

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

VALENCIA BLACK (EN 711928),  
A Permanent Certificated Employee,

Respondent.

OAH No. 2012100891

DECISION

The Commission on Professional Competence (Commission) heard this matter on December 9, 11, 12, 13, 16, 17, 18, and 20, 2013, in Los Angeles, California. The Commission consisted of Karen Schuett, Liana Collica, and Howard W. Cohen, Administrative Law Judge (ALJ) with the Office of Administrative Hearings, State of California. ALJ Cohen presided.

Cynthia L. Sands, attorney at law with Liebert Cassidy Whitmore, represented complainant Vivian K. Ekchian, Chief Human Resource Officer for the Los Angeles Unified School District (District).

Daniel J. Kolodziej, attorney at law with Trygstad, Schwab & Trygstad, represented respondent Valencia Black, who was present.

Prior to the presentation of evidence, the parties brought several motions in limine. The ALJ considered and ruled on those motions in limine, as well as on motions made during the course of the hearing, as reflected on the record. Oral and documentary evidence was received and argument was heard. The record was closed and the matter was submitted for decision on December 20, 2013.

The Commission considered the entire record in executive session.

FACTUAL FINDINGS

1. Complainant filed and served on respondent a Notice of Intention to Dismiss and Statement of Charges. On October 12, 2012, respondent timely requested a hearing.

2. On November 9, 2012, complainant, acting in her official capacity, filed and served on respondent an Accusation and Statement of Charges. Respondent timely served a Notice of Defense.

3. Respondent is a permanent certificated employee of the District, presently on unpaid leave status.

*The District's Charges Against Respondent*

4. In the Accusation and Statement of Charges against respondent, the District alleged that it has cause to dismiss respondent from her employment as a permanent certificated employee of the District for:

- a. Unprofessional conduct, under Education Code section 44932, subdivision (a)(1);<sup>1</sup>
- b. Immoral conduct, under sections 44932, subdivision (a)(1), and 44939;
- c. Evident unfitness for service, under section 44932, subdivision (a)(5);
- d. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939; and
- 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).

5. In the Accusation and Statement of Charges, the District charged respondent with the following misconduct:

- a. On January 26, 2012, respondent pinched Student B., a student in her class, on her left armpit, causing broken skin, bleeding, and swelling.
- b. On November 22, 2011, respondent twice pulled the hair and pinched the shoulders of a female student.
- c. Also on November 22, 2011, respondent pinched the shoulders or pulled the hair and ears of five of her students.

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<sup>1</sup> All statutory references are to the Education Code, unless otherwise specified.

### *Respondent's Background*

6. At all relevant times, respondent taught first grade at 52nd Street Elementary School (52nd Street School). Respondent was assigned to 52nd Street School, at her request, when she began working for the District in 2002. She has a bachelor's degree from California State University, Dominguez Hills (CSUDH), and she has a multi-subject credential (K through 6), a supplemental credential in English up to 9<sup>th</sup> grade, and a Cross-cultural, Language, and Academic Development (CLAD) certificate.

7. Respondent was raised in South Los Angeles and Watts and attended public schools in the District, graduating from Susan Miller Dorsey High School. She was raised by a single mother and has six siblings; in her family, only she and an older sister attended college. After obtaining an Associate of Arts degree from West Los Angeles Community College, respondent worked in various jobs to support her mother and a younger brother. She worked as a teaching assistant for the District at a battered women's shelter from 1998 to 2001 while also attending CSUDH. After obtaining her bachelor's degree, respondent was accepted into the student teaching program in the Hawthorne Unified School District. She received her teaching credential and sought employment in the District in order to teach in the neighborhood where she lived, near 52nd Street School.

8. No evidence was submitted of a prior history of discipline against respondent.

### *The Allegation That Respondent Pinched Student B. on January 26, 2012, and Caused Broken Skin, Bleeding, and Swelling*

9. The District alleged but did not establish that, on January 26, 2012, respondent pinched Student B. on her left armpit, causing broken skin, bleeding, and swelling.

