

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
AND THE COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

STACIA TRIMMER,
a permanent certificated employee,

Respondent.

OAH No. 2016030439

AMENDED DECISION

The Commission on Professional Competence, consisting of complainant's designee, Jacqueline Ferguson, respondent's designee, Deanna Clark, and Administrative Law Judge Jennifer M. Russell, from the Office of Administrative Hearings, heard this matter in Los Angeles, California on August 11, 12, 15, 16, 17, 18, and 19, 2016.

John M. Coleman, Attorney at Law, represented complainant Los Angeles Unified School District (LAUSD or District). Rosemary O. Ward and Rosty G. Gore, Attorneys at Law, represented respondent Stacia Trimmer, who was present throughout the hearing.

The District seeks to dismiss respondent based on charges that, on certain specified dates, respondent manifested immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, and was persistent in her violation of or refusal to obey the District's reasonable regulations prescribed for the governance of the public schools by the State Board of Education when she failed to supervise properly a student, failed to treat students respectfully, and violated applicable codes of conduct. Respondent disputes the charges.

At the conclusion of the hearing, the Administrative Law Judge granted complainant's unopposed motion to amend the Accusation by interlineation to omit lines 10 through 14 on page 4 of the Accusation pursuant to Government Code section 11507. The record was closed and the matter submitted for decision on August 19, 2016.

During the preparation of the Decision, the Administrative Law Judge noted that the jurisdictional documents consisting of the Accusation and Notice of Defense and Request for Hearing were not marked for identification or entered in evidence. Government Code section 11523 provides for judicial review, which a petitioner initiates by, among other things, requesting the Office of Administrative Hearings to prepare a complete record of the

proceedings. Section 11523 provides that “[t]he complete record includes the pleadings[.]” Thus, to preserve a complete record of the proceedings in this matter, the Administrative Law Judge has identified the jurisdictional documents as Exhibit OAH1 and has entered the jurisdictional documents in evidence, thereby rendering the jurisdictional documents or pleadings a component of the complete record.

On November 28, 2016, pursuant to Government Code section 11518.5, subdivision (d), the Administrative Law Judge amended the Decision to correct the following minor and clerical errors. In Legal Conclusion 10, the date “February 1, 2013” is replaced with “February 13, 2013.” In Legal Conclusions 16 through 21, the date “February 13, 2014” is replaced with “February 13, 2013.” In Legal Conclusion 17, at the twelfth line, the word “same” is replaced with the word “subsequent,” and at the thirteenth line, the words “in which” are replaced with the word “following” and the word “occurred” is omitted. There are no other amendments to the Decision.

FACTUAL FINDINGS

1. Respondent has earned a Bachelor Degree from Pepperdine University in history and political science, a Master Degree from University of California, Los Angeles in special education, and an Education Specialist Credential in Mild/Moderate Disabilities from California State University Los Angeles. Respondent’s 20-year experience as an educator for students with disabilities includes appointments at both private and public schools. At various times, respondent has served as a master teacher and she has held a supervisory position.

2. Respondent’s special education students capable of communicating have used the words “nice,” “mean,” and “screaming” to describe respondent. (Exhs. R and S.) Among the student’s parents writing character reference letters on respondent’s behalf, respondent enjoys a reputation for being “a special educator who truly loves all children with compassion and concern for their welfare and educational progress,”¹ for being “a very

¹ See Exhibit 11, which is an April 15, 2015 character reference written by Student C.’s mother. Complaint’s allegations that respondent failed to respect Student C. are set forth in Factual Findings 23 through 36. In that reference, Student C.’s mother expressed the following opinion regarding respondent. “While [Student C.] has challenges that can be very difficult such as Intellectual Disability, Attention Deficit Hyper Activity disorder, Oppositional defiant disorder and Impulse Control, Ms. Trimmer was one of the few teachers that was able to actually teach [Student C.] within the public school system an in the least restrictive environment. [¶ . . . ¶] My journey with [Student C.] had not been easy. [¶ . . . ¶] What I have learned through this journey is that Ms. Trimmers experience had a tremendous impact on [Student C.’s] progress in the past yrs. I have said this before ‘I wish I could ‘clone Ms. Trimmer’, but I can’t. I know that personal connection [Student C.] had with her

observant, hands on educator, that has exhibited patience, concern and dedication to her students and representation as a Special Needs Teacher,”² for being “an open advocate for advancement” of her students’ education,³ and for being “a good teacher who stands for disabled children’s needs.”⁴

3. In a November 18, 2013 performance evaluation, Principal Kimberly Wright-Graves rated respondent as “Effective” and “Highly Effective” in areas generally denoted as Standard 1/Planning and Preparation; Standard 2/The Classroom Environment; Standard 3/Delivery of Instruction; Standard 4/Additional Professional Responsibilities; and Standard 5/Professional Growth. In sub-areas denoted Managing Classroom Procedures and Managing Student Behavior, Principal Wright-Graves rated respondent “Highly Effective” for the category Management of Routines, Procedures, and Transitions. (Exh. 24.) In a May 2, 2014 performance evaluation, Principal Wright-Graves rated respondent “Effective” in all areas. (Exh. 28.)

4. The superintendent of LAUSD wrote a June 23, 2014 letter recognizing respondent for her performance during the 2013/2014 academic year at the “*Highly Effective Level*” in the Teaching and Learning Framework. (Exh. 22.) The superintendent’s recognition cited respondent’s Knowledge of Content-Related Pedagogy; Awareness of Students’ Skills, Knowledge, and Language Proficiency; Standard-Based Learning Activities; Management of Routines, Procedures, and Transitions; Monitoring and Responding to Student Behavior; Discussion Techniques and Student Participation; Standards-Based Projects, Activities, and Assignments; Purposeful and Productive Instructional Groups; Feedback to Students; and Use of Reflection to Inform Future Instruction. (Exh. 21.)

