

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
BUENA PARK SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Dismissal of:**

**STACY MCCAY, Respondent**

**A Permanent Certificated Employee**

**OAH No. 2019050661**

**DECISION**

This matter was heard on September 23-26, 2019 in Buena Park, California, before the Commission on Professional Competence (Commission). The Commission consisted of Tracy Do, Sara L. Smith, and Nana Chin, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California.

The Buena Park School District (Buena Park/District) was represented by Joshua E. Morrison and Sara C. Young with the law firm Atkinson, Andelson, Loya, Rudd & Romo.

Stacy McCay (Respondent) was present throughout the proceedings and was represented by Arthur N. Four of Reich, Adell & Cvitan.

Prior to the presentation of evidence, the parties stipulated to admission of the exhibits as outlined in their respective Final Exhibit lists with exception of Bates

Stamped page BPSD000156 of Exhibit 20. The Stipulation was marked as Exhibit 30 and the exhibit lists referenced in the Stipulation were marked collectively as Exhibit 30A.

In order to protect the privacy of Respondent and to prevent the disclosure of confidential information, the ALJ issued a Protective Order placing Bates-stamped page BPSD000048 of Exhibit 11 and Exhibits 503, 506, 509 and 511 under seal after its use in preparation of the Proposed Decision. This document shall remain under seal and shall not be opened, except as provided by the Protective Order. A reviewing court, parties to this matter, their attorneys, and a government agency decision maker or designee under Government Code section 11517 may review the document subject to the Protective Order provided that such document is protected from release to the public.

The record was held open until October 10, 2019, in order to allow parties to submit Articles 10, 11, 12, 13 and 15 of the 2015-2018 Agreement between the Governing Board of the Buena Park School District and the Buena Park Teachers Association (BPTA Contract) that was in place in 2016. The Articles were timely received and collectively marked and admitted as Exhibit 35.

The record was closed and the matter was submitted for decision on October 10, 2019.

The Commission considered the entire record in executive session. After due consideration of the entire record herein, the Commission makes the following Factual Findings, Legal Conclusions, and Order.

## **FACTUAL FINDINGS**

### **Jurisdiction**

1. Respondent was, at all times relevant herein, a permanent certificated employee of the District assigned to Gordon H. Beatty Elementary School (Beatty Elementary).
2. On April 22, 2019, Ramon Miramontes, Ed.D., the Superintendent for the District had Respondent served with a Notice of Dismissal Unless a Hearing is Timely Requested (Notice of Intent to Dismiss). Attached to the Notice of Intent to Dismiss was the Statement of Charges, the Board of Education (Board)'s Resolution re: Intent to Dismiss; Request for Hearing form and selected statutes and regulations.
3. Respondent timely served a Notice of Defense and this matter ensued.

### **Background**

4. Respondent began her employment with the District working as a substitute teacher in 1996. After being hired as a full-time teacher, she has worked at Beatty Elementary as a fourth grade teacher.

### **2016-2017 School Year Absence**

5. On July 21, 2016, Respondent informed Seri Hwang, the newly assigned principal at Beatty Elementary, that she would be attending the Rio de Janeiro Olympics in Brazil, and therefore she would not be reporting to work until August 22, 2016. Principal Hwang notified respondent that she would have to check with the District office to see if leave could be approved.

6. After consulting the District office, Principal Hwang contacted Respondent by phone on July 25, 2016, and informed her that she did not have approval to go on the trip during student instructional time. Principal Hwang documented the conversation in a letter that she emailed respondent. The letter, which was incorrectly dated as July 22, 2016, is somewhat unclear but does convey that Respondent's request to be absent for the first two weeks of school had not been approved.

7. On July 28, 2016, Respondent responded in writing. In the letter, Respondent claims that she had been planning to go to the Olympics in Rio de Janeiro ever since she saw the city showcased during the Closing Ceremonies at the Olympics in London. Respondent claims that all her immediate supervisors had been aware of her plans to attend the Olympics and no one had informed her that she would need to get written approval for the trip. Respondent further states that she had always understood the change in the school calendar would not affect her plans and that she had made many nonrefundable purchases based on that belief. Respondent asserted that she "strongly believe[d] that [her] absence should be approved based on the decision by the district to honor travel plans made before the change of the instructional calendar." (Exhibit 18.)

8. Principal Hwang responded to Respondent in writing on July 29, 2016. Principal Hwang advised Respondent that prior notice to administrators did not constitute written approval. Principal Hwang also noted that as respondent's trip to Rio de Janeiro was "specifically recreational in nature, it cannot be approved as Personal Necessity or Sick Leave according to BPTA Contract language" and recommended Respondent submit a request for unpaid leave of absence to the Governing Board if she intended on moving forward with the trip. (Exhibit 19.)