10. On January 10, 2012, Student B. started attending 52nd Street School, having transferred from Watts Learning Center (WLC), a charter elementary school. She was placed in respondent's class and, on her first day, exhibited behavior issues, including running around the classroom and yelling at other students not to look at her. At the end of the school day, respondent told Principal Osbaldo Jimenez that she wanted to talk with him about Student B.'s behavior. Jimenez told respondent that he could not talk to her at that time, but that Mr. Corral, a school administrator, would look into her concerns.

11. Each day thereafter in respondent's classroom, Student B. engaged in unusual behaviors, disturbing the class. On at least two occasions, Student B. grabbed and bit or tried to bite respondent's leg, and respondent removed Student B. from her leg by pushing Student B.'s shoulders.

12. At the close of a school day during Student B.'s first week in respondent's class, Student B.'s father approached respondent and told her that he wished to inform her of some matters concerning Student B. Jimenez, however, took Student B.'s father to his office and held further discussions with him outside of respondent's presence.

13. Jimenez testified that Student B.'s father told him that Student B. had suffered trauma due to sexual abuse at the hands of her mother. Jimenez did not share this information with respondent. Jimenez discussed Student B.'s behavior with her father three or four times per week during the first two weeks she attended 52nd Street School. Jimenez told Student B.'s father of her behavior in respondent's class; Jimenez testified that Student B.'s father was not surprised. Jimenez testified that he tried to obtain information about Student B. from WLC, but was unsuccessful. He did not know, for instance, that the Student Success Team (SST) process had started for Student B. at WLC. Nevertheless, given the information he had received from respondent and from Student B.'s father, school policies required Jimenez to support respondent and help her "deal with [Student B.'s] egregious behaviors despite [the] lack of or missing documentation" from WLC, and possibly begin the SST or Individualized Education Program (IEP) process at 52nd Street School. (Ex. 109. p. 262.) Jimenez conceded that training on how to properly address children with behavioral issues was provided only to special education teachers, not to respondent.

14. Dr. Rosalinda Lugo, a District instructional director who supervises 17 principles, including Jimenez, testified that school administration is not required to immediately inform a teacher of a parent's report of a transfer student's behavior issues at a prior school, because the District wants the student to have a chance at a "fresh start." This testimony was not credible; it contradicts District policies that require that teachers be given "information and resources" necessary to provide effective intervention when a student has behavioral needs (Ex. 112, p. 368-370), and would in practice place teachers and other students at risk. It also contradicts Dr. Lugo's own testimony that, once the District is informed of a student's prior behavioral issues, such as engaging in violence or defiance, District policy mandates that the teacher be informed.

15. On January 17, 2012, the week after Student B. started at 52nd Street School, Corral came to respondent's classroom, observed the class, and took notes. When respondent asked him to provide her with advice for addressing Student B.'s behaviors, Corral said he needed more time to review his notes before he could discuss the matter with her. He never, however, talked to respondent about Student B. and never offered respondent any suggestions.

16. On January 26, 2012, just as the children in respondent's classroom were to line up to go to lunch, Student B. began running around the classroom, shouting and scaring the other students. She then crawled under a table at which other students were seated and began lifting the table with her feet. Respondent, concerned for the safety of Student B. and the students seated at the table, attempted unsuccessfully to verbally coax Student B. out from under the table. Respondent then reached under the table and, holding Student B. under the arms, pulled her out.

17. Respondent used a reasonable amount of force in the circumstances. If respondent did pinch Student B. when bringing her out from under the table, there was insufficient evidence to show that it was anything but accidental. District policy states that physical abuse of a student does not include physical injury inflicted accidentally, and that it

does not include the use of an amount of force that is reasonable and necessary to quell a disturbance threatening physical injury to persons or property. (Ex. 60., pp. 83, 84.)