I. Alleged Failure to Supervise Properly

5. On February 13, 2013, Student M., a third-grader with an Intellectual Disability diagnosis, was enrolled in respondent’s special education classroom at Cienega Elementary School. At the end of the instructional day, at 2:30 p.m., respondent escorted Student M. and an indeterminate number of other students to the front of the school to board waiting District school buses. Parents, other students, and at least two other District employees congregated in the area. As students queued up and boarded their respective buses, respondent assisted a parent who queried respondent about an undisclosed matter. Respondent did not observe Student M. leave the boarding area, and she believed that

made a difference.” (Excerpted portions of Student C.’s mother’s character reference has not been edited for grammar or punctuation.)

²See Exhibit 13.

³ See Exhibit 16.

⁴ See Exh. 22.

Student M. boarded the District bus provided for his transport home. No bus driver informed respondent that Student M. had not boarded his assigned bus. Before the buses departed the school, respondent left the area believing that all the students for whom she cared, including Student M., had boarded their assigned District bus.

6. Respondent went to the main office, where Lisa Irene Parrish, an administrative assistant, was working. Respondent sat at a desk, and she made a telephone call to the District regarding an after-school program. Within five to 10 minutes after respondent's arrival at the main office, Student M. appeared at the main office counter. Ms. Parrish looked at the wall clock, and she noted that it was 45 minutes after 2 o'clock. Ms. Parrish told Student M., "You have to catch the bus." Student M. responded, "Oh." Respondent told Student M., "Hurry up and get on the bus." Student M. exited the main office alone. Respondent continued to converse with the District on the telephone.

7. LaKeisha Minor drove the District bus to which Student M. was assigned. As Ms. Minor approached Student M.'s stop, Ms. Minor asked the aide accompanying students on the bus whether Student M. was on the bus. The aide surveyed the bus and told Ms. Minor that Student M. was not on the bus. Student M.'s mother waited for him at the bus stop. Ms. Minor informed Student M.'s mother that he was not on the bus, and asked Student M.'s mother whether he remained at school to attend a Valentine Day dance occurring at the school. Student M.'s mother did not know whether he attended the dance. Ms. Minor instructed Student M.'s mother to contact the school.

8. At 4:15 p.m., Student M.'s mother arrived at the school's main office. Ms. Parrish called the District's transportation branch, and she spoke to the dispatcher to determine whether Student M. was erroneously dropped off at another bus stop. Ms. Parrish searched the classroom buildings and the school's playground for Student M. Ms. Parrish additionally queried workers cleaning the school and other students at the school about any sighting of Student M. Two other teachers were present in the main office at the time of Student M.'s mother's arrival. One teacher notified LAUSD School Police, which in turn provided instructions to notify the Los Angeles Police Department (LAPD). Another teacher notified Principal Wright-Graves.

9. At 5:00 p.m., LAPD officers arrived at the school. Ms. Parrish furnished the officers with a picture of and identifying information about Student M., all of which were dispatched to various LAPD units patrolling the neighborhoods surrounding the school. Ms. Parrish sent notification to respondent about the search for Student M., and at 5:15 p.m., respondent arrived at the school. Coincident with respondent's arrival, LAPD contacted Ms. Parrish to notify the school that the Culver City Police Department (CCPD) located Student M. Student M. had boarded a Culver City municipal bus. The Culver City bus driver recognized that Student M. was a special needs student and took him to the CCPD. At 6:00 p.m., CCPD returned Student M. to the school and to his mother's custody.

10. The next day, on February 14, 2013, Principal Wright-Graves distributed a memorandum bearing the title *Bus Procedures* to special education teachers at Cienega Elementary School. The memorandum in part states the following:

It is imperative that ALL teachers walk their bus riders to the bus. You must wait until the bus closes their doors before returning inside the school. This procedure allows you to communicate with the bus driver for any missing students or other concerns. Not following this directive will lead to disciplinary actions.

(Exh. BBB at p. 043.)

11. On February 27, 2013, in the presence of a United Teachers Los Angeles (UTLA) representative, Principal Wright-Graves convened an investigatory conference with respondent to discuss “concerns” in connection with the February 13, 2013 incident involving Student M. Respondent declined to make any statements at that time, and requested an opportunity to submit a written response. Principal Wright-Graves provided respondent with directives, including the February 14, 2013 *Bus Procedures* memorandum. Principal Wright-Graves instructed respondent to provide a written response no later than March 8, 2013. The conference is memorialized in a March 1, 2013 Inter-Office Correspondence referencing the subject “Investigatory Conference of February 27, 2013.” (Exh. BBB at p. 045.)

12. In an undated memorandum to Principal Wright-Graves, respondent addressed the “concerns”⁵ raised during the investigatory conference as follows:

1.) You stated that I gave a permission slip to [Student M.] one of my 3rd grade students.

I did not give [Student M.] a permission slip for the Valentine’s Day Dance. I fully understood that this was an activity that was for 4th and 5th graders. [Student M.] could have obtained a slip from someone else.

2.) You stated that I walked my students to the bus.

This is absolutely correct.

3.) You stated, “I failed to pay attention to ensure the student was secured on the LAUSD school bus.”