9. On August 1, 2016, the District received an undated letter from Respondent addressed to Barbie Montelongo, the Director of Human Resources. In the letter, Respondent claims that she had already had plans to go to the Olympics in Rio de Janeiro when the school calendar changed and that the teachers had been told during a staff meeting that they could use their personal necessity days for vacations that had already been planned. "This was part of the bargaining agreement." (Exhibit 4.) Respondent further claimed that as she had spent money on the trip well before the calendar change and that she would appreciate the District honoring the agreement and permitting her to use personal necessity days to attend the Olympics. If not, she was "requesting leave for the time not covered by other absence reasons." (Exhibit 4.)

10. Though the District did not approve Respondent's absence, Respondent, went on the trip to Brazil, and missed the first two weeks of school. To her credit, Respondent did attempt to minimize the disruption her absence would have on her students by ensuring that a substitute teacher she trusted was assigned to her classroom in her absence.

11. According to Principal Hwang, the first few weeks of school is significant as that is the time when students meet and establish a relationship with their teachers, and for the teacher to set classroom procedures and guidelines for the upcoming school year.

## **Respondent's Contentions**

12. At hearing, Respondent acknowledged that she had missed the first two weeks of the 2016-2017 school year but contended that she had been granted

permission to start late after the changes to the instructional calendar were announced in 2013, as she fell within the exception agreed to by the District.

## **CHANGE TO THE DISTRICT'S INSTRUCTIONAL CALENDAR**

13. At the end of the 2012-2013 school year, the District negotiated a change to the instructional calendar with the BPTA, moving the school start date back approximately two weeks. In order to minimize any negative impact on teachers, the District informally agreed to try to accommodate those who had already planned and paid for a vacation during the two weeks in 2013. The requests were to be reviewed and approved by the District on a case-by-case basis.

14. A. Greg Magnuson was the superintendent for the District from 2008 until he retired in July 2018. Superintendent Magnuson testified that the District's verbal agreement to try to accommodate the teachers had only been intended to be for the 2013-2014 school year. It was never contemplated that the accommodations would continue three years after the calendar change.

B. Superintendent Magnuson explained that the reason for limiting the accommodations was that the start of the school year is key to establishing relationships with students to get the school year off to a good start. It was never contemplated that accommodations would continue to be made due to this change for teachers in 2016.

15. Superintendent Magnuson first became aware of Respondent's plans to attend the Olympics in Brazil in late July of 2016, either by being notified by Principal Hwang or through communications with Director Montelongo. Superintendent Magnuson discussed Respondent's request with Principal Hwang and provided her with guidance on the BPTA Contract provisions regarding leaves.

## **NOTIFICATION TO STAFF OF CALENDAR CHANGE**

16. During Respondent's deposition on August 22, 2019, Respondent stated that she learned of the new start date during a staff meeting. According to Respondent, Nancy Rios, who was the principal at Beatty Elementary at the time, "said if we had plans, we had to let our principal know, and we were allowed to use personal-necessity days if it was before the old calendar." (Exhibit 27, page 18.)

17. Respondent presented no other witnesses who had a similar recollection of the meeting at the hearing. According to Daniele Fuson, Respondent's co-worker and fellow 4th grade teacher at Beatty Elementary, the information communicated to teachers was that if teachers had plans or had purchased tickets prior to the calendar change, to talk to their administrator to "figure out what is the best plan of action. To go, to not go. Whatever is best for the students."

18. A. Karen Musurlian, a history teacher at Buena Park Junior High School and the president of the BPTA, testified that Respondent had contacted her shortly after the calendar change had been announced.

B. According to Ms. Musurlian, teachers at her junior high school, were also notified of the change to the school calendar during staff meetings. The teachers were informed that those with vacation plans that could not be changed would have their plans honored as the District was giving such late notice. All that was required was that the impacted teachers to notify their principals. Ms. Musurlian was unable to recall if the teachers had been notified of this accommodation by the principal or District personnel at a staff meeting but did not believe the proposed accommodations were presented at a District wide meeting or that there was any official discussion.

C. As it was established that the discussions Ms. Musurlian was privy to took place at the junior high school and not the elementary school, her testimony regarding the meetings at the junior high was disregarded.

### **MEETING WITH PRINCIPAL RIOS**

19. Following the staff meeting, Respondent approached Principal Rios,<sup>1</sup> upset by how the new calendar was going to disrupt her long-term plans to attend the 2016 Olympics in Rio de Janeiro.

20. Respondent's testimony at hearing regarding the meeting with Principal Rios was consistent with her other statements to the District and deposition testimony in that she insisted that Principal Rios gave her verbal permission to attend the Olympics during the meeting and start late during the 2016-2017 school year. Respondent further testified during her deposition that she had told a number of the employees at the school, including Ms. Fuson and Mindi Whiteley, that she had received permission from Principal Rios to go. (Exhibit 27, pages 22-23.)

