

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
FALLBROOK UNION ELEMENTARY SCHOOL DISTRICT

In the Matter of the Proceeding to Dismiss:

CYNTHIA OSHIRO,

Respondent.

OAH No. 2017060569

DECISION

This matter was heard before the Commission on Professional Competence in Fallbrook, California on October 25, 2017, through November 1, 2017, and on November 14, 2017, through November 15, 2017. The Commission was comprised of the following members: Administrative Law Judge (ALJ) Debra D. Nye-Perkins, Daniel Leonard, and Cheryl Lynch.

Daniel Shinoff and Michelle Pacis, Attorneys at Law, Artiano Shinoff, represented Fallbrook Union Elementary School District.

Jon Y. Vanderpool, Attorney at Law, Smith, Steiner, Vanderpool & Wax, APC, represented respondent, Cynthia Oshiro, who was present during the hearing.

On December 1, 2017, the Commission met to deliberate and the matter was submitted.

CASE SUMMARY

Ms. Oshiro was employed by the district for 26 years primarily at Potter Junior High School where she taught English. Beginning in the 2016-17 school year Ms. Oshiro was transferred from Potter Junior High School to San Onofre School to teach seventh and eighth grade math. Ms. Oshiro received seven letters of reprimand during the 2016-17 school year. During the 2016-17 school year, Ms. Oshiro failed to grade student assignments, failed to utilize a clear lesson plan or sequence in her classes, and failed to comply with district directives. Ms. Oshiro's actions constituted persistent violations or refusals to obey regulations and district policies. The Commission did not find that Ms. Oshiro's actions constituted evident unfitness for service or immoral conduct. Based upon the evidence presented, the Commission concluded that the allegations that were sustained warranted Ms. Oshiro's dismissal from the district.

FINDINGS OF FACT

Jurisdictional Matters

1. Ms. Oshiro was employed by the Fallbrook Union Elementary School District as a seventh and eighth grade school teacher. During the time of the alleged incidents, she worked at San Onofre School (San Onofre).

2. On May 12, 2017, Ms. Oshiro was suspended without pay from her position at the district.

3. Bill Billingsley, the district's Superintendent of Human Resources, signed the Notice of Charges on May 12, 2017, in his official capacity. The notice set forth the facts and laws on which the district was relying and sought to immediately dismiss Ms. Oshiro from employment with the district on the grounds of unprofessional conduct (Education Code section 44932, subdivision (a)(2)), immoral conduct (Education Code section 44932, subdivision (a)(1)), unsatisfactory performance (Education Code section 44932, subdivision (a)(5)),¹ evident unfitness for service (Education Code section 44932, subdivision (a)(6)), and persistent violation or refusal to obey regulations and district polices (Education Code section 44932, subdivision (a)(8)).²

4. In the Notice of Charges, the district alleged that during the 2016-17 school year Ms. Oshiro: had poor instruction techniques, had poor discipline of students, repeatedly failed to follow the district-adopted lesson plans and pacing guides, failed to teach math as required during her classes, failed to create lesson plans, failed to post daily standards and objectives for each math class, failed to routinely check homework, failed to have a clear lesson structure and sequence, failed to implement a student's IEP correctly during class, humiliated a disabled child in front of his peers as a form of discipline, utilized poor disciplinary techniques humiliating students, failed to keep student information confidential as required, restricted students from recess and food as a form of discipline, and failed to build a positive classroom environment.

¹ By Order dated November 30, 2017, Ms. Oshiro's motion to dismiss the charges of unsatisfactory performance (Education Code section 44932, subdivision (a)(5)), and unprofessional conduct (Education Code section 44932, subdivision (a)(2)) was granted because the district failed to comply with the mandates of Education Code section 44938.

² Page 2, line 1, of the notice only referenced Education Code section 44932, subdivisions (a)(1),(2),(5), and (6). However, page 2, lines 8 to 12, specifically assert that Ms. Oshiro has repeatedly violated and refused to obey school and/or district rules and directives, which constitutes an allegation of persistent violation or refusal to obey regulations and district polices pursuant to Education Code section 44932, subdivision (a)(8). Ms. Oshiro never argued that she was not on notice of that allegation.

5. Ms. Oshiro timely appealed the dismissal action, denying that grounds for her dismissal from employment existed, and this hearing followed.

Motions in Limine

6. The parties filed motions in limine and oppositions thereto. Tentative rulings were issued on October 24, 2017, and the parties were allowed to orally argue their positions at the start of trial. After listening to oral arguments, final rulings were issued consistent with the tentative rulings.

Motion to Dismiss

7. By Order issued November 30, 2017, the respondent's motion to dismiss the charges for unsatisfactory performance (Education Code section 44932, subdivision (a)(5)), and unprofessional conduct (Education Code section 44932, subdivision (a)(2)) was granted because the district failed to comply with the mandates of Education Code section 44938. Accordingly, this decision addresses the remaining charges in the Notice of Charges.

Ms. Oshiro's Education and District Employment

8. After obtaining her Bachelor's degree in 1985, Ms. Oshiro received a Master's Degree in Teaching in 2007. As of 1985, she holds a multiple subject teaching credential and a supplemental credential to teach math. Ms. Oshiro also holds a bilingual certification allowing her to teach Spanish. Additionally, she has taken some additional classes from California State University regarding the incorporation of technology in the classroom. Prior to beginning employment with the Fallbrook Union Elementary School District in 1991, Ms. Oshiro worked full-time for five years for the Los Angeles Unified School District teaching third and fifth grade classes. Ms. Oshiro was hired in 1991 by the Fallbrook Unified Elementary School District to work at Potter Junior High School where she taught until the 2016-17 school year when she was transferred to San Onofre. During the 25 years she taught full-time at Potter Junior High School, Ms. Oshiro taught seventh and eighth grade subjects of science, English language development, and study skills.

Ms. Oshiro's Transfer to San Onofre

9. After the end of the 2015-16 school year, Ms. Oshiro was involuntarily transferred from Potter Junior High School (Potter) to San Onofre. She first learned of her transfer on May 6, 2016. Ms. Oshiro appealed the transfer but her appeal was denied on the basis of "program need." When she worked at Potter, Ms. Oshiro's commute to work was about 20 minutes each way. After her transfer to San Onofre, her commute to and from work was about two hours each way causing her hardship. During her time working at Potter, Ms. Oshiro never received any letters of reprimand. During the 2016-17 school year at San Onofre, Ms. Oshiro taught two seventh grade math classes, two eighth grade math classes, and one elective class.

2016 -17 School Year at San Onofre

10. On August 10, 2016, Ms. Oshiro first met with the principal of San Onofre, Lillian Perez, to prepare for the 2016-17 school year which began on August 15, 2016. Ms. Oshiro discussed with Ms. Perez the curriculum for the seventh and eighth grades at San Onofre. Ms. Oshiro informed Ms. Perez that she had completed the University of California Irvine Math Project (IMP)³ training for the seventh grade, but had not done so for the eighth grade. Ms. Perez ensured Ms. Oshiro that it was not a problem that she had not completed IMP training for eighth grade math. After their conversation that day, Ms. Oshiro went to her classroom to set it up for the first day of school. Later that day, Ms. Oshiro suffered a health related incident at the school and was transferred by ambulance to the hospital. As a result of this incident, Ms. Oshiro missed meetings on August 11 and 12 regarding preparation for the school year and a “meet and greet” with parents. However, she returned for the first day of school.

11. On September 12, 2016, Ms. Perez sent an email to Ms. Oshiro following Ms. Perez’s observation of one of Ms. Oshiro’s math classes. The email stated that Ms. Perez did not see a “standards based lesson, clearly defined objective,” or alignment to the IMP scheduled math lesson for that day. Ms. Perez further instructed in the email that Ms. Oshiro should follow the “math scope and sequence” daily, have “clearly defined objectives, with student work ‘tied’ to the math objective being taught”, and that “‘IMP’ math lessons should be the ‘bulk’ of your instruction.”

September 23, 2016, Letter and September 26, 2016, email

12. On September 23, 2016, Ms. Perez provided a letter to Ms. Oshiro following a conference with her to discuss Ms. Perez’s observation of Ms. Oshiro’s class on September 21, 2016, and concerns regarding Ms. Oshiro’s use of instructional time and failure to follow the required instructional framework in her classes. In the letter Ms. Perez summarized the discussion at the conference with Ms. Oshiro, which included Ms. Perez’s questions regarding Ms. Oshiro’s use of a handwriting worksheet in class, a “magic circle” exercise in class, and failing grades of students. The letter further provided that all future lessons should contain:

1. Clearly outlined objectives for each grade level math block.
2. Following IMP Lessons scheduled by you and school TOSA⁴ in Lessoneer⁵ from start to finish with re-teach when necessary.

³ University of California Irvine Math Project or IMP is a method of teaching mathematics utilized by the Fallbrook Elementary Unified School District for their mathematics curriculum.

⁴ The acronym TOSA refers to Teachers on Special Assignment and refers to an instructional coach for teachers who is an expert on the instructional framework utilized by

3. Please continue to update Lessoneer monthly and share with admin.

We also agreed that Maria Flaherty would provide you with another day of co-teaching and co-planning for 7th/8th math so you could specifically focus on the instructional framework. I will provide feedback on my walk throughs and follow-up with you as needed.

13. On September 26, 2016, Ms. Perez sent an email to Ms. Oshiro after having observed Ms. Oshiro's class that day. The email provided in part as follows:

I am checking in with you today regarding your lesson. I do not believe the lesson I observed today during my brief walk through followed the guidelines we agreed on. When we met last Friday, Sept. 23, 2016, we agreed on the following items regarding the us [sic] of instructional time:

- a. Maximize math instructional time each Math Period
- b. Standards/Objective driven versus activity
 - i. Following Lessoneer from start to finish/with re-teach when necessary
 - ii. Please continue to update Lessoneer monthly and share with admin

Ms. Oshiro's Medical Leave

14. Ms. Oshiro was out on medical leave from October 3, 2016, through October 14, 2016, during which a substitute teacher taught Ms. Oshiro's math classes.

October 18, 2016, Letter of Reprimand Number 1

15. On October 18, 2016, Ms. Perez provided a letter of reprimand to Ms. Oshiro after observing Ms. Oshiro's period 5 math class on September 26 and 27, 2016. Ms. Perez wrote that during her observation she "did not observe the lesson/objective listed in Lessoneer and there was not a clear objective being taught and website listed on the projector was from the British Math Council." She further wrote:

the district. A STEM (science, technology, engineering, and mathematics) TOSA named Maria Flaherty provided coaching to teachers at San Onofre during the 2016-17 school year, including Ms. Oshiro.