This is absolutely incorrect. I walked all the student to the bus and [Student M.] was there with the other students. The students stood in line waiting to

⁵ The “concerns,” appearing in bold font in respondent’s original undated memorandum, are excerpted from the “Investigatory Conference of February 27, 2013.” (See Exh. BBB at p. 045.)

board the bus and the bus driver was there to receive the students. Also, it is important to point out that two other staff members were present and it was also there [sic] job to monitor the student's transition from school grounds to bus. I did assist a parent that had questions that concerned her child.

4.) You stated, "I was distracted while talking to parents."

I was not distracted. I was assisting a parent that had questions. I was monitoring the line the students were in as they boarded the bus. While I was there, I did not see [Student M.] leave the line. My understanding was that he entered the bus.

5.) You stated, at 2:45 p.m. I saw [Student M.] in the office and I told him to "get on the bus."

My understanding is that it is the driver's responsibility to check his list of students on the bus and to verify if someone who has been marked present in the morning and is on the bus in the afternoon. If a student is missing, the driver has the responsibility to call the office (administrator) and not leave until all students are accounted for (as per the LAUSD Sp. Ed. Policies and Procedures Manual).

When I left the loading area, my understanding was that all students were on the bus and the bus driver had acknowledged that he was assuming the responsibility for the students on the bus. The bus driver did not notify the office or me that there was a problem.

(Exh. BBB at p. 049.)

13. On May 7, 2013, the District issued two notices to respondent—a Notice of Unsatisfactory Service or Act(s) of Certificated Employee (Exh. BBB at p. 037) and a Notice of Suspension of Certificated Employee (Exh. BBB at p. 038). The District imposed a six-day suspension on respondent for "Unprofessional Conduct" and "Persistent and/or willful failure to follow the Cienega ES special education student dismissal policy, Code of Ethics and Ethics Policy." (Exh. BBB at p. 039.) The six-day suspension was premised on charges that (1) at 2:30 p.m. respondent "failed to properly supervise . . . [Student M.] . . . boarded the bus to return home, therefore [Student M.] left the bus area unnoticed" and (2) respondent "encountered [Student M.] in the office at 2:45 p.m. and failed to walk him back to the bus area. Instead she told him to 'go get on the bus.' Since the school day had ended 15 minutes prior, the school bus had already left. [Student M.] boarded a Culver City bus and was missing for approximately 2 hours." (Exh. BBB at 039.)

14. At the administrative hearing, on direct examination respondent was asked, "Did you see [Student M.] get on the bus?" Respondent answered, "I thought I did." Respondent explained that when Student M. appeared at the main office counter, she "didn't realize what he was there for." Respondent testified, "In retrospect, I should have questioned

why [Student M.] was there. I was caught up with the phone conversation. I am sorry for that. I take responsibility for what happened. It never happened in my 20 years of teaching. It will never happen again.”

15. Principal Wright-Graves testified at the administrative hearing, and her testimony established that “procedure and protocol” require special education teachers to walk their students to the dismissal area where “non-bus riders are handed off to parents” and they “watch bus riders get on the bus.” Principal Wright-Graves’s testimony additionally established that “policy required [respondent] to take [Student M.] and walk [Student M.] to the bus stop after she discovered him in the office.”

16. Ms. Parrish testified at the administrative hearing. In combination, Ms. Parrish and respondent’s testimony established that District bus drivers use an attendance chart to account for each student transported daily. Bus drivers complete the attendance chart as each student enters and departs the bus. When a student does not appear for transportation, a bus driver is required to notify the school’s main office about the student’s non-appearance and to remain at school until there has been an accounting for the student. On February 13, 2013, no District bus driver notified the main office at Cienega Elementary School that Student M. had not boarded his assigned bus.

17. Competent, credible evidence did not establish that respondent failed to supervise Student M. properly when, on February 13, 2013, respondent escorted Student M. to the bus loading area at 2:30 p.m. Respondent monitored the que as students boarded the bus, even as she spoke to a parent, and respondent did not observe Student M. leaving the que. Respondent had no reason to know that Student M. was not on the bus because neither the bus driver nor the aide traveling on the bus notified respondent or the main office that Student M. was not aboard the bus. Under those circumstances, it was not unreasonable for respondent to think Student M. successfully boarded his designated bus at 2:30 p.m.

18. Competent, credible evidence established that respondent failed to supervise Student M. properly when, on February 13, 2013, she observed Student M. at the main office counter at 2:45 p.m., told Student M., “Hurry up and get on the bus,” but did not escort Student M. to the bus loading area.

II. Alleged Failure to Treat Students with Respect

19. At the start of the 2014/2015 academic year, respondent’s special education classroom was populated with as many as 14 students ranging in age from four through 11 years old, presenting with a variety of disabilities and conditions, including Intellectual Disability, Autism Spectrum Disorder, and Downs Syndrome, and manifesting a number of maladaptive behaviors, including physical and verbal aggression. In addition to respondent, three other adults—a special education trainee (Eva Alvarez), a special education assistant (Cornelia Kyle), and a contracted behavioral interventionist therapist (Laura Leon)—were regularly present in respondent’s special education classroom. Other professionals—speech

therapists, occupational therapists, for example—were present in the classroom when certain students required their services. Parents frequented the classroom.

20. District employees at Cienega Elementary School, contracted service providers with access to respondent's classroom, as well as parents of students enrolled in respondent's special education classroom regarded the classroom as "noisy," "chaotic," and "challenging." It was not uncommon for respondent to use an elevated tone or raised voice to exert her control over her classroom. Melody Baker, an Assistant Principal at Cienega Elementary School, testified at the administrative hearing, "It is important for a teacher to have command in her classroom." Assistant Principal Baker explained that it is "not unusual for a teacher to raise her voice in the classroom," but that "yelling" is inappropriate. Assistant Principal Baker noted the existence of a "teacher voice," which she explained is evident when a teacher "projects her voice clearly to be heard."