21. At hearing, when asked about the expenses she had incurred related to her trip to Brazil, Respondent's responses were extremely disjointed and consisted of a number of long pauses and contradictions. Respondent first testified that she had made purchases related to the trip prior to the announcement of the change in the

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<sup>1</sup> Confusingly, Respondent would later deny that this meeting occurred as she had not been present the last two months of the school year but would continue to testify that she had received permission from Principal Rios during the private meeting.

school's calendar, and that those purchases included "tickets, hotel accommodations, airline --." Respondent then claimed that she did not remember which purchases she made specifically or when she purchased her airline ticket. After further questioning, Respondent testified that she had not purchased her airline ticket prior to the announcement, claiming that her purchases were made after she had received permission from Principal Rios.

22. A. Principal Rios, who had retired at the end of the 2012-2013 school year, testified at hearing. According to Principal Rios, the change to the school calendar was a "giant shift" and, as a result, it was on the agenda for all the staff meetings that were conducted in May and June of that year.

B. After one of the staff meetings, Respondent approached her distraught over the change. Respondent requested her permission to start the school year late in 2016 so that she could attend the Olympics in 2016. According to Principal Rios, she reminded Respondent that she was retiring at the end of the school year and that she did not have authority to grant her permission. She instructed Respondent to direct her request to Superintendent Magnuson, as he was the only individual who had authority to grant Respondent permission to start late.

C. Principal Rios expressed that she did not know why Respondent would represent that she gave her such permission as principals do not have that kind of authority and they would have to get permission from their supervisor.

## **Request for Paid Leave**

23. Respondent submitted a request to be paid leave for the days she had been absent and in Brazil. Respondent designated August 8, 9, and 10 as Bereavement Leave; August 11 and 12 as Personal Necessity; and August 15, 16, and 17 as

Illness/Sick leave. The three categories of leave are generally governed by Articles 10, 11, 12 and 13 of the BPTA contract.

24. A. Article 10 of the BPTA Contract governing sick leave specifies that employees of the school district are entitled to take leave "for illness or injury including periods of disability or incapacitation for pregnancy or childbirth." (Exhibit 8, p. 35.) Witnesses generally testified that sick leave can also be used by a teacher for medical appointments and that teachers are not required to notify administration beforehand that they intend to use sick leave. Article 11 indicates that, under normal circumstances, employees are not required to verify sick leave unless the employee has been absent for five consecutive days of sickness. (Exhibit 34, p. 40.)

B. According to respondent, she claimed three days as sick leave as she received physical therapy from an unidentified person for her back pain.

C. Based on the forgoing, Respondent's use of sick leave in this manner was not improper.

25. A. Article 12 of the Agreement generally provides that "[p]ersonal necessity leave may be used at the employee's option except for . . . recreational purposes." (Exhibit 35, p. 41.) The contract, however, allows teachers with over 30 days of sick leave to use one day of personal necessity leave without restriction and then an additional day for each additional 20 days of sick leave.

B. During Respondent's deposition, Respondent testified that one primary purpose of her trip to Brazil was recreational, the other was bereavement. (Exhibit 27, p. 28.)

C. At the outset of the 2016-2017 school year, parties stipulated that Respondent had 47.1 days of sick leave. Accordingly, Respondent would have been entitled to use one day of personal necessity leave without restriction.

D. Respondent's testimony at hearing, however, regarding her use of personal necessity leave days, however, were not geared towards her rights under the BPTA Contract. Instead, Respondent asserts that she requested personal necessity leave days because she relied on Principal Rios's assurances that she could, in fact, claim leave days for her trip to Brazil. Her testimony is not credited. Even assuming Respondent truly believed that Principal Rios has given her permission, Respondent had been notified by her current principal, Principal Hwang, that she did not have permission to claim leave days for her trip.

26. A. Article 13 of the BPTA Contract provides employees up to five "working days" at full salary compensation "in the event of the death of any member of [an employee's] immediate family." (Exhibit 24, p. 43.) The Agreement does not specify any time frame as how long after the death bereavement can be taken.

B. Superintendent Magnuson testified that bereavement was intended to be used close in time to the death of the family member and was not intended to be "banked" for future use.

C. His testimony is corroborated by testimony from Ms. Musurlian. According to Ms. Musurlian, there are no strict procedures laid out in the BPTA Contract, however, bereavement time requested more than a year after the death would not be appropriate.

D. At hearing, Respondent testified that she claimed the days as bereavement as she wanted to honor Respondent's grandfather, who passed away in

March 2013. When confronted with evidence that she had taken bereavement close in time to when her grandfather passed away, Respondent insisted that she had been unaware that she had taken bereavement until she was presented evidence of that at hearing.