18. Once respondent had gotten Student B. out from under the table, one of the school's instructional coaches, Kelly Picard, was called to escort Student B. to the office of the school nurse, Zabrina Washington. Washington examined Student B. The only treatment Washington deemed necessary was to provide Student B. with an ice-pack to help calm her down. Washington wrote on an office referral form that there was "0 bleeding or swelling," though she also noted that she saw two small scrape marks breaking the skin under Student B.'s arm.<sup>2</sup>

19. Jimenez misinterpreted Washington's note; he insisted at the hearing that the note states, "*with* bleeding or swelling." His interpretation lacks credibility, as it is contradicted by the plain and legible language of the note itself. It is also contradicted by Washington's testimony at the hearing that she wrote that there was no bleeding or swelling, and by the construction of the sentence in the note. (If Washington had written "*with*" instead of "0," there would have been no logical reason to use the disjunctive between "*bleeding*" and "*swelling*.") Jimenez decided not to question Washington about what she had seen during her examination of Student B.; he testified that he did not want to mar respondent's reputation by questioning Washington while his investigation was ongoing. His mistaken interpretation of the note, however, which could have been corrected had he spoken to Washington or read the note more carefully, led him to base his further investigation activities on an incorrect assumption about respondent's contact with Student B.

20. Jimenez called the Los Angeles Police Department (LAPD) child abuse unit and reported the possible abuse of Student B. The officer who took the call told Jimenez that LAPD would send someone to interview Student B., and that Jimenez could investigate the matter concurrently. LAPD Sgt. Guy Juneau investigated the incident on the same day it occurred, after the school nurse examined Student B. Prior to January 2012, while assigned to the LAPD Juvenile Unit, Sgt. Juneau was responsible for responding to calls from school sites and had investigated more than 100 allegations of child abuse. Sgt. Juneau examined Student B.'s underarm area. He saw no bleeding or swelling; he did not even notice a scrape mark, which may have faded by the time he examined Student B. Sgt. Juneau testified that he interviewed Student B., who told him that she had been disruptive in respondent's class, had been defiant when respondent told her to sit down, and had run around the desk, and that respondent had forced her into her seat, during the course of which she had been pinched under her arm. Sgt. Juneau concluded that, based on the absence of any visible injury or

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<sup>2</sup> There was inconclusive evidence as to whether the scrape marks were self-inflicted by Student B. Picard, who escorted Student B. to the nurse's office from respondent's classroom, testified that she does not believe Student B. created the marks, but while walking to the nurse's office, Student B. physically illustrated for Picard what she claimed respondent had done, and she may have scraped herself in doing so.

marks of any kind and Student B.'s admission about her disruptive conduct, no crime had occurred and no further investigation was warranted.

21. Nevertheless, Jimenez conducted an investigation into the incident. He questioned Student B.; she told Jimenez that five students saw respondent pinch her. When Jimenez questioned those five students, however, all denied seeing respondent pinch Student B.

22. Jimenez talked to Dr. Lugo and to Sergio Franco, in the Office of Staff Relations, who helped Jimenez draft questions to ask other children in respondent's class. The next day, and over the following five days, Jimenez questioned other students; he had removed respondent from her classroom, and he had children come in pairs from the classroom to his office, where he interviewed them individually. Among the students Jimenez interviewed were Student S. and Student Z. Both girls, now eight years old, were deemed competent to testify and did testify at hearing. However, their testimony regarding their recollection of events that transpired when they were six years old was not internally consistent and in many particulars lacked credibility.

23. ~~Student S. testified that Student B. would frequently misbehave by screaming,~~ running around the classroom, pulling on respondent's leg, and crawling under the tables. Student S. testified that she saw respondent pinch Student B.'s shoulder; her testimony was unclear as to whether she saw that happen once or twice, but she testified that Student B. did not say anything or cry out in pain when respondent touched her shoulder. On one occasion, Student B. was holding onto respondent's leg at the time, trying to bite respondent, and Student B. kept on misbehaving after respondent touched her. Student S. said that Student B. did bite respondent's leg, and that respondent said, "Ouch." Apparently on another occasion, Student B. tried to hide under the marker board, then under the student tables, and then ran around the classroom. Respondent talked to Student B., to try to get her to stop; after respondent touched Student B.'s shoulder, Student B. said nothing and continued running around. Student S. testified that she was scared of Student B., not of respondent. Her testimony was confused; although she clearly testified that respondent had touched Student B.'s shoulder, she did not assist in establishing whether respondent pinched Student B. or touched Student B. improperly.