21. Student C., Student N., and Student I. were among the 14 students populating respondent's special education classroom. Student C. presents with Downs Syndrome and severe Intellectual Disability. Student C. is non-verbal. Student C.'s mal-adaptive behaviors included her elopement from the classroom, her removal of her clothing and prescription eye-glasses, her hurling of her shoes at others, her use of profanity, and her resistance to redirection. Ms. Leon's primary responsibility in respondent's special education classroom was to "shadow" Student C. Student N. presents with enuresis (an inability to control urination) and she soils herself and clothing at least twice weekly. Student N. is communicative, but her verbal repertoire is limited. Student I. presents with severe Intellectual Disability. Student I.'s maladaptive behaviors include making loud noises, running around the classroom, jumping on desks, pulling items from the wall bulletins, dismantling the classroom, and throwing and breaking objects. Ms. Alvarez's responsibilities in respondent's special education classroom required her to "shadow" Student I. throughout the instructional day.

22. Respondent expressed concerns about the number of students populating her special education classroom, the appropriateness of the placement for particular students, and the extent of the interventions and care available to enable the academic progress of students presenting with severe maladaptive behaviors to the administration at Cienega Elementary School, including Principal Wright-Graves and Assistant Principal Baker.

A. Allegations Involving Student C.

23. On October 6, 2014, Student C. was on her hands and knees (or "all fours") on the carpet located in the front of respondent's classroom. Respondent instructed Student C. to get up off the floor and to go to her assigned seat at a desk situated in front of the carpet. Student C. was noncompliant.

24. Ms. Alvarez, who shadows Student I., and Ms. Leon, who shadows Student C., were present in the classroom at the time. Ms. Alvarez was seated next to Student I. who in turn was seated at his assigned desk six feet away from the front of the classroom where

Student C. was on the carpet. The evidence did not establish Ms. Leon's position in the classroom at the time. Ms. Alvarez claimed she saw respondent use her foot against Student C.'s bottom. At the administrative hearing, Ms. Alvarez testified she "was not sure if it was a push or a kick," but she knew "there was enough force to cause [Student C.'s] bottom to move." Ms. Alvarez claimed she saw Student C.'s "knees buckled as she went down." According to Ms. Alvarez, after Student C.'s "pelvis area went down, [Student C.] got up and went to her seat."

25. Respondent denies using her foot to push or to kick Student C. when Student C. was on her hands and knees. Respondent explained at the administrative hearing that Student C. threw herself on the classroom floor at least twice weekly for various reasons, including protesting her return to the classroom when she wanted to remain in the school yard. Respondent credibly explained that her established practice was to ignore Student C.'s behavior so as not to reinforce it, to redirect Student C., to point to encourage Student C. to get up from the floor, to have Ms. Leon guide Student C. up from the floor, or to guide Student C. up from the floor herself.

26. Ms. Alvarez's claim is internally inconsistent. If Student C. were on her hands and knees, Student C.'s knees could not have "buckle[d]" as Ms. Alvarez claimed. That internal inconsistency undermines the credibility of Ms. Alvarez claim that she saw respondent use her foot to push or kick Student C.'s bottom. Ms. Alvarez's claimed observation was incongruous with respondent's long established practice for addressing Student C.'s recurring maladaptive behavior. The evidence did not establish how in this instance Student C. got up from the floor and returned to her assigned seat. However, in the absence of credible evidence to the contrary, it is reasonable assume that respondent addressed Student C.'s behavior in a manner consistent with her established practice for doing so.

27. Competent, credible evidence did not establish that respondent used her foot to push or kick Student C.'s bottom when Student C. was on her hands and knees on the carpet. It is not established that respondent failed to treat Student C. with respect, failed to model appropriate behavior, or failed to comply with District policies and procedures regarding student behavior.

28. During the October 6, 2014 dismissal period, Ms. Alvarez and Ms. Leon were both in the classroom with respondent. Respondent assigned a student monitor to distribute homework folders to other students in the classroom. Student C. refused to accept a homework folder from the student monitor. The student monitor brought the situation to respondent's attention. Ms. Alvarez claimed she saw respondent take the homework folder from the student monitor and "extended it" to Student C., who would not take the folder from respondent. According to Ms. Alvarez, respondent said, "Here, here, here," and "the corner of the folder made contact with [Student C.] below her collar bone." Ms. Alvarez claimed that Student C. "was visibly upset," and looked to Ms. Leon for comfort. Ms. Alvarez claimed seeing "three marks across [Student C.'s] chest," which she described as "pinkish red" and "swollen." Student C.'s skin was not broken and Student C. did not bleed. No one

provided first aid to Student C. No one sought any medical attention from the school nurse or other medical professionals for Student C. No photograph or other recording captured or preserved imagery of marks on Student C.'s chest. Ms. Leon subsequently escorted Student C. to an afternoon program.

29. Student C.'s mother saw no marks on Student C.'s chest or neck or on any other part of Student C.'s body. Student C.'s mother credibly testified that Student C. "would have been able to pull up her shirt and point" and that Student C. "would have been able to articulate what happened." Student C. did not do any of those things. No one from Cienega Elementary School reported the interaction respondent allegedly had with Student C. about the homework folder to Student C.'s mother.

30. No evidence was offered to establish how or under what circumstances a certificated teacher of the District stating "Here, here, here" as a homework folder is "extended" to a student constitute disrespectful treatment in violation of a District policy or procedure. No evidence was offered to establish that when respondent "extended" the folder to Student C. respondent did so with ill will or malice. It is not established that respondent failed to treat Student C. with respect, failed to model appropriate behavior, or failed to comply with District policies and procedures regarding student behavior.