E. Based on the forgoing, Respondent's request to use bereavement leave in order to honor her grandfather's passing was improper.

### **Notice of Unprofessional Conduct and Unsatisfactory Performance**

27. After Respondent's return, Superintendent Magnuson issued Respondent a Notice of Unprofessional Conduct and Unsatisfactory Performance on September 22, 2016 (2016 Notice).

28. The 2016 Notice was issued following an investigation by Superintendent Magnuson wherein he concluded that Respondent's decision to miss the first two weeks of the 2016-2017 school year was without approval and "extremely unprofessional and dishonest." (Exhibit 6, BPSD 000008.) The Notice provided Respondent with a Plan of Assistance that directed Respondent to: (1) comply with all directives given to her by her supervisors; (2) comply with all applicable rules and procedures when requesting leave; and (3) conduct herself in a professional and honest manner at all times.

29. Respondent submitted a response to the 2016 Notice. In it, Respondent does not accept any responsibility for her conduct. First, Respondent claims that she had been advised by unnamed people on the bargaining committee and Principal Rios that she "could use personal necessity days for the time affecting [sic] by changing our school schedule." (Exhibit 3.) Respondent also asserts that Principal Rios "was disseminating information that wasn't true" and blames Annie Oie, the principal at

Beatty Elementary after Principal Rios, for telling her to check the contract instead of directing her to request leave or to contact Human Resources. (Exhibit 3.)

30. Superintendent Magnuson estimated that, on average, during his 14-year tenure in Human Resources at the District, he would issue less than one Notice of Unprofessional Conduct and Unsatisfactory Performance a year. It is one of the most serious forms of discipline he could issue.

## **Analysis**

31. Respondent's assertion that she reasonably relied on permission she had been granted from Principal Rios to attend the Olympics in 2016 and start school late was not credited. As an initial matter, Respondent failed to establish that Principal Rios had granted her permission to attend the 2016 Olympics. Unlike Respondent's testimony, Principal Rios's testimony was clear and concise and did not have any internal inconsistencies. Further, there was no evidence presented at the hearing to suggest that Principal Rios would benefit from being untruthful about her meeting with Respondent or that she otherwise held any animus toward Respondent. In fact, both claimed to have had a "good relationship."

32. Further, it is not credible that Respondent believed Principal Rios had the authority at the end of the 2012-2013 school year to grant her permission to start school late in the beginning of the 2016-2017 school year, three years after her retirement. Nor was it credible that Respondent, having obtained such permission, failed to memorialize her permission in writing. It is also telling that though Respondent testified in her deposition that she had told other employees, including Ms. Fuson and Ms. Whiteley that Principal Rios had given her permission, no testimony, was presented from either witness that would corroborate that testimony.

33. The evidence further established that Respondent spoke with Principal Oie about having received Principal Rios's permission, following Principal Rios's retirement. According to Respondent's deposition testimony, "I told her of the permission I got from [Principal Rios] to go to the Olympics" and was told by Principal Oie "[t]hat I had to go check the contract." (Exhibit 27, p. 30.)

34. Article 15 of the BPTA Contract states: "[a]ny special request regarding absence other than illness and not specifically stated in the rules and regulations must have School Board approval. The request shall be submitted through the Superintendent, thirty (30) days prior to the date of anticipated leave, except in cases of emergency." (Exhibit 35, p. 45.)

35. According to Ms. Musurlian, leave requests are generally handled very informally at the District and that, an employee would typically make leave request through their principal but would ultimately have to obtain Board approval. In this case, Respondent had been explicitly directed towards the BPTA Contract by her principal. Despite such direction, however, Respondent failed to timely request Board approval.

36. According to Superintendent Magnuson, dishonest or fraudulent behavior is very problematic. The importance of honesty is underscored in Board policies, administrative regulations and is even a part of the California Standards for the Teaching Profession. As a practical matter, teachers, who operate in a largely autonomous manner, are representatives of the District and the District expects teachers to be honest with students and their parents, colleagues and peers and administrators.

## **Claim of Workplace Injury**

37. On the morning of October 22, 2018, Respondent reported to Tina Corso, the school secretary, and Principal Hwang that she had sustained an injury on a rubber mat as she was walking to the office.

38. Principal Hwang followed her standard procedure and asked Respondent if she needed to see the doctor and also requested that she fill out the portion of the injury report requesting information regarding where the injury occurred, the nature of the injury and a description of how the injury occurred.

39. Respondent described the accident in the report as follows, "I was walking with a cane and put the cane down to push off while walking. The handicapped pad was not attached to the ground so my cane went out from under my, made my back hurt." (Exhibit 9.)