24. Student Z.'s testimony was also confused and self-contradictory. She testified that respondent never did anything bad to her and kept her and the other children in class safe. She also, however, testified that respondent would scream at children who misbehaved and pull their ears and hair. She did not identify any of the students who had their ears or hair pulled. She testified that Student B. bit and hit other students in the class, that Student B. "did crazy stuff," that Student B. tried to grab and bite respondent, and that she, Student Z., was afraid of Student B. She also testified that respondent called the office for help with

Student B. more than once and that on one occasion Student Z. went to get another teacher for help.<sup>3</sup>

25. Student B. did not testify at the hearing. Yvette Choyce, a special education teacher in the District who taught Student B. at WLC in 2011, testified that at WLC Student B. had displayed behavior similar to that which she displayed at 52nd Street School, and that those behaviors included yelling, hitting, defiance, crawling under tables, endangering other students, and falsely accusing others of hurting her.

26. Jimenez testified that some of the students he interviewed said they saw respondent pinch Student B., but those students did not appear at the hearing. Student S. and Student Z. were the only two children to testify regarding the charges concerning Student B. In view of the fact that their testimony was at best inconclusive and did not establish that they saw respondent pinch Student B., the written records of Jimenez's interviews with other students, offered as "administrative hearsay," cannot be found to explain or corroborate admissible evidence for the purpose of making a factual finding that respondent deliberately pinched Student B., or that she did so at all.<sup>4</sup> They are, therefore, inadmissible.

~~27. In addition to the fact that the student statements are unsubstantiated hearsay,~~ the reliability of statements allegedly made to Jimenez in the course of his interviews is compromised for other reasons. To help evaluate the statements Jimenez obtained from those students, respondent presented the testimony of Mitchell Eisen, Ph.D., Professor of Psychology, Director of the Forensic Psychology Program at the University of California, Los Angeles, and an expert in memory and suggestibility.

28. Dr. Eisen explained that, without adults to help them define reality, young children, including six-year-olds, have difficulty distinguishing between what is real and what is not. Children are subject to suggestion; this may occur, for instance, where a child is asked to respond to a leading question, which may cause the child to accept misinformation as true. There are other types of suggestibility involving delayed misinformation and retrieval errors, such as false memories. A false memory is a false narrative that someone has been convinced is true; it becomes part of their memory. It is impossible for outside observers to tell the difference between the truth and a false memory because the person holding the false memory truly believes it. With children, it is easier to suggest that a non-existent event actually occurred. When later retrieving their memories, children confuse elements of the false event with their autobiographical memory. The false event can then

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<sup>3</sup> In fact, the evidence shows that respondent sought help in addressing Student B.'s behavior approximately 20 times in two weeks, but received no assistance.

<sup>4</sup> "Administrative hearsay," under Government Code sections 11514, subdivision (a), and 11513, subdivision (d), is hearsay evidence, otherwise inadmissible, offered to supplement or explain other evidence; it cannot independently form the basis of a factual finding.

become part of their autobiographical memory even though they did not believe the story when they first heard it.

29. Jimenez's testimony regarding his questioning of the children in respondent's class, and the documentation he kept of that questioning, raise serious concerns about the effects of Jimenez's interview techniques on the children's stated recollection. Jimenez testified that he changed his methodology continually, as he refined his process of interviewing based on his accumulating experience and on advice he received from Dr. Lugo and from Franco. He learned, for instance, to prepare questions in advance. But he never attempted to qualify any of the children, before he began questioning them substantively, in order to determine whether they were competent to understand and truthfully answer the questions he was about to ask. And in many instances, Jimenez's questions were leading, or directed the children toward a certain conclusion. The questioning took place over several days, allowing the children time to discuss the events and the questioning and to further affect their memory of what happened in respondent's classroom.