⁵ Lessoneer refers to an on-line program accessible by teachers of the district that provides objectives and standards to be met for lessons utilized by the district.

Your repeated failure to adhere to CTSP Standard 4 Planning and Designing Learning Experience has led to ineffective introduction of 7th/8th grade math concepts in Units 1-2 and you have violated our agreement on 9/23/16 to adhere to the grade level objectives and Standards Based Lessons and pacing outlined in Lessoneer.

Your failure to follow the district pacing guide and Standards Based Lesson plans has caused ineffective and inconsistent delivery of math standards, confusion amongst students who have come to complain and several parents complaints regarding math instruction and not knowing how to support their children.

Effective immediately you will adhere to the assistance plan outlined in the next section of this letter. In the assistance plan (pg 2) you will have to have Lessoneer updated daily to coincide with your math lessons, clear standard/objective posted for each math class and weekly feedback/communication with parents regarding math progress and discontinue giving student discipline paragraph. Failure to comply with this requirement will result in a further disciplinary action by the district.

16. On November 1, 2016, Ms. Oshiro responded to the October 18, 2016, letter of reprimand with a letter wherein she stated that she hoped to “clear up misconceptions of what is being taught in my Math class.” Ms. Oshiro wrote she was “under the impression that students would use McGraw-Hill, IMP, and technology together in Math instruction” and she “followed the year-at-a-glance teaching California state standards, but not always using IMP alone.” Ms. Oshiro wrote “the objectives were written on the front whiteboard” and because her students struggled with decimals she provided several “reteach” lessons on decimals, which she understood was not a seventh or eighth grade standard. Ms. Oshiro wrote that on 9/23/16 about “half of the 8th grade students were still completing the iReady Diagnostic Assessment, while [Ms. Oshiro] conducted an engaging activity (not IMP) which included vocabulary from our lessons.” She wrote that the activity “was a paper folding activity I learned at a Math conference.” She further wrote that “[i]f I had continued with the pacing guide, several students would have missed out on instruction.” Ms. Oshiro wrote that with regard to her lesson on 9/26/16 she had the class objective printed in 150 size font posted at the front of the room and that the lesson she taught “was the same as” Lesson 1 in Lessoneer, but was using a website that was “meant to be more engaging” and “incorporate technology into [the] lesson.” Ms. Oshiro included photographs from her classroom of the objective written in large font on paper and posted, as well as screenshots from Lessoneer. Ms. Oshiro concluded in her letter:

I can and will follow the IMP lessons in Lessoneer as directed.
I have found a few errors and lessons with sections missing, but
I will do my best to stick to it, and support my students.

October 19, 2016, Classroom Observation Report

17. Ms. Cindy Guerrettaz, assistant principal of San Onofre during the 2016-17 school year, observed one of Ms. Oshiro's seventh grade classes, on October 19, 2016, as part of her duties as assistant principal. Ms. Guerrettaz summarized her observations in a report and testified at the hearing regarding those observations. Ms. Guerrettaz wrote with regard to the seventh grade class, that she entered the class 42 minutes after it had started and Ms. Oshiro did not have an objective posted on the board. After Ms. Guerrettaz entered the classroom, Ms. Oshiro wrote the objective on the board and read it to the class. Ms. Guerrettaz testified that prior to her observations that day, she was aware that Ms. Oshiro had shown inconsistencies with posting objectives in her class, and as a result, Ms. Guerrettaz had provided Ms. Oshiro with a template for objectives sometime in early October 2016. Ms. Guerrettaz further summarized her observation of the seventh grade class and wrote, "there was no clear Lesson Structure and Sequence . . . there was no evidence of gradually releasing the students towards mastery of the objective." Ms. Guerrettaz testified that this meant that the students did not show that they understood the lesson before Ms. Oshiro released them to perform the tasks alone. Ms. Guerrettaz wrote that when students provided an incorrect response, no correctives were given and there were no adjustments to the lesson. She also wrote that the students were not engaged and several students were observed to be off-task and not participating in the lesson. Ms. Guerrettaz wrote that Ms. Oshiro was observed asking three students what their names were despite the fact that those students have been enrolled in the class all year.

November 4, 2016, Instructional Conference Summary

18. On November 4, 2016, both Ms. Perez and Ms. Guerrettaz conducted a formal observation of Ms. Oshiro's classroom and summarized their findings in an Instructional Conference Summary reviewed and signed by Ms. Oshiro during a conference with her to discuss the observation. Ms. Perez testified that after her observation of Ms. Oshiro's class she was concerned because Ms. Oshiro's lessons were missing key components and the students were never given a strong model on how to perform the assigned tasks and were never able to master the objective taught. In the summary, Ms. Perez and Ms. Guerrettaz wrote in part as follows:

Throughout several observations in your classroom, we continue to have the same concern with the level of instruction. There does not appear to be a well planned, thoughtful attempt at a Lesson Structure and Sequence. The District Instructional Framework has a well outlined process to follow to ensure our students are provided with a strong first model in their initial teaching during the Input/Model phase. A model was never

observed during this lesson. Students were clearly able to self-teach throughout the lesson and although they navigated the papers well, it wasn't observed that you were able to provide feedback or instruction in this lesson.

It is critical for our student's [sic] success, that you schedule an additional co-plan/co-teach with our site TOSA for additional support in the area of Lesson Structure and Sequence.

Ms. Perez testified that San Onofre provided Ms. Oshiro with support from the school TOSA, Ms. Flaherty, co-teaching and a co-plan as well, but despite those efforts, Ms. Oshiro never showed improvement. Ms. Perez also testified that she began receiving several parent complaints that their students were falling behind in math due to poor instruction by Ms. Oshiro.

Alleged Incident Involving Student I.M.

19. On November 7, 2016, Ms. Perez first received student and parent complaints that during Ms. Oshiro's class, student I.M. was humiliated by Ms. Oshiro. Specifically, Ms. Perez testified that three students came to her office and were very upset. Ms. Perez stated that these were very bright children who had never come to her with complaints in the past. Ms. Perez testified that each of the three students told her separately without the other students present that Ms. Oshiro singled out student I.M. during class and made him stand up and repeat the instructions to homework or assignments she had provided to him. When I.M. stood in class he was not able to repeat the instructions and was crying and upset. Each student told Ms. Perez that Ms. Oshiro then told I.M. while the entire class listened "I don't care if you have ADHD." The students further alleged that Ms. Oshiro searched I.M.'s backpack in front of the class and made I.M. turn his desk around to face the wall while instruction happened behind him thereby humiliating the student. Ms. Perez also testified that student I.M. has a 504 plan⁶ because of his anxiety.

20. After receiving the student complaints and the parent complaint on November 7, 2016, Ms. Perez wrote an email to Ms. Oshiro regarding them and expressing that the students and parent were very upset and that the students stated that they do not feel safe in the classroom. Ms. Oshiro responded to this email and denied that she ever said the phrase, "I don't care if you have ADHD," denied ever searching the backpack, and stated that she did not know I.M. had ADHD.

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⁶ A 504 plan is an educational plan utilized for students with special needs, such as anxiety, to accommodate the special needs of that student.

21. At about 7:30 a.m. on the morning of November 8, 2016, Ms. Perez met with Ms. Oshiro and Ms. Oshiro's FETA⁷ site representative, Cheryl Bliss to discuss the allegations regarding student I.M. Ms. Perez summarized that conference in a memo provided to Ms. Oshiro. Ms. Perez also testified about this meeting. According to Ms. Perez, when questioned about whether she had I.M. stand in front of the class to repeat the instructions, Ms. Oshiro admitted she did so and also stated that she had other students do the same. Ms. Perez asked Ms. Oshiro to refrain from having students stand and repeat instructions. With regard to searching the student's backpack, Ms. Oshiro stated that she removed the backpack and took it to the front of the class because I.M. was distracted by something in his backpack. With regard to the alleged statement, "I don't care if you have ADHD," Ms. Oshiro denied making that statement and told Ms. Perez that she was unaware that I.M. had a 504 plan and never knew that he had a disability. Ms. Perez summarized that Ms. Oshiro told her that I.M. had been acting like he could not talk and felt sick. Accordingly, Ms. Oshiro sent him to the school nurse. Ms. Perez testified and summarized in her letter that upon return to the class from the nurse, Ms. Oshiro admitted to turning I.M.'s desk to face the wall while instruction was happening behind him. Ms. Perez asked Ms. Oshiro to refrain from turning any student's desk to the wall to avoid humiliating students. Ms. Oshiro testified that she did not admit to Ms. Perez that she turned I.M.'s desk to face the wall and she denied doing so at this hearing. Ms. Bliss testified she recalled Ms. Oshiro admitting at their meeting that she turned I.M.'s desk to face the back wall while instruction happened behind him.

22. Later, on November 8, 2016, Ms. Perez attended a 504 plan review meeting for student I.M. with the San Onofre Special Education teacher, Ms. Gautreux, I.M.'s science teacher, the school psychologist, the school resource specialist and I.M.'s parents. Ms. Perez summarized portions of the meeting in a letter dated November 8, 2016, sent to Ms. Oshiro. Ms. Perez wrote that I.M.'s parents expressed concern that Ms. Oshiro "was not treating [their] son fairly" and I.M. has come home from school very upset and expressed he does not want to go back to school because he does not want to go to Ms. Oshiro's math class. Ms. Perez offered to set up a meeting with I.M.'s parents and Ms. Oshiro, but the parents did not want to meet with Ms. Oshiro. Ms. Perez further wrote that she asked Ms. Gautreux to move I.M.'s desk to the back of the class where Ms. Gautreux sits so she may assist him moving forward with a special education assignment and putting the 504 plan in place.

23. Leonard Rodriguez has worked for the Fallbrook Union Elementary School District for 12 years, and he was the principal of Potter Junior High School for five years from 2010 to 2015. After that position he was promoted to the position of Director of Student Services and Instructional Technology, where his duties included investigating various issues related to student discipline. Through this position, Mr. Leonard was tasked by the district to investigate Ms. Oshiro's treatment of students. He began his investigation on March 29, 2017, concluded it on April 24, 2017, and summarized his findings in a report dated April 28, 2017. Mr. Rodriguez testified about his investigation and his report mirrored

⁷ FETA is an acronym of unknown origin. However, evidence established that FETA is a teacher's union.

his testimony. Mr.Rodriguez interviewed multiple parents, students, Ms. Trudeau, Ms. Gautreaux, and I.M. and concluded that none of the students in the class recalled Ms. Oshiro saying to I.M., "I don't care if you have ADHD," and Mr. Rodriguez could not confirm Ms. Oshiro made those remarks.