40. After filling out the injury report describing when, where and how she got hurt, Respondent declined medical treatment and returned to her classroom. At lunchtime, Respondent went back to the office and met with Tyler Morgan, the assistant principal (AP) at Beatty Elementary. Respondent reported to AP Morgan that she was in a lot of pain and could no longer teach that day. Respondent, however, stated that she did not want to use her personal sick leave. AP Morgan contacted Director Montelongo for instruction on how to proceed. Director Montelongo relayed to Respondent that if she went home without medical treatment, she would have to use her personal sick leave. If she wanted the District to pay for her time, she would have to go to Concentra, the hospital used by the District for workplace injuries.

41. Respondent chose to go to Concentra. After being seen at Concentra, Respondent was told to remain off of work for the rest of the day and to then resume

working with restrictions. Respondent took two additional days off during the week after the incident due to her ongoing symptoms, using her personal sick leave.

42. As Respondent received treatment at Concentra for an injury she allegedly suffered at work, a worker's compensation claim was filed on her behalf. The company that administers the District's workers' compensation plan, Keenan & Associates (Keenan), contracted with Natalie Klemek, a self-employed private investigator, to conduct a fact-finding investigation into Respondent's claim. Investigator Klemek was familiar with Respondent as she had previously obtained statements from Respondent in connection with one of Respondent's prior claims.

43. As part of her investigation, Investigator Klemek interviewed Respondent at Beatty Elementary on November 15, 2018. Respondent's statement was recorded with her permission and subsequently transcribed.

A. During the interview, Respondent reported that the October 22 injury occurred early in the morning at approximately 7:30 a.m. as she had been heading towards the office. Respondent volunteered that she was wearing "Nike flex runs 2013's" when the injury occurred and using a cane for support. (Exhibit 11, BPSD0000077.) After passing the first doorway after her classroom, she put the cane on the border of the mat in front of the second doorway. According to Respondent, ". . . when I went to put a weight on the cane the border slipped out from underneath me jerking my whole body in a way that you don't want to be jerked when you're already using a cane. (Exhibit 11, BPSD0000078.) The cane then "just slipped out. It slid with the border." (Exhibit 11, BPSD0000079.) Respondent reported that, on her way back from the office, she took a picture of the mat where she had been injured.

B. According to Investigator Klemek, Respondent was cordial during the interview and appeared to be doing her best to remember the events.

C. Investigator Klemek also reviewed video footage from six camera locations at the school site of when and where Respondent claimed the injury occurred. When reviewing the footage against Respondent's statement, Investigator Klemek noted that as the event described by Respondent did not occur as she claimed it did.

D. At the conclusion of her investigation, Investigator Klemek submitted a report with her findings, which forwarded by Regency to Keenan, and was admitted into evidence as Exhibit 10. Though Investigator Klemek acknowledges Regency made some stylistic changes to her report, the substance of it remained the same.

## **Video Surveillance**

44. Beatty Elementary has a Closed Circuit TV (CCTV) security system on its campus. The cameras are generally situated to record the entrances and exits of the school. Any kind of movement, including an insect flying into the area, will prompt the camera focused on the area to start recording. If there are gaps in the video surveillance, it means that there was no movement in the area.

45. A zip drive, which was submitted into evidence as Exhibit 20<sup>2</sup>, contained seven video clips captured by the surveillance cameras during the period Respondent had been allegedly injured. Each clip was Bate stamped with its own page number.

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<sup>2</sup> The zip drive also contained one video clip identified as Exhibit 15.

A. The video clip Bate-stamped BPSD000156 starts at approximately 6:55 a.m. In the upper right hand corner, there is a view of several parked cars and a door which was identified as the door to Respondent's classroom. More centrally, there is a clear view of two doors, each as a mat with a rubber border in front. Respondent is first seen in the clip at approximately 7:11 a.m. Respondent is in sandals and using a cane. Respondent is seen approaching the door that is farther away from the camera and walks smoothly on the mat in front of it (first mat). Respondent then lifts her cane up as she reaches into her pocket for a cellular phone. Holding the phone in one hand, Respondent steps briefly on the mat that is in front of the door closer to the camera (second mat).<sup>3</sup> Her cane is elevated and never touches the second mat.

B. The next clip, BPSD000157 begins at approximately 7:23 a.m. Respondent is again seen stepping on the second mat. Respondent then pauses, looks down and is then seen separating the rubber border from the second mat, with her left foot and then her right foot. Respondent then proceeds to continues walking away. The clip jumps a few second from 7:24 a.m. and 12 seconds to 7:25 a.m. At 7:25 a.m. and 10 seconds, Respondent is seen exiting the door to what was identified as her classroom and returning towards the camera. Respondent crosses the first mat with her cane elevated and reaches for an unidentified item in her pocket. Shen then stops in front of the second mat and appears to be searching for something in her pockets. She turns away from the camera and then, grabbing her cellular phone, turns back towards the camera and appears to take multiple pictures. Respondent returns the

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<sup>3</sup> When providing her statement to Investigator Klemek, Respondent had identified the second mat as the broken mat on which she had injured herself.

phone to her pocket and continues forward to the lower left and out of view of the surveillance camera.