31. Student C. was required to wear her eye glasses throughout the entire day, but, as Ms. Alvarez testified, Student C. "rebelled against having glasses at all." At the beginning of the day, Student C. "would come on the bus with glasses and then remove them when no one was looking. She would leave her glasses on the seat of the bus or under the seat of the bus." During school, Student C. habitually misplaced her eye glasses. Student C.'s mother made it known that she wanted Student C. to wear her eye glasses all day.

32. On October 7, 2014, Student C. went to lunch wearing her eye glasses, but returned to the classroom after lunch without her eye glasses. Respondent asked Ms. Leon to take Student C. from the classroom and to help Student C. search for her eye glasses. After a period of time, Ms. Leon and Student C. returned to the classroom. Ms. Alvarez testified that Ms. Leon said to respondent, "We found them. They were in the trash can." Then according to Ms. Alvarez, respondent took Student C.'s eye glasses from Ms. Leon, and told Student C., "Here, here. Put them on your face, and don't let me see you take them off again. You think you're special. You are nothing. You are trash."⁶ According to Ms. Alvarez, Student C. looked sad as she put her glasses on her face.

⁶ In an October 8, 2014 note that Principal Wright-Graves instructed Ms. Alvarez to prepare, Ms. Alvarez wrote the following account using the question mark and explanation point:

Yesterday after [Student C.] threw her glasses in the trash, Ms. Laura . . . helped her find them. When [Student C.] came back to class Ms. Trimmer said something to the extent of: "You think you're special? You're nothing,

33. Respondent emphasized on direct examination that she does not speak disrespectfully to the children in her classroom. “I love Special Ed students; I love their idiosyncratic behaviors. I’m into the kids; I know each one of their behaviors. You have to be into the kids. They have to feel you; they have to trust you.” Respondent explained, “I love [Student C.]; she was one of my favorites. I showed love by hugging her, giving her treats, allowing her to teach a lesson in cooperative group. I would allow [Student C.] to sit by me.” Respondent also explained that Student C. habitually lost her eye glasses—at least three times each week, and that she (respondent) was “not angry about it.”

34. Ms. Alvarez alone claimed hearing the assertion “You’re not special. You’re nothing. You’re trash” even though Ms. Leon, who was instrumental recovering Student C.’s glasses, was present at the scene. The word “trash” was evidently uttered when Ms. Leon returned to the classroom with Student C. because Student C.’s eye glasses were recovered from the trash. Ms. Alvarez’s faulty account of other events allegedly occurring in respondent’s classroom⁷ raises doubt about the accuracy of her perception of respondent’s statements to Student C. Respondent denied asserting “You are not special. You are nothing. You are trash” to Student C. Respondent’s denial was credible because the assertion “You’re not special. You’re nothing. You’re trash” is incongruous with respondent’s expressed affection for her students generally and for Student C. in particular.

35. Respondent’s statement instructing Student C. to put her eye glasses on her face, and admonishing Student C. not to take them off again was in accord with Student C.’s mother’s expressed expectations that the adults in the classroom would enforce the requirement that Student C. wears her eye glasses on her face at all times. Nothing untoward was exhibited by that instruction and admonishment. It is undisputed that Student C. was not enamored with wearing her eye glasses. Consequently, it is not surprising that Student C. may have expressed sadness when instructed to place her eye glasses on her face and admonished not to remove her eye glasses from her face.

36. The credible evidence did not establish that respondent asserted “You’re not special. You’re nothing. You’re trash” to Student C. when Ms. Leon returned to the classroom with Student C. after recovering Student C.’s misplaced eye glasses from the trash. It is not established that respondent failed to treat Student C. with respect, failed to model appropriate behavior, or failed to comply with District policies and procedures regarding student behavior.

you’re trash! Put those glasses on your face and I dont [*sic*] want to see you take them off!”
(Exh. A.)

⁷See Factual Findings 26 and 39.

B. Allegations Involving Student N.

37. On October 7, 2014, respondent and Ms. Alvarez were the only adults in the classroom during a transition period. Student N. stood in the front of the classroom. Respondent instructed Student N. to sit in her assigned seat; Student N. was noncompliant. Respondent stood behind Student N. and placed her hands on Student N.'s shoulders to coax Student N. down into her seat. In the process, respondent raised her knee.

38. Ms. Alvarez claimed she saw respondent use her raised knee "to knee" Student N. in the back. Ms. Alvarez was approximately six feet behind respondent, who in turn stood behind Student N. At the time, Ms. Alvarez was attempting to manage Student I., who was making screeching sounds.

39. The position of Student N. in front of respondent, Ms. Alvarez's six-foot distance behind respondent and Student N. with respondent's body interposed between Ms. Alvarez and Student N., and Ms. Alvarez's preoccupation with Student I. cast doubt on the accuracy of Ms. Alvarez's perception and therefore on Ms. Alvarez's accounting of respondent's interaction with Student N. when respondent raised her knee.

40. The credible evidence established that respondent employed her knee as a brace against Student N.'s back to stabilize Student N. as respondent lowered Student N. into her seat. The credible evidence did not establish that respondent used her knee "to knee" Student N. It is not established that respondent failed to treat Student N. with respect, failed to model appropriate behavior, or failed to comply with District policies and procedures regarding student behavior.

III. LAUSD Administrative Investigation

41. On October 16, 2014, the District temporarily reassigned respondent to "housed" status pending its investigation of the alleged events occurring on October 6 and 7, 2014.