November 18, 2016, Letter of Reprimand Number 2

24. On November 18, 2016, Lillian Perez provided a second letter of reprimand to Ms. Oshiro after their meeting on November 8, 2016. The letter stated in part:

During the conference, the following was discussed:

- Students being humiliated in class – Students were asked to stand up in front of classmates and repeat directions when not on task which you admitted is your current practice.
- Student was moved to have his desk face the wall, which you validated.
- Students reported feeling unsafe in the classroom and unclear on classroom expectations.

[¶] . . . [¶]

Effective immediately, I am providing you with the following directives:

- You are to refrain from singling out students or having them stand to repeat instructions as mentioned in meeting on 11/7/16.
- You are to refrain from isolating students from the rest of the classroom to repeat directions, please work with Mrs. Gautreux on how to engage students with specific learning disabilities.
- You are to work on building a positive classroom environment which means you have clear/concise classroom behavioral expectations that are consistent for all students. Students should be given constructive feedback, positive praise and recognition for staying on task and completing assignments.
- You are to have a process chart for each focus standard in IMP so that students can follow the metacognitive process when solving a math problem.

25. Ms. Oshiro testified that the November 18, 2016, letter of reprimand was changed by Ms. Perez from the language cited above before the letter was given to Ms. Oshiro because Ms. Oshiro did not admit to that allegation that she turned the student's desk to face the wall. Specifically, she stated that Ms. Perez struck through the second bullet point stating "Student was moved to have his desk face the wall, which you validated" and put her initials next to that strike through. Ms. Oshiro produced the same document with a line through that statement and the initials LP next to the line. Ms. Perez testified she never made such a strike through on the document, that was not her handwriting, and that Ms. Oshiro did admit that she turned the student's desk to face the wall.

December 14, 2016, Letter of Reprimand Number 3

26. From November 16, 2016, to December 12, 2016, Ms. Perez received several parent and student complaints about Ms. Oshiro's math class, including that Ms. Oshiro's students had poor performance and were failing Benchmark Assessments, Ms. Oshiro was not checking students' work and that she gave her students her daughter's old stuffed animals to reward them for high scores.

27. Ms. Perez testified that after the first semester, about 80 to 90 percent of Ms. Oshiro's eighth grade math class students received a D or F grade. Ms. Perez stated this was astounding to her because these students are typically high academic achievers and the scores from San Onofre are typically much higher. Additionally, with regard to the seventh grade students in Ms. Oshiro's math class, about 60 to 70 percent of them were failing the class, which was also an astoundingly high number. Ms. Perez testified that her observations of Ms. Oshiro's math classes reflected the poor student grades and that the students were not getting what they needed in math class to progress. Ms. Perez was very concerned. Because of this sense of urgency, Ms. Perez assigned Ms. Trudeau to co-teach with Ms. Oshiro. Ms. Perez knew that Ms. Oshiro was familiar with the math concepts and Ms. Trudeau "had the rest" so that the students could progress. Ms. Perez stated that she had never before given this level of co-teaching support to a veteran teacher such as Ms. Oshiro but she had also never before felt this type of urgency to do so. Ms. Perez also continued to provide support to Ms. Oshiro by providing the STEM TOSA, Ms. Flaherty, to assist her.

28. On December 14, 2016, Ms. Perez provided a third letter of reprimand to Ms. Oshiro wherein she summarized "the complaints that [Ms. Perez has] received from ten parents/students from [November 11 to December 12], concerning the Benchmark tests sent home, poor student performance and continued complaints regarding instruction." Ms. Perez testified consistent with her letter in which she wrote:

In summary, these are the following recurring complaints:

- Failing benchmark scores for Trimester 1 in 7th/8th grade Math Classes.

- Students confused during instruction and not understanding classwork.
- Teacher showing videos or TV clips that are irrelevant to objective being taught.
- Classwork/Homework not explained, corrected or returned to show student progress.

The ten student/parent complaints demonstrate poor planning and ineffective instructional delivery of the standards and objectives students are expected to learn. Your failure to explain, correct, and provide immediate feedback to students on class work also demonstrates a lack of understanding and application of the District's instructional framework in which you have been trained. Your failure to provide students with process steps for each objective has also led to the students [*sic*] lack of understanding and progress. As a result of this you are currently "ineffective" in the CSTP 3- Understanding and Organizing Subject Matter for Student Learning.

[¶] . . . [¶]

Effective immediately, I am providing you with the following directives:

- You are to turn in lesson plans with 7th/8th grade objectives and process steps by 8:00 a.m. Monday morning for the week (aligned to the FUESD Mathematics Units of Study Curriculum Map in EdCaliber).
- Each lesson should have an appropriate engagement strategy to increase your ability to assess student understanding of the learning objective(s) during the lesson.
- Weekly 5-10 question formative assessment on objectives taught for that week.
- Weekly assessment grades inputted into Infinite Campus by the following Tuesday.
- All written communication to parents must be provided to the principal or assistant principal in advance, and approved for distribution.
- Continue the Assistance Plan attached to this letter.
- Continue to work with site-based instructional coach (STEM TOSA) for support with instruction.

29. On an unknown date Ms. Oshiro responded to the December 14, 2016, letter of reprimand with a letter to Ms. Perez. In her letter, Ms. Oshiro wrote in part:

These letters of Reprimand are in error. I am not “ineffective” in CSTP-3.

[¶] . . . [¶]

I have made every effort to follow all directives given. In September, when I mentioned that I had not been to any 8th grade IMP trainings, you said this was no problem. . . . In October when I returned from medical leave, and was told to do only IMP lessons, I did that. . . . Some of the lessons were missing materials, some materials are in the wrong places, an assessment was missing, and there are many errors on work pages, answer sheets, and even tests. . . . Regarding student complaints, except for needing time to visit the restroom, what was mentioned did not happen. . . . I will do as directed, with building students’ skill and confidence foremost in mind.

January 12, 2017, Letter of Reprimand Number 4

30. On January 12, 2017, Ms. Perez observed Ms. Oshiro’s seventh grade math class for 45 minutes. Thereafter, Ms. Perez had a meeting with Ms. Oshiro regarding her observations and provided Ms. Oshiro with a fourth letter of reprimand, which was consistent with Ms. Perez’s testimony regarding her observations that day. The letter stated in part as follows:

Your Assistance Plan dated 12/6/16, states that you will have a clear standard and objective posted for each math class, however I did not see a [sic] that in today’s observation 1/12/17. In 1/12 observation from 9:00-9:45 am in Period 2 math class with 7th graders, I observed the following: Incomplete objective posted without the “By” statement. The objective posted for 7th grade was “Students will solve linear equations and inequalities.”

During today’s meeting we discussed the incomplete objective and confusion noted by students. The assistance plan states that you must start each lesson with a grade level objective. These are developed at the weekly meetings held on Wednesday with our STEM Teacher on Special Assignment.

I discussed the fact that students are still confused when you cover a lesson because there isn’t a sequence in the math

instruction and the objective drives the lesson. When the objective is incomplete than [sic] the lesson is confusing. I have emails from parents that continue to be concerned when you teach the math lesson.

We discussed the need for you to continue to work with our STEM TOSA to refine your objectives and planning time with TOSA will help you solidify your weekly lessons. These lessons will occur every Wednesday during your hour of prep. I also informed you that failure to comply with these directives could result in administrative leave.

January 30, 2017, Mid-Year Feedback Form and February 7, 2017, Formal Observation and Summary

31. On January 30, 2017, Ms. Guerrettaz observed Ms. Oshiro's seventh and eighth grade math classes and provided her feedback on areas they had agreed upon would be the areas of concentration for Ms. Oshiro's formal observation, which would take place on an agreed upon date with Ms. Oshiro. Ms. Guerrettaz provided Ms. Oshiro with two Mid-Year Feedback forms after the January 30, 2017, observation to evaluate her with four possible marks: Ineffective, Developing, Effective and Highly Effective. Ms. Guerrettaz testified that the form was accurate regarding her observations. The first form evaluated "Creating and Maintaining Effective Environments for Student Learning" and Ms. Oshiro received "Ineffective" marks for three of the seven areas listed, including "uses instructional time to optimize learning," "creates a rigorous learning environment with high expectations and appropriate support for all students," and "creates physical or virtual learning environment that promotes student learning, reflects diversity, and encourages constructive and productive interactions among students." For the remaining five areas of observation, Ms. Oshiro only received "Developing" marks.

The second form evaluated "Assessing Student Learning" and Ms. Oshiro received a mark of "Ineffective" for "uses assessment data to establish learning goals and to plan, differentiate and modify instruction," and "uses assessment information to share timely and comprehensible feedback with students and their families." Ms. Oshiro received "Developing" as a mark for five other areas, and she received the mark "Effective" for one area of "applies knowledge of the purposes, characteristics, and uses of different types of assessments."

Ms. Guerrettaz testified that on January 30, 2017, she was not satisfied by what she was observing in Ms. Oshiro's classroom and she believed that Ms. Oshiro was not effective as a teacher. Ms. Guerrettas also stated that she had agreed with Ms. Oshiro that she would conduct a formal observation of Ms. Oshiro's classroom on February 7, 2017, a date and time chosen by Ms. Oshiro for the formal observation.

32. On February 7, 2017, Ms. Guerrettaz conducted that formal observation. She testified about her observations and summarized them in an Instruction Conference Summary. Ms. Guerrettaz testified that after her observation Ms. Oshiro told her, “I was not prepared for the lesson,” despite the prior notification of the observation. The document, which was signed by Ms. Oshiro and Ms. Guerrettaz provided a summary of Ms. Guerrettaz’s observations as follows:

Through our reflection conversation of this lesson, it was clear that you were not prepared for the lesson that was observed. The overall objective and standard of the lesson were not connected to the lesson as it was presented to the students. The bulk of the lesson was focused on the “Dead Mice Smell Bad” for division steps which is a 4th grade standard. It is essential that our students receive instruction that is accurately and tightly aligned to their grade level appropriate standards. With the support of an additional teacher in your classroom, and the weekly meetings for planning with the TOSA and Admin, it is the expectation that you are fully prepared for your lessons including work problems in advance to ensure teaching it correctly to the students for the best first teach. Please let us know if you need any further support in this area.

Ms. Guerrettaz testified that she was shocked by her observations of Ms. Oshiro’s classes that day because the students were clearly confused and were being taught a 4th grade standard, not the lesson Ms. Oshiro had previously discussed with the STEM TOSA. Ms. Guerrettaz was very concerned for the students and discussed those concerns with Ms. Perez. Ms. Guerrettaz stated that Ms. Oshiro never requested any additional support, but that there was no further support available to give her because she was already receiving the maximum amount of support possible. Ms. Guerrettaz stated that while Ms. Oshiro understands the math, she fails to grasp the concept of lesson structure, pacing, and framework.

