to teach. The misconduct must be shown to have some rational connection, some nexus, to the teacher's ability to teach in the District.

(B) This requirement was first set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229. In that case a teacher had been discovered to be homosexual, and a proceeding was filed to discipline his credential because of his homosexuality. The California Supreme Court held that the teacher's homosexuality alone was not enough to discipline his credential, instead requiring that some connection or nexus between his private conduct and his job duties and performance had to be shown. The court listed a number of factors that might be considered in determining whether or not such unfitness to teach had been established.

46. (A)(i) The first factor to consider is the likelihood that the conduct may have adversely affected students or fellow teachers. Here Respondent's actions adversely affected students. Many students did not learn the subject matter of Respondent's math classes during the fall semesters in 2015-2016, and 2016-2017. One student was unable to make up a test grade after she was absent because Respondent never made herself available, as she said she would, to allow the student to take the test. Thus, that student was saddled with a low grade, bringing down her overall grade. There has also been a negative impact on the District and other teachers, in that parents and students demanded transfers from her classes because of Respondent's inability to provide adequate instruction and a temperament that did not allow for her to change her ways for the better. The District was required to take her out of the classroom and to find replacement instructors.

(A)(ii) Giving students quiz answers in advance, not checking and correcting their homework, and giving some a false grade of A+ adversely affected students, in that they did not learn the material. This must have an adverse effect on other teachers and the District because those students would move on to other math classes with a deficiency in their math knowledge.

(A)(iii) The adverse consequences for students and fellow teachers is rooted in Respondent's tendency to avoid responsibility generally and her duties specifically. Instead of taking steps to improve her instruction, she claimed that she couldn't physically do the work, or that her technology was not adequate, or there was some other reason that her students were not learning vital material. Instead of answering questions, she told one student she would remove the student from class. Instead of teaching she told her students the questions and answers. Some took her saying that one should "fake it till you make it" to

mean they should go through the motions in class. Claiming all the students would pass the class, she tried to use memorization, and providing answers to tests or quizzes in advance. Such conduct was detrimental to the students, other staff, and the District.

(B) Another factor is the proximity or remoteness in time of the conduct. In this case the conduct in question occurred recently, in two of the last three school years.

(C) Another factor is the type of certificate held by the teacher, which in this case is a single subject credential allowing Respondent to teach math. It is plain that mathematics are a critical part of education.

(D) Whether there are extenuating or aggravating circumstances is another *Morrison* factor. In this case there are some extenuating circumstances. Respondent provided evidence that she has had significant medical problems and personal problems, such as her unravelling marriage. However, there is evidence that her medical problems were not as debilitating as she let on, and she took a less than co-operative attitude toward the District when it tried to work with her. Overall, Respondent exhibited an attitude that things had to work her way, on a one-way street. Furthermore, her medical and personal issues did not justify Respondent in giving an A+ to every student in her 2016 geometry 1A class, nor did they justify her in teaching memorization, or providing quiz questions and answers in advance. Indeed, these are aggravating circumstances.

(E) The praiseworthiness or blameworthiness of the motives resulting in the conduct should be considered. There is no praiseworthiness to the Respondent's attitude toward the administrators, and it was blameworthy to engage in dishonest conduct, such as the false grades, in order to appear to be instructing and actually teaching the students.

(F) Another factor is the likelihood that the conduct in question will recur. The Commission believes it is highly likely that Respondent's misconduct will recur. She has been unapologetic about her misconduct.

LEGAL CONCLUSIONS

Legal Conclusions Generally Applicable To All Claims

1. The Commission has jurisdiction to proceed in this matter, pursuant to section 44944, and based on Factual Findings 1 through 4.

2. (A) It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell*

(1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible witness may constitute substantial evidence,” including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, at 1052.)

(B) The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. While the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue, that does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof, unless there is other evidence in the case to support such affirmative position. (*Hutchinson v. Contractors’ State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal. 295, 304.)