## **Analysis**

46. At hearing, Respondent's statement was somewhat inconsistent with the statement she provided in the injury report and to Investigator Klemek, in that Respondent merely claimed that the mat had caused her body to "jerk." When asked about the inconsistencies between her statement and the video surveillance, Respondent became defensive, initially answering by simply repeating counsel's questions in a manner suggesting she did not understand the questions. Later, in an attempt to explain the inconsistencies between her statement and the video clip, Respondent claimed that when the injury occurred, she had been using the cane like a crutch and when the mat caused her body to jerk, it caused the cane in her hand to jerk."

47. The video clips presented at hearing show that despite Respondent's claim that she had injured herself when she placed her cane down on the second mat, this did not, in fact, happen. The clip clearly shows Respondent that her cane never came down as she passed over the second mat<sup>4</sup> and that Respondent was not using the cane like a "crutch" but was, in fact, freely lifting her cane. Another clip shows Respondent returning to the area and kicking the rubber border away from the mat, arguably creating a dangerous condition for students at the school. Based on the

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<sup>4</sup> It is also noted that, contrary to her statement to Investigator Klemek, Respondent was wearing sandals and not "Nike flex runs 2013's."

forgoing, it was established that Respondent was dishonest in filing her October 22, 2018 injury report and in her statements to Investigator Klemek.

## **Workers' Compensation Claims**

48. While employed at Beatty Elementary, Respondent has filed over 30 injury reports. A portion of those injuries resulted in Respondent receiving medical treatment. When Respondent took time off to receive medical treatment for workplace injuries, she was not required to use personal sick leave. Instead, a worker's compensation claim was filed and Respondent was compensated by the District under "industrial accident" leave.

49. Respondent insisted during the hearing that she was unfamiliar with the workers' compensation process and had not realized that by going to Concentra following the October 22, 2018 incident, a worker's compensation claim would be opened. This statement, however, is contrary to the statement she provided to Investigator Klemek where she stated, "... I don't know. I took a couple of days. . . which I shouldn't have to pay out of my sick time because this a work comp injury but nooooo." (Exhibit 11, BPSD000085.)

## **Impact**

50. Sometime following Respondent's report of injury, Principal Hwang had an opportunity to review the surveillance footage of the alleged injury and found Respondent's incident report to be dishonest. In her opinion, honesty and integrity are "extremely important" traits in a teacher.

51. According to Principal Hwang, families entrust their children to the school for six to six-1/2 hours a day, on average. Parents trust that their children are

kept safe, that the school is honest in its communications with them about what is occurring in the classroom, and that educators are role models for students. To Principal Hwang, it is crucial that teachers set a positive example for students.

52. After viewing the surveillance footage, Principal Hwang testified that it would be hard for her to count on Respondent to exhibit honesty and integrity in working with other teachers and in the classroom because of her dishonesty with regard to her alleged injury.

## **Statement of Charges**

53. On March 22, 2019, Dr. Miramontes had a proposed Notice of Intent to Dismiss and Statement of Charges prepared to present to the District's Board. On April 8, 2019, the Board unanimously resolved to immediately suspend Respondent without pay and directed Dr. Miramontes to have a copy of the Statement of Charges served on Respondent.

54. Dr. Miramontes's recommendation to immediate suspend and dismiss Respondent was based on her dishonest conduct in filing a fraudulent workers' compensation claim against the District and in the false statements she provided to justify her decision to not report for work at the beginning of the 2016-2017 school year. According to Dr. Miramontes, teachers and educators are pillars in the community and they are entrusted with the care of children and as a result, they are expected to be honest and trustworthy. Honesty is one of the District's ethical core values. Honesty is also emphasized in Board policy and in the California Standards for the Teaching Professional Standards.

55. According to Dr. Miramontes, he made the recommendation, in part, due to the 2016 Notice regarding her dishonest and unprofessional conduct. Though

Respondent was provided with a plan of assistance which, in part, directed her to conduct herself in "a professional and honest manner at all times," Respondent failed to comply with the directive when she was again dishonest regarding her alleged October 22, 2018 injury. (Exhibit 6, BPDS000009.)

## **Character Witnesses**

56. Ms. Fuson, Respondent's co-worker at Beatty Elementary for approximately 23 years testified on Respondent's behalf. According to Ms. Fuson, she has spent time with Respondent both in and out of school. She considers Respondent to be honest. Ms. Fuson understands that Respondent was dismissed for being hurt at the school and for issues related to the calendar change in 2013.