February 10, 2017, Letter of Reprimand Number 5

33. Ms. Perez testified that Ms. Oshiro met every Wednesday with Ms. Flaherty, Ms. Trudeau (the co-teacher for Ms. Oshiro’s classes) and Ms. Perez. Ms. Perez testified that she had to attend those Wednesday meetings because “the dynamics between” Ms. Trudeau and Ms. Oshiro were difficult. Ms. Perez stated that Ms. Oshiro had some animosity towards Ms. Trudeau because Ms. Oshiro wanted to teach alone, but Ms. Perez felt that having Ms. Trudeau was necessary for the students. Ms. Perez stated that Ms. Trudeau would teach the “essential” classes and Ms. Oshiro would teach the “non-essential” classes to ensure that Ms. Oshiro’s class would follow the pacing guide. In the Wednesday meetings Ms. Flaherty would create a schedule for which days each teacher would teach the class. Ms. Perez testified that Ms. Oshiro would frequently “sabotage” the schedule by deciding the day

before the class she was scheduled to teach to change the subject matter thereby causing Ms. Trudeau to scramble the next day because the required subject had not been taught.

34. On February 10, 2017, Ms. Perez provided Ms. Oshiro with a fifth letter of reprimand. The letter summarized that during a meeting on December 14, 2016, an Assistance Plan was put in place based upon Ms. Oshiro's failure to adhere to the weekly lesson plan thereby causing student and co-teacher confusion, and a loss of standards based instructional time. The letter enclosed an attached revised Assistance Plan and further provided in part:

On February 1, 2017, you chose to "play" a Bingo game with the students in both 8th grade periods instead of introducing the new unit which was agreed upon during the planning day. Your failure to adhere to the lesson plan that was designed yesterday and teach a multiplication Bingo resulted in the students falling behind on the standards based lesson and confusion for the students and teachers in the classroom. As a result of this you are currently "ineffective" in the CSTP-3 Understanding and Organizing Subject Matter for Student Learning. You were previously informed on 9/21, 11/8, and 12/8, that your conduct negatively impacts the learning environment in the classroom. Your conduct also has caused continuous parent/student complaints. I informed you that your conduct negatively impacts the learning environment because the schedule has all the standards that need to be taught before CAASPP on a tight timeline and by missing a lesson the students are falling behind. It is important to stay on the instructional pacing guide and maximize academic learning time.

Effective immediately, I am providing you with the following directives:

- You are to turn in lesson plans with 7th/8th grade objectives for the lessons you are teaching every Monday by 8:00 am.
- Weekly Lesson plans must be followed daily and changes to the schedule or lesson need to be communicated on Wednesday planning meetings. Any changes made to the daily schedule should be standard driven or for re-teach purposes only.

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March 15, 2017, Letter of Reprimand Number 6

35. Ms. Perez testified that on February 15, 2017, she gave Ms. Oshiro two “release days” for her to work exclusively with the STEM TOSA to plan the remainder of the semester. On February 16, 2017, Ms. Perez had received numerous parent complaints that Ms. Oshiro had not graded student homework or quizzes and had not updated the student database with those grades. As a result Ms. Perez provided Ms. Oshiro an additional “release” day to do grading. Ms. Perez emailed Ms. Oshiro on February 16, 2017, to request a meeting at 4:00 p.m. that day “to see what you have graded by the end of the day and be sure to update as many scores as you can.”

36. On March 9, 2017, Ms. Guerrettaz observed Ms. Oshiro’s classroom. Ms. Guerrettaz testified regarding her observations and also sent Ms. Oshiro an email regarding her observations and her concerns. Ms. Guerrettaz wrote in the email in part as follows:

When you began to teach there was no objective posted or reviewed with the class. I was unclear of what the students were learning and I was unable to follow the lesson. . . . [T]here was clear confusion on [the student’s] faces as they were unsure . . . Very few students participated. It is essential that an objective be posted for every lesson, every day. In addition, I was concerned that I noticed a student completing a “Thinking About My Behavior” Sheet during the time that instruction was occurring. . . . We will meet to address how discipline should be handled, as we have previously discussed this concern in your classroom and I am not seeing progress in this area either.

37. Ms. Perez testified that on March 9, 2017, a student’s parents complained to her that during a parent/teacher conference with Ms. Oshiro, Ms. Oshiro shared other students’ grades with those parents. Additionally, Ms. Perez continued to get parent complaints about their students’ performance in Ms. Oshiro’s math class, and about improper discipline Ms. Oshiro gave to her students, specifically keeping an entire math class in at recess because of the behavior of some students. Ms. Perez wrote an email to Ms. Oshiro on March 10, 2017, regarding the parent complaint that she showed other students’ grades to those parents, and admonished Ms. Oshiro for doing so.

38. On March 15, 2017, Ms. Perez provided Ms. Oshiro with a sixth letter of reprimand after a conference Ms. Perez had with Ms. Oshiro on March 12, 2017, discussing the issues in the sixth letter of reprimand. The letter stated in part as follows:

On 10/4-17 [sic] I received several parent complaints regarding their concern [sic] with classroom instruction and this was documented in our meeting on 10/18/16 with the FETA rep, Cheryl Bliss, when we met to discuss this and develop your Assistance Plan. The first letter of reprimand was given to you

on 11/18/16 with specific support assigned to help your instruction.

On 11/8/17 [*sic*], we met again regarding student and parent complaints that were filed concerning instruction in the classroom and a student being humiliated in the classroom. . . .

Again on March 9, 2017, during parent/teacher conferences I received multiple parent complaints. First it was reported by parents that (1) you allowed them to take a picture of the teachers computer screen which displayed confidential student data and (2) parents were shown several students grades along with their own child. [Parents] filed a complaint regarding their son's grades being shown to other parents. Parents continue to have concern and lack of confidence in your skills, and professionalism. As a professional educator, it is expected that student records and grades remain confidential and only shared with legal custodians, guardians, or parents. Under the Fallbrook Union District Board Policy it states the following:

- Parents/guardians shall have the opportunity to work with schools in mutually supportive and respectful partnership and to help their children succeed in school. (Education Code 51100)
- The Governing Board recognizes the importance of keeping confidential information confidential. Staff shall maintain the confidentiality of information acquired in the course of their employment. Confidential/privileged information shall be released only to the extent authorized by law.

As addressed in 10/18/16, 11/8/16, 12/15/16, 1/25/17, and most recently 3/9/17 parent relationships are fractured due to the lack of confidence they have in your instruction, breach of confidentiality and their child's lack of success. Your conduct has caused fractured relationships with parents . . . You are directed to keep all student records confidential and private, only to be shared with the legal guardian. This includes grades, disabilities and any information that is part of a student's record. Failure to comply with this directive will result in an administrative leave of absence.

39. Ms. Oshiro provided an undated written response to the March 14, 2017, letter of reprimand and wrote in part as follows:

I wish I could reduce the time spent on these issues. This school year started off misguided. The teaching expectations were not clearly communicated, so as these changed, student expectations and experiences changed also. Though mostly solid, the IMP program in Lessoneer has gaps and errors. Many students and parents complain about not understanding IMP lessons. To better support [sic] student, I have:

- posted standards and objectives,
- created process charts as requested,
- used IMP lessons and tests as written,
- used sentence starters from IMP,
- created algebra tiles before they were purchased, to keep lesson order
- used the McGraw Hill text book,
- used Engage NY lessons for scaffolding,
- encouraged students to use iReady and printed out their strengths and needs,
- posted a Weekly Overview of lessons & homework on my teacher web page,
- helped out with after school tutoring,
- provided assistance before school, at break time, and during lunch,
- collaborated with others for planning,
- adjusted lessons for student needs,
- provided printed copies of notes for students who need it,
- communicated, posted, and reinforced class procedures for class management,
- participated in school door decorating for special days with student input
- dressed for school spirit days, flag days, and school events
- donated books for the library book exchange & gave away tickets to students
- provided a chess club/knitters club
- tried to provide a positive class environment to encourage students
- lately, making copies of homework pages for student [sic] who lost their books.

I know many students miss Mr. Floto, and wish for his return. These are great students with so many talents, but some are low in operations with decimals and fractions. I wish I could give

retakes for test and quiz [sic] as I did at the start of the year, especially for those students who are most frustrated and need lessons in smaller chunks. My aim has been to build confidence in students, by incorporating mini lessons in our daily work and warm up problems. Currently I am told there is no time for this, and last week, I was locked out of our google docs planning page. So, I use what I have, to do my best, and keep moving forward. . . .

I believe most of the student issues are misunderstandings. As I wrote in an email dated 11-7-16, I never searched a student's backpack. I never said, nor would I say a statement "that" to a student. . . .

I did not allow a parent to take a photo of my computer, and I did not show grades of other students to any parent. At the Spring Parent Conference, I shared a printed page of "mean average growth" in iReady, from Fall to Mid-year. These mean scores, not actual scores, are not calculated in student grades at all. One parent, so surprised and proud that her daughter was doing so well, asked if she could take a photo with her phone, to share with her husband who could not attend. I originally said no, but she was persistent. Since these were not grades, and no names were visible, I allowed it. . . .

In the last incident, a student drew a curly haired stick person, and held it up to show students from other tables. At first, I reminded the other tables to be on task. Then I noticed the notebook, again, held near the student's face. This was unusual, so I asked for the notebook and spoke to the student about it after class. Ordinarily this is a responsible, hard working student, so I just took the page and did not issue a consequence. My mistake was showing a glimpse of this to a student who frequently needs behavior reminders. Though I needed to speak to him again, I was praising him for his progress in improving his behavior. I showed half of the page, and I did not show the name.

I have tried to do all that was asked, and what is right for the students.

March 21, 2017, Letter of Reprimand Number 7 and Administrative Leave

40. Ms. Perez testified that on March 20, 2017, she received another parent complaint regarding improper discipline of her daughter by Ms. Oshiro. Specifically, the

parent complained that her daughter had been drawing a doodle of a stick figure in Ms. Oshiro's class and Ms. Oshiro took the drawing, made the student sign her name on the drawing and kept it. Thereafter, the student received reports from students in Ms. Oshiro's next math class that Ms. Oshiro held up the drawing with the student's name on it to show to the class and tell them that they are better behaved than the previous class because they only want to doodle. The parent was upset that Ms. Oshiro had used the drawing to embarrass her daughter through her peers as a mechanism to control her class through intimidation and coercion.

41. On March 21, 2017, Ms. Perez provided Ms. Oshiro with a seventh letter of reprimand, which stated in part as follows:

On the following dates, 9/23/16, 11/8/16, 1/27/17, 2/16/17, 3/9/17, and 3/20/17 incidents including parents/students complaints were received regarding punitive discipline on students and/or public humiliation of students. . . .