(C) “On the cold record a witness may be clear, concise, direct, unimpeached, uncontradicted—but on a face to face evaluation, so exude insincerity as to render his credibility factor nil. Another witness may fumble, bumble, be unsure, uncertain, contradict himself, and on the basis of a written transcript be hardly worthy of belief. But one who sees, hears and observes him may be convinced of his honesty, his integrity, his reliability.” (*Wilson v. State Personnel Board* (1976) 58 Cal.App.3d 865, 877-878, quoting *Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)

3. Respondent is charged with dishonesty under section 44932, subdivision (a)(4). “Dishonesty” needs no especial definition, as it is an ordinary term known to the members of the Commission. However, within the context of these proceedings, not every act of dishonesty will constitute grounds for discipline. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*).)² And, as noted some years ago by the Court of Appeal, dishonesty is not readily compartmentalized. (*Windham v. Board of Medical Quality Assurance* (1980) 104 Cal.App.3d 461, 470.)

4. “Evident unfitness for service” as used in section 44932, subdivision (a)(6), properly means “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” Unlike “unprofessional conduct,” “evident unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) (*Woodland*.)

² As stated in *Fontana*, “Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute ‘dishonesty’ as a ground for discipline.” (*Fontana, supra*, 45 Cal.3d at 220, fn. 12.)

5. As noted in the Factual Findings, even where grounds to terminate have been established, such as immoral conduct, dishonesty, or evident unfitness for service, it must also be established that such conduct renders the Respondent unfit to teach. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d 214, 229-230; *Fontana*, *supra*, 45 Cal.3d 208; *Woodland*, *supra*, 4 Cal.App.4th at 1444-1445; see *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 321.)

Legal Conclusions Pertaining to the Specific Allegations of the Accusation

6. It was established that Respondent was dishonest within the meaning of section 44932, subdivision (4), based on Factual Findings 16, 21, 22(A), 26, 27, 37, and 44, and Legal Conclusion 3. Respondent's entry of false grades into the grading system is not "the smallest fib" but instead is a matter of flagrant wrongdoing that goes to the heart of a teacher's obligations. Her practice of providing quiz questions and answers in advance was also dishonest. If a student were to obtain a copy of a test and the answers to it in advance of the test, and use that information for a passing grade, all would say the student had cheated; all would deem that a dishonest act. It is no different if the teacher engages in such conduct. The students were being cheated out of learning opportunities, and Respondent was being placed in a position where further false information would be put into the grading system. She was also being a poor role model for the students by engaging in such conduct.

7. It was established that Respondent is evidently unfit for service within the meaning of section 44932, subdivision (a)(6), based on Factual Findings 10, 11, 13, 15 through 24, 27, 37 through 42, 44, 46(A)(iii), and Legal Conclusion 4. This is not because of the sort of bad or vulgar behavior displayed in cases such as *Woodland* or *Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967). Instead Respondent has shown a fixed character trait of avoiding her responsibilities, and shifting the blame for her shortcomings and missteps elsewhere. She has shown little or no desire to improve her skills, disregarding Ms. Zamora's efforts and advice. Respondent has retreated behind her physical and personal ailments, when those were not the reasons that her students were not learning. Her refusal to answer questions in class is also a manifestation of a character trait that avoids obligation, as it was Respondent's obligation to see to it that the students understood the material she was to teach.

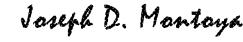
8. It was not established that this action was brought to retaliate against Respondent for having physical disabilities, or for her efforts to obtain accommodations for her disabilities, based on Factual Findings 28 through 36, and Legal Conclusions 2 through 7.

9. Review of the *Morrison* factors and their application to the facts of this case establish that Respondent is not fit to teach in the District. (Factual Findings 45 and 46.) The Commission firmly believes that if she is retained, her misconduct will likely continue, to the detriment of students, teachers, and the District. Based on all the foregoing, the Commission finds and concludes that Respondent should be terminated from her position as a certificated employee of the District.

ORDER

Respondent Deborah Harris shall be terminated as a certificated employee of the William S. Hart Union High School District.

DATED: September 10, 2018

DocuSigned by:

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JOSEPH D. MONTOYA
Administrative Law Judge
Office of Administrative Hearings

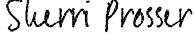
DATED: September 9, 2018

DocuSigned by:

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DAVINA KEISER
Commission Member

DATED: September 7, 2018

DocuSigned by:

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SHERRI PROSSER
Commission Member