30. Dr. George McKenna, who at the time was the Local District Supervisor for LAUSD Local District 7 in 2012, was responsible for conducting pre-disciplinary hearings, known as *Skelly* hearings, in that local district. He conducted respondent's *Skelly* hearing and, after reviewing all pertinent documents, recommended to Sergio Franco that respondent not be dismissed.

31. Complainant bore the burden of proving the allegations that respondent inappropriately pinched Student B., breaking her skin and causing bleeding and swelling. Complainant has failed to meet her burden. The weight of the evidence shows that administration did not provide respondent with the information or training necessary to properly address Student B.'s behavioral issues. Student B. did not testify, and those students who did testify were not credible as to whether respondent pinched Student B. The nurse's note and testimony, and the testimony of the investigating police officer, contradict Jimenez's findings. Jimenez's interviewing techniques were inadequate for the task of accurately ascertaining what occurred in respondent's classroom.

*The Allegation That Respondent Twice Pulled the Hair of and Pinched a Female Student on November 22, 2011*

32. The District alleged but did not establish that, on November 22, 2011, respondent twice pulled the hair of, and pinched the shoulders of, Student H, a female student in her class.

33. As discussed below, the evidence of respondent's allegedly pinching Student H. was confused, ambiguous, inconsistent, and contradictory.

34. Student H.'s father, O.H., testified. He has had two children enrolled in 52nd Street School. He participated in parent activities, was the chair of the school site council, and volunteered in his children's classes once per week. He volunteered in respondent's class when Student H. was there, and would stay in the classroom for 30 to 45 minutes each time



he volunteered. O.H. observed respondent interact with his daughter and with other students. He found respondent to be professional at all times, even when students were unruly; if they defied her request to be seated, she would direct them to their seats, occasionally holding them by the arm; sometimes the students who were very unruly made a comment when respondent touched them. But O.H. never saw respondent use physical force on the children or hurt them. Student H. is developmentally delayed; she has cognitive disorders and some behavioral issues. O.H. and respondent discussed Student H. and worked on her issues together weekly. O.H. and respondent discussed having Student H. get an IEP; she eventually did so, about six months after the time relevant to this case, and has since been receiving special education services. O.H. never requested that Student H. be removed from respondent's classroom; when she was removed, O.H. thought it was temporary, and would not have objected to Student H. being moved back into respondent's classroom.

35. Jimenez's notes of his interview of Student H. show that he asked directive, leading, or yes or no questions, such as "Did Ms. Black ever hit you?," "Does it hurt when she does it?," "Does she do it a lot?" (Ex. 4.) Student H. demonstrated a pinch on her arm in response, saying it hurt and that respondent did that to her while she was waiting in line. Student H., however, denied that respondent ever pulled her hair or her ear.

36. Jimenez also questioned Student A., using questions formulated by Franco. Jimenez, however, could not determine from his own interview notes whether Student A. confirmed that respondent pinched Student H. Jimenez did not show any of the students he interviewed what he meant by "pinch," which was revealed by testimony and the interview notes to be an ambiguous term. There appeared to be a variety of types of contact described by the students; it was unclear from the interview documents whether students were recounting respondent touching children's shoulders, guiding them by their shoulders, holding or lightly squeezing their shoulders, or actually pinching their shoulders. None of the children whom Jimenez interviewed said respondent caused Student H. any pain; they did not see Student H. wince or hear her say anything as a result of respondent's touching her.

37. Student H. testified. She did not appear to be afraid of respondent at all; she waved and smiled at respondent when taking the stand. She testified that she liked going to respondent's class, that she felt safe there, and that respondent was nice to her. She testified that respondent pinched her shoulder once when she was in class. Student H. had pushed a table, hurting another student's hand. Student H. testified that respondent responded by pinching her on the upper right arm, and that it hurt but she said nothing. But she then testified that respondent pulled her from the table by the shoulder so she would not hurt the other student again, raising the question of whether respondent had actually pinched her and what meaning she assigns to the term "pinched." She also testified that respondent pinched her on one other occasion, but offered no details.