42. On October 24, 2014, in the presence of LAUSD Operations Coordinator Karen Brown and a UTLA representative, Principal Wright-Graves convened an interview with respondent regarding respondent's alleged failure to treat children with respect. Respondent denied the allegations and respondent explained her behavioral expectations for students in her classroom and the behavior management systems she employs. (Exh. T.) An additional conference occurred on November 20, 2014, and at that time Principal Wright-Graves provided respondent with directives, including LAUSD Board Resolution on the Respectful Treatment of All Persons, LAUSD Bulletin 5747.1-Abolition of Corporal Punishment, LAUSD Code of Conduct with Students, LAUSD Employee Code of Ethics, and Bulletin 6231.0 Discipline Foundation Policy: School-Wide Positive Behavior Intervention and Support. The conference is memorialized in a November 21, 2014 Inter-Office Correspondence. (Exh. Q.)

43. On December 2, 2014, Jan Davis, Operations Administrator with the District, recommended the dismissal of respondent on grounds that respondent “continues to demonstrate a pattern of unprofessional conduct towards students, and despite assistance and guidance, this employee is demonstrating an escalating pattern of physically aggressive behavior towards Special needs students who are under her direct supervision in the classroom.” (Exh. O.) On December 8, 2014, the District reached a final determination to suspend respondent for a period of 15 days and to initiate dismissal proceedings against respondent.

44. On January 22, 2016, the District filed a Statement of Charges against respondent. On March 4, 2016, respondent demanded a hearing pursuant to Education Code section 44943. On March 11, 2016, the District filed and served an Accusation incorporating the charges contained in the January 22, 2016 Statement of Charges. Respondent’s Notice of Defense was filed simultaneously with her demand for a hearing. (See Exh. OAH 1.)

LEGAL CONCLUSIONS

1. Education Code section 44932 provides that a permanent, certificated employee shall not be dismissed except for, among other causes, immoral conduct, unprofessional conduct, unsatisfactory performance, evident unfitness for service, or persistent violation of, or refusal to obey, reasonable regulations prescribed by the governing board of the school district employing him or her.

2. The California Supreme Court has long established, in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, that abstract characterizations of a teacher’s conduct as “immoral” or “unprofessional” are insufficient grounds for removal from the teaching profession. A rational connection or nexus must exist between alleged misconduct and a teacher’s competence or ability to teach effectively. In other words, misconduct deemed “immoral” or “unprofessional” must demonstrate unfitness to teach.

3. *Morrison* involved a teaching credential revocation proceeding. The holding in *Morrison*, however, applies to proceedings, such as this, involving a teacher’s dismissal from a single school district. (See *Board of Education v. Jack M.* (1977) 19 Cal.3d 691 [indicating that the determinative test in teacher discharge cases is whether the person is fit to teach and upholding the factors delineated in *Morrison* for consideration].) Consequently, before respondent is subjected to dismissal from the District, the following several factors should be considered: the likelihood that the conduct may have adversely affected students, fellow teachers, or the educational community, and the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of credential held or applied for by the person involved; the extenuating or aggravating circumstances surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the

person involved, or other certified persons; and the publicity or notoriety given to the conduct.

4. Complainant has the burden of proving by a preponderance of evidence that cause exists pursuant to Education Code section 44932 to dismiss respondent, a permanent certificated employee, from the District. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) “‘Preponderance of the evidence means evidence that has more convincing force than that opposed to it.’ (Citations.) . . . [T]he sole focus of the legal definition of ‘preponderance’ in the phrase ‘preponderance of the evidence’ is the *quality* of the evidence. The *quantity* of the evidence presented by each side is irrelevant.” (*Glage v. Hawes Firearms Company* (1990) 226 Cal.App.3d 314, 324-325.) (Emphasis in text.) In meeting the burden of proof by a preponderance of the evidence, the complainant “must produce substantial evidence, contradicted or uncontradicted, which supports the finding.” (*In re Shelley J.* (1998) 68 Cal.App.4th 322, 339.)

5. a. In this dismissal proceeding, the Commission evaluated the credibility of witnesses in accordance with the factors set forth in Evidence Code section 780: the demeanor and manner of the witness while testifying, the character of the testimony, the capacity to perceive at the time the events occurred, the character of the witness for honesty, the existence of bias or other motive, other statements of the witness which are consistent or inconsistent with the testimony, the existence or absence of any fact to which the witness testified, and the attitude of the witness toward the proceedings.

b. The manner and demeanor of a witness while testifying are the two most important factors the Commission considered when judging credibility. (See Evid. Code, § 780.) The carriage, mannerisms, tone of voice and hesitation, eye contact, and facial expressions of a witness are “wordless language,” which although difficult to describe in such a way that the reader truly understands what caused the Commission to believe or disbelieve a witness, were part of the evidence for consideration as well as evidence on which the Commission made factual determinations. (See *Dyer v. MacDougall* (2d. Cir., 1952.) 201 F.2d 265, 268-269.)

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.” (*Meiner v. Ford Motor Co.* (1971) 17 Cal.App.3d 127, 140.)⁸

d. The Commission was mindful that it is permitted to “accept part of the testimony of a witness and reject another part even though the latter contradicts the part

⁸ As observed in *Broadcast Music v. Havana Madrid Restaurant Corp.* (2d. Cir., 1949) 175 F.2d 77, 80, the best and most accurate record or hearing transcript is like a dehydrated peach; it has neither the substance nor the flavor of the fruit before it was dried.

accepted.” (*Stevens v. Parke, Davis & Co.* (1973) 9 Cal.3d 51, 67.) The Commission was mindful also that it may “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, 777.) The Commission is permitted even to reject testimony that is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.)

e. “Although impeaching evidence in the nature of contradictions or otherwise has been received, it is still the right as well as the duty of the [Commission members] to determine to what extent they believe or disbelieve the testimony. [Citations.] [The Commission members] may likewise give credence to a witness . . . [citation] whose testimony contains contradictions or inconsistencies.” (*Hansen v. Bear Film Co.* (1946) 28 Cal.2d 154, 184.)