On 3/21/17, [parent] filed another complaint stating that Mrs. Oshiro used "intimidation and coercion as she used our daughter's paper in another class period to embarrass [student] through her peers." . . . One student stated that they saw the paper was [student's] (her name and date was written at the top in red pen) and approached [student] during lunchtime. Another student confirmed the drawing was shown to him. The other five students who were kept during their nutrition break also claimed that only one of the students was "playing with his shirt" and they felt it was unfair to lose their recess because they weren't learning anything and it was "downtime." . . .

[W]e called you into a brief meeting at 1:45 p.m. on March 20, 2017 with Mrs. Ezell, FETA rep, Mrs. Guerrettaz, Assistant Principal, and myself, to inform you of the parent "allegation" and that we would be investigating the compliant. You stated (1) that you hid the student's name on the paper when you showed some students (2) Ms. Trudeau wasn't in the class at that time and (3) you told 5th period when showing the student paper "at least you weren't doodling." A student confirmed they had seen the paper with the student's name. Ms Trudeau was present during 3rd period. Students who were restricted from recess stated that they heard you accuse [student] of drawing a picture of you (the teacher). There were several inconsistencies in your recollection of the events. . . .

Effective immediately you are to adhere to the Assistance Plan, #7, which states you must have Clear and Consistent Classroom

Behavioral Expectations listed in San Onofre Playbook Section 5 titled School Culture. . . .

- You are to refrain from singling out students publicly or in isolation.
- You are to work on building a positive classroom environment which means you have clear/concise classroom behavioral expectations that are consistent for all students.
 - Students should be given constructive feedback, positive praise and recognition for staying on task and completing assignments.
- You will not restrict students from recess without consulting with administration.

Failure to comply with these directives, may lead to administrative leave. . . .

42. By letter dated March 28, 2017, Ms. Oshiro was placed on paid administrative leave from her position. The letter stated that she was “to refrain from being present on any property of the Fallbrook Union Elementary School District” and to refrain from contact with fellow employees other than her FETA representative. The letter was signed and dated by someone from the school district but Ms. Oshiro refused to sign the letter.

Investigation of Ms. Oshiro by the District

43. The district conducted an investigation of the parent and student complaints of Ms. Oshiro beginning on March 29, 2017. Specifically, Mr. Rodriguez conducted an investigation as part of his responsibilities from March 29, 2017, to April 24, 2017, and summarized his findings in a report dated April 28, 2017. Mr. Rodriguez also testified at the hearing. He reviewed parent complaints and interviewed witnesses. Mr. Rodriguez concluded that Ms. Oshiro did not use her instructional time effectively and the students did not perform well on benchmark tests. As a result, Ms. Oshiro would punish the entire class or single out students as a form of discipline that was unprofessional and unfair. Mr. Rodriguez also testified that he was not able to confirm that Ms. Oshiro told a student, “I don’t care if you have ADHD.” Mr. Rodriguez testified that his findings showed that although Ms. Oshiro had been given many directives regarding her classroom instruction and discipline, Ms. Oshiro never followed those directives.

Witness Testimony

44. Leonard Rodriguez, now the Executive Director of Pupil Personnel Services for the district, testified about his experience with Ms. Oshiro as her principal at Potter during the 2013-14 to 2015-16 school years. He also testified about his investigation of

student and parent complaints regarding Ms. Oshiro during the 2016-17 school year at San Onofre.

Mr. Rodriguez testified that in May 2013, Ms. Oshiro was teaching developmental reading classes for students who were two or more years below grade level and was provided a teaching coach to help her with new structural framework and implementing new standards. During this time, Ms. Oshiro repeatedly deviated from the curriculum and was not teaching the curriculum with fidelity. Additionally, Mr. Rodriguez stated that Ms. Oshiro was issuing a large number of referrals of students to go to the principal's office, which is an issue of classroom management. Ms. Oshiro was not teaching math at all in the 2013-2014 school year despite requests to do so. Mr. Rodriguez did not have Ms. Oshiro teach math because "she had not been demonstrated to be effective in teaching math" and he had stronger teachers and wanted to use Ms. Oshiro's credentials elsewhere.

Mr. Rodriguez testified regarding his observations of Ms. Oshiro during the 2014-15 school year when she was assigned to teach English Language Development (ELD), a class for primarily Spanish-speaking students to develop reading skills in English, a study skills class and a math class. Ms. Oshiro had seven ELD classes that year and she had math added to her responsibilities that year with smaller ELD classes. Mr. Rodriguez testified that during this year Potter provided Ms. Oshiro with an instructional coach because they were concerned about her straying from curriculum. Additionally, she was still issuing a high number of referrals, even though the number had dropped from the previous year. Mr. Rodriguez provided Ms. Oshiro with a formal evaluation of her teaching in the year 2014-15. Her formal evaluation from April 24, 2015, showed that she received marks of "Effective" in 11 areas of review and "Developing" in three areas of review. The overall performance summary for Ms. Oshiro was "Effective." Mr. Rodriguez testified that the 2014-15 school year was his last as principal of Potter.

Mr. Rodriguez's testimony was consistent with the documents introduced at hearing and his testimony was credible.

45. William Billingsley, Assistant Superintendent of Human Resources and Communication for the district, testified that he is responsible for all recruiting, hiring, risk management, administration of budget for human resources, and public relations. Mr. Billingsley testified regarding the circumstances of the transfer of Ms. Oshiro from Potter to San Onofre. He stated that the math teacher at San Onofre, Mr. Floto, had a high degree of interest in STEM and was a very effective math teacher. He was serving a smaller number of students at San Onofre (approximately 80) and the district wanted him to reach more students so he was transferred to Potter, which had approximately 800 students. By comparison, Ms. Oshiro was teaching new students at Potter who had limited English skills and were the district's most vulnerable students. Mr. Billingsley stated, "We had our worst performing teacher in the district serving in the classroom with our most vulnerable students and it was shameful." The district made the decision to transfer Ms. Oshiro to San Onofre because she "was struggling with teaching and San Onofre was much smaller and manageable" and San Onofre "would be able to accommodate her deficiencies in instruction." Mr. Billingsley

stated that transferring Ms. Oshiro to San Onofre was a “win-win” because it would allow Mr. Floto to impact many more students and would allow Ms. Oshiro to get a fresh start and be successful.

Mr. Billingsley stated that he was aware of the longer travel time Ms. Oshiro would have to get to San Onofre and that was taken into consideration. The district only informed Ms. Oshiro that the reason for the transfer was “program need.” Mr. Billingsley did not want to inform Ms. Oshiro that part of the reason for the transfer was also her poor job performance, and he did not do so.

Mr. Billingsley also testified that he was aware of and typically reviewed all letters of reprimand issued to Ms. Oshiro. Mr. Billingsley discussed all the issues raised regarding Ms. Oshiro’s performance with Ms. Perez during the school year. Mr. Billingsley admitted that there was no documentation in Ms. Oshiro’s personnel file for the time she was at Potter stating that she was the worst performing teacher in the district.

Mr. Billingsley’s testimony was consistent with the documents introduced at hearing and his testimony was credible.

46. Lillian Celina Perez, the principal of San Onofre, testified regarding Ms. Oshiro’s work during the 2016-17 school year. Ms. Perez has been with the district for 21 years with the last four years as principal of San Onofre Junior High School. San Onofre Junior High School is currently being rebuilt, is not operational during the 2017-18 school year, and teachers have been relocated to other schools based on their credentials.

Ms. Perez testified regarding her interactions with Ms. Oshiro during the 2016-17 school year consistent with the findings above. Ms. Perez was not aware of any performance issues with Ms. Oshiro prior to her transfer to San Onofre. Ms. Perez stated that she made every effort to provide support to Ms. Oshiro so that she would be a successful teacher at San Onofre, including providing the school TOSA, Ms. Flaherty, as support, as well as having a co-teacher, Ms. Trudeau, placed in Ms. Oshiro’s classroom. Ms. Perez received over 38 parent and student complaints regarding Ms. Oshiro during the 2016-17 school year and had deep concerns regarding Ms. Oshiro’s failure to follow the math curriculum despite numerous letters of reprimand and directives to do so. Additionally, Ms. Oshiro had great difficulty disciplining students in a proper manner. Despite all her efforts to provide assistance and guidance to Ms. Oshiro, Ms. Oshiro was never able to follow the proper sequence of lessons and never followed the curriculum appropriately.

Ms. Perez’s testimony was consistent with the documents introduced at hearing and her testimony was credible.

47. Cyndy Guerrettaz is currently the principal of Mesa View Elementary School in the Romoland School District where she has worked for the past month. Prior to this position, Ms. Guerrettaz worked as the Assistant Principal of San Onofre for two years. Ms. Guerrettaz was responsible for providing support to Ms. Oshiro and for providing

evaluations of Ms. Oshiro's performance while she worked at San Onofre. Ms. Guerrettaz testified regarding her evaluations of Ms. Oshiro and her interactions with Ms. Oshiro consistent with the findings above. Ms. Guerrettaz testified that despite instructing Ms. Oshiro to provide her with lesson plans for her classes, Ms. Oshiro never provided her with a written lesson plan. Instead, Ms. Guerrettaz stated that on some occasions Ms. Oshiro would print out a pre-generated IMP lesson plan from the district's on-line lesson plan program and submit that as a lesson plan.

Ms. Guerrettaz stated that at the beginning of the 2016-17 school year she met with Ms. Oshiro to discuss the California standards for which she would be evaluated. Ms. Oshiro selected a standard and Ms. Guerrettaz selected a standard on which Ms. Oshiro would be evaluated. Ms. Guerrettaz also explained the deadlines and due dates for the formal observations and feedback.

Ms. Guerrettaz testified that during her observations, Ms. Oshiro did not provide a written objective for each class, her students were often confused and not engaged in the class, Ms. Oshiro failed to follow a lesson structure and sequence, and Ms. Oshiro had very little classroom management. Ms. Guerrettaz explained that effective teaching using the district's Direct Interactive Instruction (DII) requires that the teacher model the lesson to show the students how to perform the work, process steps should be posted to guide the students in their thinking, and then the students should be gradually released toward an objective so that they can perform the work on their own. Ms. Guerrettaz never observed Ms. Oshiro follow those steps despite extensive coaching and support. Ms. Guerrettaz had tremendous concerns regarding Ms. Oshiro's teaching and discipline of students. Despite all of the support provided to Ms. Oshiro, Ms. Guerrettaz did not see any improvement in Ms. Oshiro's teaching over the 2016-17 school year. Ms. Guerrettaz discussed these issues, as well as the parent and student complaints with Ms. Perez and Mr. Billingsley.

Ms. Guerrettaz's testimony was consistent with the documents introduced at hearing and her testimony was credible.