38. Student S., who also testified about the alleged incident involving Student B. (see Factual Finding 23), testified that respondent "pinched" Student H.'s shoulder only once, when Student H. misbehaved, but that Student H. did not say anything when respondent touched her. In Jimenez's notes of his interview of Student S., he wrote that

Student S. said respondent pinched Student H. on the shoulder once, while Student H. was in line, and that it did not hurt much, but that Student H. cried a little. This inconsistency, like the inconsistencies in Student H.'s testimony and Jimenez's notes, does not tend to establish that Student H. was in pain and was actually pinched. Student S. testified that she likes respondent, that she learned a lot from respondent, and that she felt safe in respondent's class.

39. Jimenez did not discipline respondent after conducting his investigation into the allegations concerning Student H. and allegations concerning five other students. (See Factual Findings 40-42.) His interviews with the students did not yield sufficient evidence of misconduct, and the children were inconsistent about the alleged pinching and other actions and lacked credibility sufficient to warrant a letter of reprimand, classroom management coaching, or other form of discipline. Instead, as set forth in a November 23, 2011, conference memorandum issued to respondent, Jimenez met with respondent, read various Board and school policies to her, which he described as providing her with "assistance and guidance," and directed her to follow District policy, including a bulletin abolishing corporal punishment. He wrote that failure to follow his directives may lead to disciplinary action. Respondent denied that she pinched students or pulled their hair or ears. Jimenez returned respondent to her classroom.

*The Allegation That Respondent Pinched, Pulled the Hair of, and Pulled the Ears of Five Students on November 22, 2011*

40. The District alleged but did not establish that, on November 22, 2011, respondent pinched the shoulders and pulled the hair and ears of five students in her class.

41. No student testified at hearing that respondent pulled her or his hair or ears, and none testified to being pinched other than Student H. (See Factual Findings 32-38.) Student Z. provided inconclusive testimony about events in respondent's classroom. She testified that when students misbehaved, respondent would scream at them and pull their ears and hair, but she offered no particulars. On the other hand, Student Z. testified that respondent was a good teacher who tried to keep Student Z. and the other students safe, and that respondent never did anything to Student Z. that Student Z. did not like. Student Z. testified that Student B. misbehaved, doing "crazy stuff," screaming, knocking over chairs, hitting other students, grabbing respondent and trying to bite her, and going under the tables. She testified that Student B. scared her, and that respondent screamed at Student B. and called the office for help more than once. She testified that other adults came into respondent's classroom and took Student B. away. Jimenez's notes of an interview he conducted with Student Z. reflect that she told him that Student B. was bad, that she was trying to kick and bite respondent, that she knocked over a board and a chair, and that respondent tried to grab her to put her in her seat, that she had difficulty doing so, and that she then called the office.

42. School administration did not take disciplinary action against respondent based on the statements Jimenez obtained. (See Factual Finding 39.)

### *Notices and Warnings Issued to Respondent*

43. Respondent was provided with a conference memorandum dated November 23, 2011, after her meeting with Jimenez regarding the alleged November 2011 incidents. The memorandum stated that failure to follow Jimenez's directives to follow Board policy "may lead to disciplinary action such as but not limited to a notice of unsatisfactory acts, notice of unsatisfactory service, [and] a suspension without pay up to and including dismissal" from the District. (Ex. 14.) When he discussed allegations against her in the November 2011 conference with respondent, Jimenez documented respondent's questions to him, but he did not document whether he answered her questions. Nor did the school administration provide respondent with any adequate means for addressing Student B.'s behaviors, despite her numerous requests for guidance and assistance. Administration did not provide information to respondent, help her develop a meaningful plan, or provide resources to help respondent achieve specified directives. (Factual Findings 10-15, 39.) The only "assistance and guidance" Jimenez documented was his reading to her of certain Board and school policies. That is insufficient to constitute "assistance and guidance." In the conference memorandum, Jimenez wrote that he would continue to investigate the allegations, but he admitted that he conducted no further investigation. The conference memorandum did not constitute disciplinary action, and respondent was immediately returned to the classroom.