6. In large measure, several of the charges against respondent rest on Ms. Alvarez’s perception of events purportedly occurring on October 6 and 7, 2014 in a dynamic classroom filled with noise and chaos and at times when the challenging behaviors of the student whom she shadowed commanded her attention. As detailed in Factual Findings 26, 30, 35, and 39, Ms. Alvarez’s perceptions did not withstand scrutiny. Ms. Alvarez’s perceptions were unreliable. The Commission accorded diminished weight to Ms. Alvarez’s testimony.

7. Respondent admitted she erred on February 13, 2013 when, at 2:45 p.m., Student M. appeared at the counter in the main office and she did not escort him to the bus loading area. Respondent’s admission was solemn and forthright. Respondent was visibly shaken as she acknowledged her lapsed judgment. Respondent’s credible testimony, supplemented with both testimony from the parent of Student C., who is the subject of some of the alleged October 6 and 7, 2014 incidents, and with character references from other parents of students respondent has taught, established respondent’s commitment to her students’ welfare. (Factual Finding 2.) Thus, Ms. Alvarez’s unsubstantiated perceptions were insufficient to override respondent’s testimony regarding her established practice for managing student behaviors and her affection and treatment of her students. The Commission accorded significant weight to respondent’s testimony.

8. By reason of Factual Findings 5, 7, 14, and 17 and Legal Conclusions 4 through 7, complainant failed to establish by a preponderance of evidence the following charge set forth in the Accusation:

On or about February 13, 2013, Ms. Trimmer failed to ensure that third grade Intellectually Disabled (ID) student Michael J. got on to his 2:30 District bus to be driven home, thereby failing to properly supervise her student.

9. By reason of Factual Findings 6 through 9, 14, and 18 and Legal Conclusions 4 through 7, complainant has established by a preponderance of evidence the following charge set forth in the Accusation:

On or about February 13, 2013, upon discovering Michael J. in the main office at 2:45 p.m., Ms. Trimmer again failed to properly supervise Michael when she saw a school secretary telling him to go and to get on the bus, but did not Michael to the bus zone to ensure that the third grader would get on the bus to be delivered to the established bus stop near his home.

10. By reason of Factual Findings 6, 9, and 17 and Legal Conclusions 4 through 7, complainant has established by a preponderance of evidence the following charge set forth in the Accusation:

As a direct result of Ms. Trimmer's failure to walk Michael J. to the bus pick up zone upon seeing Michael in the office on February 13, 2013, Ms. Trimmer did not see that the District bus had already left. As a further direct result of her failure to walk Michael J. to the bus pick up zone, Ms. Trimmer did not see Michael J. walk to a municipal Culver City bus stop and board a municipal bus.

11. By reason of Factual Findings 23 through 36 and Legal Conclusions 4 through 7, complainant has failed to establish by a preponderance of evidence the following charge set forth in the Accusation:

During the period on or about October 1 through 7, 2014, Ms. Trimmer failed to treat fifth grade Intellectually Disabled (ID) special education student Christy C. respectfully, failed to model appropriate behavior, and failed to properly comply with District policies and procedure regarding student behavior[.]

12. By reason of Factual Findings 37 through 40 and Legal Conclusions 4 through 7, complainant has failed to establish by a preponderance of evidence the following charge set forth in the Accusation:

On or about October 7, 2014, Ms. Trimmer failed to treat second grade Intellectually Disabled (ID) special education student Nataly S. respectfully, failed to model appropriate behavior, and failed to properly comply with District policies and procedure regarding student behavior[.]

13. By reason of Legal Conclusions 11 and 12, complainant has failed to establish by a preponderance of evidence the following charge set forth in the Accusation:

During the period on or about October 1, 2014 through October 7, 2014, Ms. Trimmer violated, among other regulations and policies, the District Code of Conduct with Students, [more to come].

14. Having determined that complainant met its evidentiary burden with respect to the charges set forth in Legal Conclusions 9 and 10, the Commission next determined whether respondent's misconduct articulated in the proven charges provides cause for dismissal.

15. "A board of education is entrusted with the conduct of the schools under its jurisdiction, their standards of education, and the moral, mental and physical welfare of the pupils during school hours." (*Johnson v. Taft School Dist.* (1937) 19 Cal.App.2d 405, 408.) As set forth in Factual Finding 18, respondent failed to supervise Student M. properly when, on February 13, 2013, at 2:45 p.m., she observed Student M. at the main office counter, told Student M., "Hurry up and get on the bus," but did not escort Student M. to the bus loading area. Respondent's admitted error placed Student M.'s physical welfare at risk. Student M., a student presenting with Intellectual Disability, was under respondent's supervision, and as such respondent was obligated, not just as a member of the teaching profession, but also pursuant to established procedures and protocols governing her non-instructional duties, to escort Student M. to the bus loading area after he appeared at the counter in the main office at 2:45 p.m. in order to ensure his safety.

16. Respondent's failure to escort Student M. to the bus was irresponsible, neglectful, and a poor exercise of judgment. No evidence offered at the hearing established or even suggested, however, that such failure resulted from hostility, corruption, indecency, depravity, or dissoluteness, which would constitute "immoral conduct." "Immoral conduct" has been defined generally as "that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or a 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 Education of the San Francisco Unified School District v. Weiland* (1960), 179 Cal.App.2d 808, 811.) Complainant has failed to establish by a preponderance of evidence that respondent's failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m., amounts to "immoral conduct" warranting cause for dismissal as alleged in the Accusation.