48. Maria Flaherty has been employed by the district for 34 years. For the past three years she has been a STEM coach or STEM TOSA (teacher on special assignment) providing instructional coaching, co-planning, and co-teaching for teachers in the district. Ms. Flaherty explained that the district teaches by Direct Interactive Instruction (DII) which includes a method to gauge how well the instruction is being delivered and understood. Ms. Flaherty also explained that the elements of DII are first for the teacher to provide a model (I do), second for the students and teacher to perform an interaction together (we do), and finally a gradual release when the students are released to do the task on their own or with a partner (you do). She further explained that process charts are utilized showing the thinking steps posted in the classroom to assist the students with the process. Ms. Flaherty also stated that the IMP model of teaching was required by the district and that in most cases the IMP model fit into the DII model, but not always.

Ms. Flaherty was assigned to provide teaching support to Ms. Oshiro during the 2016-17 school year. During that time, Ms. Flaherty coached Ms. Oshiro to follow the district's current curriculum for math, but Ms. Oshiro did not feel that her seventh and eighth grade students had a firm grasp on decimals and fractions, which are subjects covered in the third grade. As a result, Ms. Oshiro was spending time re-teaching third grade material to her seventh and eighth grade students making Ms. Oshiro far behind in the curriculum pacing chart because she was not teaching seventh and eighth grade curriculum. Ms. Flaherty tried to emphasize to Ms. Oshiro that her focus should be on the seventh and eighth grade curriculum because doing so is very important, particularly because the student's proficiency in eighth grade math determines placement in high school. Ms. Flaherty stated that early in the school year she would assist Ms. Oshiro in lesson plan development, but Ms. Oshiro would waste instructional time in the class with other topics, such as hygiene, and as a result the students would fall behind in the pacing guide. According to Ms. Flaherty, Ms. Oshiro also had problems with classroom management and discipline. Ms. Flaherty would observe that Ms. Oshiro would sit at the front of the class during the entire class and Ms. Flaherty suggested that she walk around the class and observe students to keep them on task. However, she never observed Ms. Oshiro do so.

Ms. Flaherty met with Ms. Oshiro on a weekly basis on Wednesday for one hour. When Ms. Trudeau was added as a co-teacher to Ms. Oshiro's class, the three of them would meet. Ms. Flaherty testified that Ms. Oshiro and Ms. Trudeau had issues between them and frequently Ms. Flaherty would play the role of mediator. Ms. Flaherty believed that Ms. Oshiro was knowledgeable in math, whereas Ms. Trudeau was not. However, she believed that Ms. Trudeau was a more effective teacher than Ms. Oshiro and that the students performed better when Ms. Trudeau was in the class. Ms. Flaherty was very concerned about Ms. Oshiro's teaching because her students were performing poorly based on benchmark tests. Ms. Flaherty stated that she provided more support to Ms. Oshiro than any other teacher in the district. Ms. Flaherty believed that Ms. Oshiro had good intentions and was knowledgeable of math. However, Ms. Flaherty never saw Ms. Oshiro follow the lesson and pacing structure, and felt that she did not handle student discipline appropriately. Ms. Flaherty asserted that Ms. Oshiro could not follow the lesson plan and structure provided to her and while she had the requisite knowledge, Ms. Oshiro simply "could not teach it."

Ms. Flaherty's testimony was consistent with the documents introduced at hearing and her testimony was credible.

49. Gabrielle Trudeau is currently a kindergarten teacher at Fallbrook Street School where she has worked since the beginning of the 2017-18 school year. Prior to this position, she worked at San Onofre as a reading intervention teacher and as a substitute teacher. She began co-teaching in Ms. Oshiro's math classes in December 2016 and continued to do so until Ms. Oshiro was placed on paid administrative leave and subsequently suspended without pay. Thereafter, Ms. Trudeau taught Ms. Oshiro's classes until the end of the school year.

Ms. Trudeau testified that after she started co-teaching with Ms. Oshiro, she would have weekly meetings on Wednesday with Ms. Flaherty, Ms. Oshiro and sometimes Ms. Perez, to discuss the lessons that must be taught that week pursuant to the curriculum. Ms. Flaherty would prepare the agendas for the meeting with input from Ms. Oshiro and Ms. Trudeau. Ms. Trudeau would be responsible for teaching some classes and Ms. Oshiro would be responsible for teaching others, and Ms. Flaherty would put together the schedule. Ms. Trudeau and Ms. Oshiro would disagree on certain issues, specifically with regard to homework and review of homework. Ms. Trudeau believed homework should be credit/no credit and there should be a review of homework. In contrast, Ms. Oshiro was collecting homework and grading it later, if at all. Ms. Trudeau felt that did not provide sufficient feedback to the students. Additionally, Ms. Trudeau stated that Ms. Oshiro would give students detention over their lunch break for failing to do homework. Ms. Trudeau disagreed with this disciplinary technique and believed the students should not miss their lunch for failure to do homework. Ms. Trudeau testified that she first got access to the grades of students after Ms. Oshiro left San Onofre. At that point she discovered that some of the homework had been graded and some of it had not.

Ms. Trudeau stated that she knew that Ms. Oshiro would use a bingo game to teach decimals and fractions in her class, which was not seventh or eighth grade level instruction. As a result, when Ms. Oshiro did so it would push back the lesson structure and pacing of the class and change the sequence of instruction in the class. Ms. Trudeau stated that Ms. Oshiro would sometimes teach the lesson assigned to Ms. Trudeau without her knowledge thereby frustrating Ms. Trudeau. As a result Ms. Perez required that there must be communication regarding any changes in the lesson plan during the Wednesday meetings. Ms. Trudeau stated that the experience of co-teaching with Ms. Oshiro was awkward.

Ms. Trudeau's testimony was consistent with the documents introduced at hearing and her testimony was credible.

50. Julie Gautreaux is currently a special education teacher at Mary Faith Hamilton Elementary School in the district teaching kindergarten and third grade students where she has worked since the beginning of the 2017-18 school year. Prior to that, she worked as a special education teacher at San Onofre. Ms. Gautreaux provided special education for students in Ms. Oshiro's seventh and eighth grade math classes during the 2016-17 school year. Her role was to provide support to special education students in a general education classroom by making sure they are behaviorally focused and taking notes.

Ms. Gautreaux was concerned about the students in Ms. Oshiro's math classes because Ms. Oshiro was spending too much time on games for multiplication, decimals and fractions and other third grade level subjects. Ms. Gautreaux felt that Ms. Oshiro spent far too much time re-teaching those subjects rather than moving forward with the seventh and eighth grade curriculum. Ms. Gautreaux was also concerned that Ms. Oshiro was not reviewing homework at all and when she confronted Ms. Oshiro about it, Ms. Oshiro told her that she did not have time for that. As a result, Ms. Gautreaux felt her students were not understanding the lesson before Ms. Oshiro moved on to something else, thereby causing

confusion. Ms. Gautreaux stated that these concerns continued throughout the 2016-17 school year, and she spoke to Ms. Perez about her concerns.

Ms. Gautreaux also had concerns about Ms. Oshiro's student discipline. Specifically, there was a student named I.M. whom she frequently saw sitting outside of Ms. Oshiro's class doing homework or filling out a "my inappropriate behavior sheet" during instruction. She once saw this student outside of class filling out an "inappropriate behavior sheet" and crying. Ms. Gautreaux was concerned about this student and would sometimes try to talk to him, but he was not very communicative and did not want attention drawn to him. Student I.M. was not a special education student at that time and not assigned to Ms. Gautreaux. Ms. Gautreaux was very concerned about I.M. because he was frequently outside of class and not getting instruction. On one occasion, Ms. Gautreaux witnessed Ms. Oshiro give a direction to I.M. and then ask him in front of the class, "What did I just say?" When I.M. did not respond, Ms. Oshiro made him stand in front of the class and again asked him, "What did I just say?" The student did not respond for a very long time, was very nervous, and started to cry in front of the class. All the students in the class were looking at him, the student completely shut down, and Ms. Oshiro finally told him to sit back down. Ms. Gautreaux was worried about I.M. and Ms. Oshiro's treatment of him. Ms. Gautreaux stated that she never saw I.M. sitting in a desk facing the wall away from instruction, but she did see him in a desk up front typically used by Ms. Oshiro for students who needed additional redirection. Ms. Gautreaux was concerned about students being humiliated by sitting in that desk or by Ms. Oshiro's negative treatment of students.

Overall, Ms. Gautreaux was extremely concerned that Ms. Oshiro was wasting time performing tasks outside of the curriculum during her classes. Ms. Gautreaux stated that she was also concerned about students being shamed and humiliated in Ms. Oshiro's class and she was particularly concerned about student I.M.

Ms. Gautreaux's testimony was consistent with the documents introduced at hearing and her testimony was credible.

Ms. Oshiro's Testimony

51. Ms. Oshiro has been a teacher in the district for 26 years. During that time she has taught seventh and eighth grade classes of Science, English Language Development, Study Skills, and Math. She testified that during that time she never received a letter of reprimand until September 2016. Ms. Oshiro first learned about her involuntary transfer to San Onofre on May 6, 2016, on the night of a FETA dinner. Ms. Oshiro was upset and emotional upon hearing the news of her transfer, which she appealed. Ms. Oshiro stated that she was never provided any reason for her transfer other than "program need."

During her testimony, Ms. Oshiro stated that during the 2016-17 school year she posted the objective for each class written in 150 font on paper posted to a pinup board and it was her custom to change that paper every day to reflect the objective for the class. However, she did admit to not having the objective posted for one class. She repeatedly

testified that she denied the allegations she did not have a clear lesson structure and sequence to her classes, did not have effective instruction delivery, did not have a routine to check homework, and did not adjust her lesson to explain incorrect responses as observed by Ms. Guerrettaz and Ms. Perez. Ms. Oshiro repeatedly testified that she addressed the criticisms of Ms. Guerrettaz and Ms. Perez by “disagreeing with the criticisms.” Ms. Oshiro also insisted that she complied with the directives provided by Ms. Perez in the multiple letters of reprimand, but that planning lessons was difficult because the IMP materials were lacking and sometimes incorrect. Ms. Oshiro testified that despite multiple letters of reprimand criticizing her for failing to submit weekly lesson plans, Ms. Oshiro admitted that she never discussed this criticism with Ms. Perez and that she disagreed with the criticism because she claimed she did submit weekly lesson plans. Ms. Oshiro asserted that she printed those lesson plans and provided them or she emailed them. Ms. Oshiro admitted that she was challenged to keep up with the grading of her students in both homework and tests. She admitted that she failed to keep pace with homework grading. She blamed the IMP curriculum for not having homework, having incorrect answers provided, and having gaps as a reason for her failure to provide timely grades. Ms. Oshiro testified several times she simply did not agree with the criticisms in the multiple letters of reprimand, and she stated she believed that she adhered to the curriculum and that her students were not confused. Ms. Oshiro stated that she did not stray from the curriculum but that the curriculum had gaps and she merely supplemented the curriculum rather than stray from it. While Ms. Oshiro testified that her students were not confused, she later testified that Ms. Trudeau’s presence in her class “caused more confusion” to her students. She also testified that she heard her students tell her that they were confused, but Ms. Oshiro claims that the students did not say her lessons were confusing, but rather “they were confused by the IMP worksheets.” She stated that she “remembers things differently” than Ms. Perez or Ms. Guerrettaz and she did not believe some of their observations of her classroom were true.