57. Ms. Whiteley has been employed by the District since 1996. She became a certificated teacher in 1996 and has taught first, fifth and sixth grades at Beatty Elementary. Ms. Whiteley has worked with Respondent for 20 years and knows her on both a professional and personal level. According to Ms. Whiteley, Respondent is a very helpful, honest and caring person who does a lot for Beatty Elementary and the community. Ms. Whiteley believes Respondent cares about her students and puts a lot of effort into being a good teacher.

## **LEGAL CONCLUSIONS**

### **Jurisdiction**

1. The Commission has jurisdiction to proceed in this matter under Education Code section 44944.

## **Burden and Standard of Proof**

2. In this case, the District has the burden of proving the allegations of the Charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.)

## **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 Education Code section 44932, subdivision (a), or Education Code section 44939 is established. The definitions of some of those causes have been further elucidated by the courts and by the legislature.

4. The Statement of Charges filed in this matter seeks to dismiss Respondent from employment with the district on the grounds of immoral conduct, unprofessional conduct, dishonesty, unsatisfactory performance, evident unfitness for service, 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.

### **IMMORAL CONDUCT**

5. "Immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness, or as willful,

flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

## **UNPROFESSIONAL CONDUCT**

6. "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. (*Board of Ed. of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 553 overruled on other grounds by *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575.) The conduct in question, to amount to unprofessional conduct, must demonstrate unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

## **DISHONESTY**

7. Dishonesty indicates a lack of honesty; a disposition to lie, cheat, or steal (www.dictionary.com); or to deceive. (*Midway District of Kern County v. Griffeth* (1946) 29 Cal.2d 13, 18.) "Dishonesty necessarily includes the element of bad faith. As defined in the dictionaries and in judicial decisions, it means fraud, deception, betrayal, faithlessness. [Citations.] As phrased by the court in *A/sup v. State*, 91 Tex. Cr. 224, 'dishonesty denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray.'" (*Hogg v. Real Estate Commissioner* (1942) 54 Cal.App.2d 712, 717.) "[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Ibid.*) "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 Unified School Dist. v. Burman* (*Fontana*) (1988) 45 Cal.3d 208, 220, fn. 12.)

## **UNSATISFACTORY PERFORMANCE**

8. "Unsatisfactory performance" is not defined in Education Code section 44932, subdivision (a)(4), but the term is not intended to encompass any of the other causes for dismissal specified in section 44932. (Ed. Code, § 44938, subd. (c).) "Unsatisfactory performance" generally denotes a failure to meet reasonable teaching standards. School districts establish requirements for all teachers concerning fundamental duties such as attendance, adherence to adopted curriculum and methodology, presentation of classroom instruction, engagement of students, and professional development. These requirements serve as the standards by which teaching performance is measured. (See *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

## **EVIDENT UNFITNESS FOR SERVICE**

9. 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. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*).) "'Evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

## **PERSISTENT VIOLATION**

10. The plain meaning of this cause for dismissal under Education Code section 44939, subdivision (b), applies. (See *Board of Education of City of Los Angeles v. Swan* (1953) 41 Cal.2d 546, 556 [teacher who declined to accept teaching assignments subject to dismissal].)

11. To establish cause for discipline based on the violation of school rules, there must be a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) The violation must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

## **Grounds for Dismissal**

12. Cause does not exist for the dismissal of Respondent for unsatisfactory performance pursuant to Education Code Section 44932, subdivision (a)(5). This ground for dismissal was not established.

13. Cause exists for the dismissal of Respondent pursuant for immoral conduct pursuant to Education Code Sections 44932, subdivision (a)(1) and 44939 based on Factual Findings 5-10, 12-17, 19-22, 27-29, 31-32, and 37-49 and Legal Conclusion 5.

14. Cause exists for the dismissal of Respondent for unprofessional conduct pursuant to Education Code Section 44932, subdivision (a)(2) based on Factual Findings 5-17, 19-23, 25-29, 31-35, 37-47, and Legal Conclusion 6.

15. Cause exists for the dismissal of Respondent for dishonesty pursuant to Education Code Section 44932, subdivision (a)(4) based on Factual Findings 7, 12, 16-17, 20-22, 29, 31-32, 37-40, and 42-47 and Legal Conclusion 7.

16. Cause exists for the dismissal of Respondent for evident unfitness for service pursuant to Education Code Section 44932, subdivision (a)(6) based on Factual Findings 5-10, 12-17, 19-22, 27-29, 31-32, and 37-49 and Legal Conclusion 9.

17. Cause exists for the dismissal of Respondent for a persistent violation or refusal to obey school rules or regulations pursuant to Education Code Section 44932, subdivision (a)(8) based on Factual Findings 5-10, 12-17, 19-22, 23, 25-29, 31-32, and 37-49 and Legal Conclusions 10 and 11.