17. "Unprofessional conduct" is conduct which violates the rules or ethical code of a profession or conduct unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.) "Unprofessional conduct" must indicate an unfitness to teach. (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) Protocols and procedures governing dismissal at Cienega Elementary School required respondent to escort Student M. to the bus loading area after Student M. appeared at the counter in the main office, and respondent's conduct contravened those protocols and procedures. (Factual Finding 15.) Respondent's conduct warranted a

six-day suspension (Factual Finding 13), but she continued to teach after the February 13, 2013 incident. Respondent's teaching warranted the LAUSD superintendent's commendation. (Factual Finding 4.) The LAUSD superintendent recognized respondent for achieving "*Highly Effective Level*" teaching status in the 2013/2014 academic year, the subsequent academic year following the February 13, 2013 incident. Under these circumstances, respondent's conduct, even if deemed "unprofessional conduct," was not established as indicating unfitness to teach. (See also Legal Conclusion 21.) Complainant has failed to establish by a preponderance of evidence that respondent's failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m., amounts to "unprofessional conduct" warranting cause for dismissal as alleged in the Accusation.

18. "Unsatisfactory Performance" connotes "deficiency" and "ineffectiveness." (See generally *R.V. v. State of California* (August 22, 2016, B258589) __ Cal.App.4th __ [2016 WL 4443590] [addressing performance-based teacher dismissal].) Evidence of respondent's performance of her instructional and non-instructional duties offered at the administrative hearing are memorialized in the May 7, 2013 Notice of Unsatisfactory Service or Act(s) of Certificated Employee resulting from the February 13, 2013 incident with Student M. (Factual Finding 13), in a November 18, 2013 performance evaluation rating respondent as "Effective" and "Highly Effective," and in a May 2, 2014 performance evaluation rating respondent as "Effective." (Factual Finding 3). The February 13, 2013 incident with Student M. preceded the evaluations rating respondent "Effective" and "Highly Effective." A reasonable inference is that whatever impact, if any, that the February 13, 2013 incident may have exerted on respondent's performance of her instructional and non-instructional duties, that impact was insufficient to characterize respondent's performance as a teacher as either deficient or ineffective or to render respondent unfit to teach. (See also Legal Conclusion 21.) Complainant has failed to establish by a preponderance of evidence that respondent's failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m., amounts to "unsatisfactory performance" warranting cause for dismissal as alleged in the Accusation.

19. "Evident unfitness for service" means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." "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.) Respondent's failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m. was a single occurrence in respondent's 20-year teaching career. As a consequence, respondent suffered a six-day suspension. (Factual Finding 13.) Respondent received explicit directives regarding bus procedures at Cienega Elementary School. (Factual Finding 11.) No evidence of recurrence was offered at the hearing that would support a conclusion that respondent's conduct regarding Student M. was irremediable. Complainant has failed to establish by a preponderance of evidence that respondent's failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m., evinces "evident unfitness for service" warranting cause for dismissal as alleged in the Accusation.

20. “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 him or her” as cause for dismissal requires more than a single violation of a school board's rules by a permanent school teacher. (*Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, rehearing denied 28 Cal.App.3d 77.) In addition, persistent violation of, or refusal to obey, a district’s governing board’s reasonable regulations requires a “showing of intentional and continual refusal to cooperate.” (*San Diego Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) Respondent’s failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m. was a single occurrence. No evidence offered at the administrative hearing established that the incident resulted from intentionality or refusal to cooperate. At the time, respondent was on the telephone with the District conversing about an unrelated matter. Complainant has failed to establish by a preponderance of evidence that respondent’s failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m., evinces a “persistent violation of or refusal to obey reasonable regulations prescribed by the District” or “willful refusal to perform regular assignments without reasonable cause” warranting cause for dismissal as alleged in the Accusation.

21. Even assuming that complainant met its evidentiary burden of establishing cause as alleged in the Accusation, application of pertinent⁹ *Morrison* factors to the facts that are supported by competent, credible evidence in this case does not warrant respondent’s dismissal. Respondent’s failure to escort Student M. to the bus on February 13, 2013, at 2:45 p.m. adversely affected Student M., his family, and the Cienega Elementary School community. Respondent’s conduct created a risk of harm to Student M. Respondent’s conduct caused anxiety and worry about Student’s M. safety. The District and its employees and agents were exposed to liability. Appropriate discipline consisting of a six-day suspension was imposed on respondent. Respondent was expressly apprised of and reminded about the District expectations and protocol and procedures regarding the proper supervision of students transported on District buses. More than three years have elapsed and there has been no recurrence of similar improper supervision. Where remediation has occurred, there is no longer any ground for dismissal. (See e.g. *Crowl v. Commission on Professional Competence* (1990) 225 Cal.App.3d 334[discussing the remediation of alleged misconduct after receipt of notice pursuant to Education Code section 44938].)

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⁹ All *Morrison* factors need not be present to reach a determination regarding respondent’s fitness to teach. In other words, an item by item analysis of each established individual fact is not required. Rather, *Morrison* calls for a comprehensive analysis of the accumulated, established facts. (See *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1444.)

ORDER

The Accusation is dismissed.

Dated: November 22, 2016

Dated: (Amended) November 28, 2016

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JENNIFER M. RUSSELL

Administrative Law Judge

Office of Administrative Hearings

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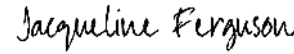
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DEANNA CLARK

Commissioner

Commission on Professional Competence

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Commissioner

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