Ms. Oshiro insisted that she followed the curriculum pacing guidelines for IMP and admitted that she did use some time in her classes to do bingo games related to fractions and decimals, but only did so on one day and did not go off pace from the curriculum as a result. She admitted to using the “magic circle” activity in her class but did so only while some of her students caught up on iREADY diagnostic testing so that the entire class could finish it. Ms. Oshiro continued to insist that she did not stray from the required curriculum with these activities, but instead was simply augmenting the curriculum. Ms. Oshiro also testified that her students’ performance on benchmark tests showed that the results of those tests were higher than the average score for the district. However, Ms. Perez informed her that San Onofre typically attains much higher scores than the district average and these scores were much lower than what is typically seen for San Onofre.

With regard to the alleged incident regarding I.M., Ms. Oshiro repeatedly denied ever saying to I.M., “I don’t care that you have ADHD.” She stated that she would never make such a statement to a student. Ms. Oshiro admitted that it was her practice to ask different students to repeat directions given in class. Ms. Oshiro admitted to asking I.M. to repeat the directions, but denied asking him again, “What did I just say?” Ms. Oshiro stated that I.M. acted like he could not speak so she sent him to the school nurse, but denied ever humiliating

I.M. and denied that I.M. was crying in her class. Ms. Oshiro stated that on one day I.M. was not his normal self and he told Ms. Oshiro that his puppy died. She told him he could go outside of class to get a drink of water and sit and he decided to do so. Ms. Oshiro denied turning I.M.'s desk to face the back wall and she denied demonstrating that to Ms. Perez. Ms. Oshiro stated that when she first discussed the incident with I.M. with Ms. Perez, she denied touching I.M.'s backpack. However, Ms. Oshiro admitted that she did take I.M.'s backpack because he was distracted by it and she simply put it at the front of the room and never rummaged through it. Ms. Oshiro testified that with regard to the second letter of reprimand regarding the I.M. incident, the bullet point of "Student was moved to have his desk face the wall, which you validated" was crossed out by Ms. Perez and her initials placed by that cross out. Ms. Oshiro testified that Ms. Perez made that cross out because Ms. Oshiro denied moving the students' desk to face the wall and because Ms. Oshiro did not validate that point. Ms. Oshiro denied demonstrating to Ms. Perez and Ms. Bliss how she turned the student's desk.

With regard to the student who drew the stick figure doodle in her classroom, Ms. Oshiro admitted to confiscating the drawing and having the student write her name and date on the drawing. Ms. Oshiro did show the drawing to another class, but she covered the student's name with her finger when she did so. Ms. Oshiro denied ever attempting to embarrass or coerce students and asserted that her discipline techniques were consistent with district policies.

Ms. Oshiro denied that she allowed parents to take a photo of her computer screen with student's names and grades on it. Instead, she stated that one parent was surprised that her daughter was doing so well in math class and wanted to take a photo of the iREADY list of measured growth, which were not student grades, to show her husband. Ms. Oshiro stated that she allowed the parent to take a photo of the screen, but she "covered the names" other than the student at issue.

Ms. Oshiro's testimony was not always consistent with the documents introduced at hearing, and conflicted with the testimony of multiple other witnesses with regard to certain issues in dispute. During her testimony, Ms. Oshiro frequently avoided providing direct answers to questions asked making her testimony generally less credible.

Character Witness Testimony

52. Five witnesses testified at the hearing in support of Ms. Oshiro's character. One witness, Ms. Castaneda, worked as the playground supervisor at Potter in 2015 and had also been a student in Ms. Oshiro's class during middle school. Ms. Castaneda testified she learned math from Ms. Oshiro, who was also a mentor to her. Ms. Castaneda admitted that she never observed Ms. Oshiro's class at San Onofre. She stated that she had never seen Ms. Oshiro embarrass a student and believed she was a good teacher.

The second witness, Ms. Edwards, works as a substitute teacher and has known Ms. Oshiro since 2005 as a result of their children being friends. Ms. Edwards received her

teaching credential in 2007 and observed Ms. Oshiro's classes from 2007 to 2009 in order to get her teaching credential. Ms. Edwards testified that Ms. Oshiro is very generous, professional and positive and emphasized that Ms. Oshiro is very respectful to students.

The third witness, Mr. Sherman, is a retired math teacher from the district who taught for 22 years and has known Ms. Oshiro for 20 years. Ms. Sherman was a substitute teacher at Potter for seventh and eighth grade math, but never substituted for Ms. Oshiro's class. Mr. Sherman has never seen Ms. Oshiro embarrass a student and believes her to be professional and honest.

The fourth witness, Ms. Amarah, has a daughter who was in Ms. Oshiro's Digital Literacy class during the 2016-17 school year at San Onofre, but her daughter was not in one of Ms. Oshiro's math classes. Ms. Amarah testified that Ms. Oshiro helped tutor her daughter in math and, as a result, her daughter now loves math.

The final witness was Ms. Amarah's daughter, who is currently 11 years old and in the seventh grade. She testified she was in Ms. Oshiro's elective class and also attended Ms. Oshiro's knitting club before school and during lunch. She stated she struggled with math before working with Ms. Oshiro. Ms. Amarah's daughter enjoyed her time with Ms. Oshiro and thought she was a good teacher. She never saw Ms. Oshiro embarrass any student.

Allegations and Findings Re: Improper Discipline and Humiliation of Students

53. The district alleged that on November 7, 2016, Ms. Oshiro asked student I.M. to stand up in class and repeat the homework assignment aloud, but I.M. stated he did not know the homework assignment and that he had a headache. The district alleged that Ms. Oshiro then said, "I don't care if you have ADHD" or words to that effect and sent I.M. to the nurse's office. The district further alleged that I.M. returned from the nurse's office without a note and began rummaging through his backpack. Afterwards, Ms. Oshiro took his backpack and searched it, upsetting I.M. to the point that he began to cry. The district alleged that Ms. Oshiro's conduct was immoral because it humiliated I.M. in front of his peers. The district further alleged that Ms. Oshiro turned the student's desk to face the wall further humiliating him.

The district further alleged that Ms. Oshiro improperly disciplined a student by throwing away that student's rubber bracelet, and by showing a drawing of a stick figure made by a student with the student's name on it to that student's peers in an effort to publicly ridicule and humiliate the student. The district also alleged that Ms. Oshiro improperly disciplined students by restricting them from recess. The district alleged that Ms. Oshiro's conduct was immoral.

The Commission concluded that the evidence did not establish that Ms. Oshiro made the "I don't care if you have ADHD" statement to student I.M., and did not establish that Ms. Oshiro turned the student's desk to face the wall. The Commission found that the evidence

did support that Ms. Oshiro asked students to stand and repeat directions, but this conduct was not immoral.

The Commission determined that the evidence did not establish Ms. Oshiro threw away a student's rubber bracelet. Furthermore, the Commission found that while the evidence did support that Ms. Oshiro showed a student's drawing to her peers, the evidence was not sufficient to establish that her conduct was immoral.

Allegations and Findings Re: Instructional Directives and Classroom Observations

54. The district alleged that Ms. Oshiro failed to follow multiple instructional directives and failed to follow the district's curriculum and pacing guides in her classrooms during the 2016-17 school year. Specifically, the district alleged that despite multiple directives, Ms. Oshiro wasted instructional time with instruction not related to the seventh or eighth grade curriculum, failed to submit lesson plans, failed to post objectives for each class, failed to have a clear lesson structure and sequence, and failed to check students' work in a timely manner. The district alleges that Ms. Oshiro's poor instructional techniques caused her students to have poor performances on benchmark tests and that they were frequently confused.

The Commission concluded that the evidence established Ms. Oshiro failed to follow the instructional directives and assistance plans provided to her by the district in each of the seven letters of reprimand. Instead, the evidence demonstrated Ms. Oshiro merely repeatedly disagreed with the assessments of her performance instead of making substantive efforts to abide by the directives provided to her. Testimony of Ms. Perez, Ms. Guerrettaz, Ms. Trudeau, and Ms. Flaherty established that Ms. Oshiro failed to follow the district's curriculum and pacing guide, failed to provide timely grades and feedback to students, and failed to submit lesson plans despite multiple directives to do so.

Allegations and Findings Re: Disclosure of Student Confidential Information

55. The district alleged Ms. Oshiro breached the confidentiality of students by allowing students to take photographs of her computer screen showing multiple students' confidential information, including grades.

The Commission concluded that the evidence was insufficient to establish Ms. Oshiro breached student confidentiality as alleged. The district provided no evidence of these photographs and Ms. Oshiro denied the alleged activity took place.

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LEGAL CONCLUSIONS

Applicable Code Sections Regarding Dismissal Actions

1. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44934 and 44944.)
2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (a)(1) authorizes dismissal for immoral conduct. Subdivision (a)(2) authorizes dismissal for unprofessional conduct. Subdivision (a)(5) authorizes dismissal for unsatisfactory performance. Subdivision (a)(6) authorizes dismissal for evident unfitness for service. Subdivision (a)(8) authorizes dismissal for persistent violation or refusal to obey regulations and district policies.
3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its final decision.
4. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a permanent employee.

Burden and Standard of Proof

5. The "burden of proof" means the obligation of a party, to convince the trier of fact that the existence of a fact sought to be proved is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The district has the burden of proof to establish cause to dismiss its employee.
6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A preponderance of the evidence means that the evidence on one side of an issue outweighs, preponderates over, and is more than, the evidence on the other side of the issue, not necessarily in number of witnesses or quantity, but in the convincing effect the evidence has on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

Board Policy and Administrative Regulation

7. District Board Policies 0410, 4119.21, 5137, 5144, and 5145.3, set forth the professional standards the board expects of its employees. As noted, the board expects district employees to "provide equal opportunity for all individuals in education," "to maintain the highest ethical standards, exhibit professional behavior, follow district policies and procedures, abide by state and federal laws, and exercise good judgment when interacting with students," "provid[e] an orderly, caring, and nurturing educational and social

environment in which all students can feel safe,” and “provide a positive school environment [conducive to learning].” District Administrative Regulation 5144 establishes site-level rules for discipline consistent with district policies wherein the principal shall solicit participation from the school and develop disciplinary rules for the school site. The Code of Ethics of the Education Profession section 4119.21 sets out ethical standards of educators as adopted by the District.