## **The Morrison Factors**

18. Education Code sections 44932 and 44944 create the statutory framework for this proceeding. The statutes give discretion to both the District and the Commission. The District has the right to determine when to seek disciplinary action against a teacher and what discipline to seek. The Commission, however, is not bound by the District's choice. It has broad discretion in disciplinary matters. Its role is not limited to determining whether charged conduct in fact occurred, but it must also decide whether that conduct demonstrates unfitness to teach when measured against the criteria set forth in *Morrison v. State Board of Education (Morrison)*(1969) 1 Cal.3d 214, 229-30. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208,

219-22.) In exercising its discretion in this matter, the Commission determines whether dismissal is warranted by the facts established at the hearing.

19. In *Morrison*, the Supreme Court held that factors that may be examined to determine fitness include the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; and, the proximity or remoteness in time of the conduct. Other factors may include the type of certificate held by the teacher; extenuating or aggravating circumstances; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood that the conduct in question will recur; and, the extent that discipline will cause an adverse or chilling impact on the constitutional rights of the teacher involved, or other teachers.

20. A. *Adverse consequences on students and teachers, and the degree thereof:*

1. There were potentially adverse consequences for students in Respondent's class during the 2016-2017 school year based on Respondent's conduct. Both Superintendent Magnuson and Principal Hwang spoke of the importance of the beginning of the school year to establishing a good teacher student relationship and setting goals for the future. Due to the fact Respondent was not, in fact, present at the beginning of the school year, she potentially deprived students.

2. There were also adverse consequences to students in Respondent 2018-2019 class in that as a result of her false report of injury, the students were left with a last minute substitute for the rest of the school day.

B. *Proximity in time:* Respondent's conduct is relatively recent, having occurred in the period between 2016 until 2018.

C. *Type of certificate held by the teacher:* During the relevant time period, Respondent taught fourth grade at Beatty Elementary.

D. *Extenuating or aggravating circumstances:* There are no extenuating circumstances. There are, however a number of aggravating circumstances.

1. Following her unauthorized absence in 2016, Respondent requested paid leave which she had been expressly told she was not entitled to claim. Respondent also lied to District administrators before and after about having received permission to be absent at the start of the 2016-2017 school year in order to justify her trip to Brazil.

2. With respect to her claim for injury, after reporting her injury to administration, Respondent returned to the area to deliberately tamper with the mat and take photographs.

3. Finally, Respondent's continued deception under oath constitutes an aggravating circumstance which supports a finding that Respondent is unfit to teach.

E. *Likelihood the conduct in question will recur:* Respondent's conduct at issue is likely to recur. She has not acknowledged responsibility for any of her conduct, and instead blames others for not having done enough to assist her.

F. *Chilling Effect on Constitutional Rights:* No constitutional rights, of either Respondent or other teachers, are implicated if Respondent is terminated for her conduct described in this decision.

21. Even where, as here, a school district has established cause for dismissal, the Commission has broad discretion to determine whether dismissal is warranted. (*Fontana, supra*, 45 Cal.3d at pp. 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*.] '[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]." (*California Teachers Assn. v. State of California* (1999) 20 Cal.4th 327, 343-344.)

22. Dismissal is warranted in this case.

A. Though Respondent's initial act of attending the 2016 Olympics and missing the first two weeks of the school year without obtaining approval was an isolated act of insubordination which alone would not have been grounds for dismissal, her misconduct was compounded by her dishonesty regarding whether she had received permission from Beatty Elementary former principal, Nancy Rios, prior and after her trip. Upon being reprimanded for her unprofessional conduct, Respondent compounded her misconduct by failing to accept any responsibility for her behavior and continued perpetuate her dishonesty in accusing Principal Rios of disseminating information that was not true.

B. After being directed in the 2016 Notice to comport herself in an honest and professional manner, Respondent falsely claimed she had been injured on October 22, 2018, leaving school early. When her statement was taken by the worker's compensation investigator, she continued to be dishonest, giving a false account.

C. Respondent continued dishonesty during her sworn deposition and in her testimony at this administrative proceeding further demonstrates that she is unfit to serve as a teacher.

## **ORDER**

The dismissal of respondent Stacy McCay from employment with the Buena Park School District is sustained.

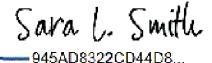
IT IS SO ORDERED.

DATE: January 17, 2020

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Tracy Do  
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TRACY DO

Commission Member

DATE: January 17, 2020

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Sara L. Smith  
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SARA L. SMITH

Commission Member

DATE: January 17, 2020

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NANA CHIN

Administrative Law Judge

Office of Administrative Hearings