44. After receiving the conference memorandum, respondent filed a grievance with Jimenez. Jimenez testified that he did not know that the grievance pertained to respondent, because all teachers' grievances came to him through respondent, the UTLA chapter chair. Jimenez testified that he did not even read respondent's grievance. This testimony was not credible.

45. On March 27, 2012, the District gave respondent a Notice of Unsatisfactory Act, with an attached conference memorandum dated February 29, 2012, that set forth seven directives. The Notice recited that "This notice is being given to you in order to allow you an opportunity to correct the above listed deficiencies and overcome the grounds for the charges." (Ex. 55.) On the same date, March 27, 2012, the District gave respondent a Notice of Suspension. When she received the notice, respondent had already been removed from the classroom; she was never returned to the classroom, and so was afforded no opportunity to remediate any alleged deficiencies, none of which has been established in this matter.

### LEGAL CONCLUSIONS

#### *Jurisdiction*

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

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### *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), are established. In the Accusation and Statement of Charges, the District alleged five of those enumerated causes: unprofessional conduct, immoral conduct, evident unfitness for service, willful refusal to perform regular assignments without reasonable cause, and persistent violation of school laws or regulations. (Factual Finding 4.)

4. The District's Accusation and Statement of Charges charged respondent with several acts and stated that those acts, separately and in any combination, demonstrate all of the five statutory grounds for dismissal. (Factual Finding 5.) The Commission examined each charged act to determine whether it was proven; if proven, the Commission would consider whether the charges were a violation of one or more of the statutory bases for dismissal as alleged.

5. The Commission determined that the District did not meet its burden of proving that any of the charged acts occurred.

6. Cause for dismissal of respondent Valencia Black does not exist under section 44932, subdivision (a)(1), based on unprofessional conduct, as set forth in Factual Findings 6 through 44 and Legal Conclusions 3 through 5.

7. Cause for dismissal of respondent Valencia Black does not exist under sections 44932, subdivision (a)(1), and 44939, based on immoral conduct, as set forth in Factual Findings 6 through 44 and Legal Conclusions 3 through 5.

8. Cause for dismissal of respondent Valencia Black does not exist under section 44932, subdivision (a)(5), based on evident unfitness for service, as set forth in Factual Findings 6 through 44 and Legal Conclusions 3 through 5.

9. Cause for dismissal of respondent Valencia Black does not exist under section 44939, based on willful refusal to perform regular assignments without reasonable cause, as set forth in Factual Findings 6 through 44 and Legal Conclusions 3 through 5.

10. Cause for dismissal of respondent Valencia Black 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 6 through 44 and Legal Conclusions 3 through 5.

11. Given that no cause for discipline exists because complainant has failed to prove any of the factual allegations in the Accusation and Statement of Charges, the factors set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 need not be considered.

### ORDER

The Accusation and Statement of Charges against respondent Valencia Black is dismissed.

DATED: March 4, 2014



HOWARD W. COHEN

Administrative Law Judge

Office of Administrative Hearings

I concur with the Decision and Order set forth above:

DATED: \_\_\_\_\_, 2014

KAREN SCHUETT

Commission Member

I concur with the Decision and Order set forth above:

DATED: \_\_\_\_\_, 2014

LIANA COLLICA

Commission Member

the State Board of Education or by the governing board of the school district employing her, as set forth in Factual Findings 6 through 44 and Legal Conclusions 3 through 5.

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DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings

I concur with the Decision and Order set forth above:

DATED: 3/10, 2014

\_\_\_\_\_  
*KR Schuett*  
KAREN SCHUETT  
Commission Member

I concur with the Decision and Order set forth above:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
LIANA COLLICA  
Commission Member

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ORDER

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DATED: \_\_\_\_\_, 2014

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HOWARD W. COHEN  
Administrative Law Judge  
Office of Administrative Hearings


I concur with the Decision and Order set forth above:

DATED: \_\_\_\_\_, 2014

\_\_\_\_\_  
KAREN SCHUETT  
Commission Member

I concur with the Decision and Order set forth above:

DATED: 3/7, 2014

  
\_\_\_\_\_  
LIANA COLLICA  
Commission Member