Relevant Judicial Authority

IMMORAL CONDUCT

8. The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. There the Supreme Court held that where charges of immoral conduct, unprofessional conduct or evidence unfitness for service are raised in teacher dismissal cases, the applicable standard is whether the person is fit to teach. The factors outlined in *Morrison* must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. (*Id.* at p.229.)

9. Immoral conduct has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is 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.)

EVIDENT UNFITNESS FOR SERVICE

10. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. “Fitness to teach” is a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

11. “Evident” is defined as “clear to the vision and understanding.” “Unfit” is defined as “not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound” and “unsuitable, incompetent and not adapted for a particular use or service.” (*Palo Verde Unified School District of Riverside County v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

12. In *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, the court noted the two parallel, yet contradictory, lines of cases regarding “unfit for service.” One line of cases equated that term with “unprofessional conduct” and the other line of cases distinguished the two definitions. In deciding that the latter line of cases was the correct way to evaluate “unfit to serve,” and complied with the rules of statutory construction. The *Woodland* court concluded that

“unprofessional conduct” and “evident unfitness for service” do not mean precisely the same thing. Although conduct constituting “evident unfitness for service” will often constitute “unprofessional conduct,” the converse is not always true. Evident unfitness for service requires that unfitness for service be attributable to defect in temperament, which is not necessary for a finding of unprofessional conduct. Nevertheless, lower courts may not disregard the criteria for unfitness set out in *Morrison* where that court concluded that “unprofessional conduct” meant conduct showing a teacher was unfit to teach. These criteria must be analyzed to determine, as a threshold matter, whether the conduct indicates unfitness for service. If it does, the next step is to determine whether the “unfitness” is “evident”; i.e., whether the offensive conduct is caused by a defect in temperament. (*Id.* at pp.1442-1445.) A finding of “unfit to serve” can be made if the evidence, taken in the aggregate, shows that retaining the employee would pose a significant danger of psychological harm to students and fellow teachers. (*Id.* at p.1456.)

13. An employee can be dismissed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher. The inquiry is whether any adverse inferences can be drawn from the teacher’s conduct as to his teaching ability, or as to the possibility that publicity surrounding the past conduct may in and of itself substantially impair his function as a teacher. (*Morrison, supra*, at p. 235.)

14. To establish a teacher is unfit to teach, *Morrison* requires a nexus between government employment and alleged employee misconduct stemming from the principle that “[n]o person can be denied government employment because of factors unconnected with the responsibilities of that employment.” (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1463.)

15. “Unlike ‘unprofessional conduct,’ ‘evident unfitness for service’ connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectation of the employing school district.”” (*San Diego Unified School District v. Commission on Professional Competence* (2013) 214 Cal.App.4th 1120, 1142-43.)

16. An employee’s actions on a given day may suggest a lack of judgment and discretion, or may be an isolated act precipitated by an unusual accumulation of pressure and stress. An absence of any other incidents in the employee’s teaching career suggestive of lack of judgment or discretion can further distinguish the aberrant character of the act at issue. In such a case, a fact finder could reasonably conclude that the isolated incident of poor judgment was outweighed by years of demonstrated teaching competence, and that on balance the employee possessed the qualities of character necessary for teaching fitness. (*Board of Education v. Jack M.* (1977) 19 Cal. 3d 691, 696-701.)

17. In determining whether the teacher’s conduct indicated unfitness to teach, such matters as (1) the likelihood that the conduct may have adversely affected students or fellow teachers, (2) the degree of such adversity anticipated, (3) the proximity or remoteness in time

of the conduct, (4) the extenuating or aggravating circumstances, if any, surrounding the conduct, (5) the likelihood of the recurrence of the questioned conduct, and (6) the notoriety and publicity accorded the teacher's conduct may be considered. (*Jack M., supra.*, at p.702, fn. 5.)

18. The nexus between an employee's conduct and his fitness to teach is established when the conduct is detrimental to the mission and functions of the employer. Factors to consider are whether the acts demonstrate a serious lapse in good judgment, the teacher failed to recognize the seriousness of his misconduct, the teacher attempted to shift blame to parents and students who might access his posting, his principal had lost confidence in his ability to serve as a role model based upon the posting, or, most noteworthy, the teacher's testimony that he did not think his postings would have any impact on his ability to teach his students if any of them had viewed his post and that he did not view his posting as immoral. The conduct itself, together with the teacher's failure to accept responsibility or recognize the seriousness of it, given his position as a teacher and role model, demonstrates evident unfitness to teach. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1465-66.)

19. One act does not alone demonstrate the unfitness of the teacher, but is simply one of the factors to be considered. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal. App.3d 555, 561-62.)

20. There must be a nexus between the teacher's conduct and his usefulness to the school district and only when so construed can grounds to dismiss for immoral conduct or unfitness to serve be constitutionally applied. (*Board of Trustees v. Judge* (1975) 50 Cal. App. 3d 920, 929.)

PERSISTENT VIOLATION OF OR REFUSAL TO OBEY LAWS

21. A violation of Education Code section 44932, subdivision (a)(8), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the district must further establish that the employee's refusal to follow the laws or regulations was "persistent," i.e., "stubborn and continuing." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered "persistent." (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

22. The word "persistent" is defined by lexicographers as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Education Codes section 44932, subdivision (8) pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; "it

is the persistent disregard” of school rules that the subdivision is designed to regulate. (*Id.* at p.84.)

Morrison Factors

23. In *Morrison, supra*, the Supreme Court suggested seven factors to consider when evaluating whether the school employee should be dismissed: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that the discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

24. The *Morrison* factors may be applied to the charges in the aggregate. When a camel’s back is broken, the trier of fact need not weigh each straw in its load to see which one could have done the deed. A trier of fact is entitled to consider the totality of the offensive conduct. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.)

25. Only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Commission on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

Other Disciplinary Considerations

26. An administrator’s loss of confidence in the educator and doubt regarding the educator’s ability to serve as a role model for students are factors that may be considered. (*San Diego Unified School District v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1460.)

27. The Commission is vested with discretion not to dismiss an employee even if grounds for discipline exist. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 209.)

Evaluation of the Charges

28. Ms. Oshiro was successfully employed as a teacher in the district until the 2016-17 school year when the district involuntarily transferred her to San Onofre. Based upon the evidence introduced at hearing, Ms. Oshiro’s issues seemed to begin soon after she arrived at San Onofre. In the 2014-15 school year Mr. Rodriguez gave Ms. Oshiro an evaluation documenting that Ms. Oshiro had an overall performance as “effective.” Despite this documented evaluation, Mr. Rodriguez testified that Ms. Oshiro’s performance as a teacher while at Potter was poor. Additionally, Mr. Billingsley testified that while teaching at Potter, Ms. Oshiro was “the poorest performing teacher in the district.” However, the assertions of

poor performance from Mr. Rodriguez and Mr. Billingsley were never documented and provided to Ms. Oshiro prior to her transfer to San Onofre. Mr. Billingsley testified that he purposely attempted to hide from Ms. Oshiro the poor performance issues asserted to be part of the reason for her transfer to San Onofre.

After her transfer to San Onofre, Ms. Oshiro soon became the subject of complaints from students and teachers based upon the poor performance of Ms. Oshiro's students on benchmark tests. Additionally, observations by Ms. Guerrettaz and Ms. Perez during Ms. Oshiro's classes, demonstrated that Ms. Oshiro was failing to adhere to the math curriculum and pacing guidelines and was wasting instructional time teaching other things. The overwhelming evidence demonstrated that Ms. Oshiro's poor work performance was so egregious that she received seven letters of reprimand. The district provided extensive support and help to Ms. Oshiro with the STEM TOSA and the co-teacher, to no avail. In each letter of reprimand the district provided her with directives regarding her instruction in her classes. Rather than abide by those instructional directives, Ms. Oshiro simply chose to disagree with the findings and allegations in the letters and continued to fail to adhere to the curriculum and pacing guidelines for her math classes, resulting in poor student performance and student confusion. The evidence demonstrated that Ms. Oshiro failed to post objectives in each class, failed to submit lesson plans as directed, failed to timely provide grades and feedback to students, and failed to follow the curriculum and pacing guidelines. The unfortunate result of Ms. Oshiro's failure to abide by the directives given to her in those seven letters of reprimand was the poor performance of her students. Based on Ms. Oshiro's persistent refusal to follow district directives, she must be dismissed.

Although it was not established that Ms. Oshiro engaged in the conduct alleged as inappropriate and humiliating discipline of students, Ms. Oshiro did admit to some disciplinary techniques, such as making students stand to repeat directions and filling out behavior forms during class, that the district alleged was inappropriate. However, the Commission did not find that these disciplinary techniques rose to the level of immoral conduct or violated district policies.

The Commission did not find that Ms. Oshiro's conduct in disciplining her students or in failing adhere to instructional directives provided by Ms. Perez and the district was a fixed character trait or a temperamental defect rendering her not fit or unsuitable for teaching altogether. The evidence did not establish any such fixed character trait of Ms. Oshiro.

Cause Exists to Dismiss Ms. Oshiro

29. Cause exists to dismiss Ms. Oshiro pursuant to Education Code section 44932, subdivision (a)(8), because the evidence established that Ms. Oshiro persistently violated district policies, regulations and school directives.

Cause Does Not Exist to Dismiss Ms. Oshiro for Evident Unfitness for Service or Immoral Conduct

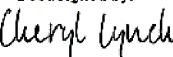
30. Cause does not exist to dismiss Ms. Oshiro pursuant to Education Code section 44932, subdivision (a)(6), because the evidence did not establish that Ms. Oshiro was evidently unfit for service.

31. Cause does not exist to dismiss Ms. Oshiro pursuant to Education Code section 44932, subdivision (a)(1), because the evidence did not establish that Ms. Oshiro engaged in immoral conduct.

ORDER

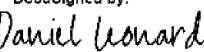
Ms. Oshiro's appeal of her dismissal from employment with the Fallbrook Union Elementary School District is denied. The district's request to dismiss Ms. Oshiro is granted. Ms. Oshiro shall be dismissed from the district.

DATED: March 9, 2018

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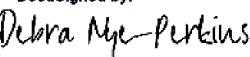
CHERYL LYNCH
Commission Member

DATED: March 8, 2018

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DANIEL LEONARD
Commission Member

DATED: March 9, 2018

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DEBRA D. NYE-PERKINS
Administrative Law Judge
Office of Administrative Hearings