

**BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND THE  
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE  
PALM SPRINGS UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA**

**In the Matter of the Proceeding to Dismiss:**

**DORIS RODRIGUEZ, Respondent**

**OAH No. 2023060708**

**DECISION**

This matter was heard before the Commission on Professional Competence (Commission) by videoconference on September 25 through September 29, 2023. The Commission was comprised of the following members: Nancy Glenn, Andrea Gordon, and Abraham M. Levy, Administrative Law Judge, Office of Administrative Hearings, State of California, who presided over the matter.

Brooke Jimenez, Attorney at Law, Atkinson, Adelson, Loya, Ruud & Romo, represented the Palm Springs Unified School District (District).

Jon Vanderpool, Attorney at Law, Smith Steiner Vanderpool, represented Doris Rodriguez, respondent, who was present.

Oral and documentary evidence was received. The hearing record was closed, and the matter was submitted for decision on September 29, 2023.

## **SUMMARY**

The District seeks respondent's dismissal based on its assertions that respondent engaged in immoral conduct, was dishonest with a District investigator regarding a personal relationship she had, is evidently unfit to teach, and persistently violated board regulations relating to her conduct towards a fellow teacher at a Las Vegas hotel on June 22, 2019. The District further alleges that while under suspension without pay from the District, respondent engaged in an incompatible activity by taking a teaching assignment at a charter school. After giving due consideration to the evidence of record in this matter and the arguments of the parties, the Commission finds that the District did not meet its burden of proof that cause exists to dismiss respondent on any of these grounds, and the amended statement of charges is dismissed.

## **FINDINGS OF FACT**

### **Jurisdictional Matters**

1. On March 22, 2023, Tony Signoret, Assistant Superintendent of Human Resources, signed the Statement of Charges, to which respondent timely appealed. On September 25, 2023, La Sonya Brummell Pitts, Interim Assistant Superintendent for Human Resources, signed an Amended Statement of Charges for the District. The District had filed a motion to amend the original charge to include a charge of incompatible employment based on respondent's deposition testimony where she stated she was working as a teacher at a charter school, Classical Academies. The motion to amend the statement of charges was granted at the start of the hearing.

2. In the Amended Statement of Charges, the District seeks respondent's dismissal on these statutory grounds: Immoral Conduct pursuant to Education Code sections 44932, subdivision (a)(1), and 44939; dishonesty, pursuant to Education Code section 44932, (a)(4); evident unfitness to teach, pursuant to Education Code section 44932; subdivision (a)(6); and persistent refusal to obey district policies pursuant to Education Code section 44932, subdivision (a)(8). In addition, the District seeks respondent's dismissal on incompatible employment grounds pursuant to Government Code section 1126, California Code of Administrative Regulations, title 5, section 80334, and Administrative Regulation 4136.

3. The core factual allegation against respondent concerns her alleged conduct at a conference she attended with other District teachers in Las Vegas on June 22, 2019, specifically, her conduct on the last day of the conference in the afternoon while she and other District employees were at the hotel pool. The District alleges that respondent sexually harassed another teacher, Joy Swize, who was then married to the District's Superintendent, Michael Swize, and that respondent sent a video of herself masturbating through a group text string to other conference attendees from her school.

## **Motions in Limine**

4. At the start of the hearing, the parties filed motions in limine, which were heard and addressed at the start of the hearing: Respondent sought to preclude the testimony and report of Alyssa Jarvis, an independent investigator retained by the District to investigate the allegations against respondent; as noted above the District moved to amend the statement of charges to allege that respondent engaged in an incompatible activity when she took a teaching assignment at another school district while this matter was pending; and the District objected to evidence respondent

planned to submit due to respondent's asserted failure to disclose the proposed evidence as required under Education Code section 44944.05.

5. For reasons articulated on the record, respondent's motion to preclude the submission of Ms. Jarvis's report and testimony was granted, except for purposes of rebuttal or to refresh a witness recollection; the District's motion to amend the charges was also granted; and the District's objection to evidence respondent planned to submit due to her failure to comply with the disclosure requirement was overruled, and the District's motion to preclude such evidence denied.

### **The District's Evidence**

6. The District called these witnesses in support of its allegations: Tony Signoret, Ed.D., Assistant Superintendent, Human Resources; Roxanna Angles, Cielo Vista Charter School Counselor; Bonna Milem-Gordon, a teacher at Cielo Vista; and Ms. Swize, a teacher at Cielo Vista. In addition, the District called as a rebuttal witness, Ms. Jarvis.

The evidence established the following:

#### **TESTIMONY OF TONY SIGNORET, ED.D.**

7. Dr. Signoret testified as follows: respondent is a certificated employee whose current position at the District is a teacher on special assignment ("TOSA") in math.

8. In October 2022, Ms. Swize informed Dr. Signoret about respondent's conduct towards her on the afternoon of June 22, 2019, at a hotel pool in Las Vegas, where she, respondent, and other teachers stayed while they attended a training. Dr.

Signoret first learned of Ms. Swize's allegations when she asked to meet with him to discuss this incident.

9. At this meeting, Ms. Swize shared a list of concerns she had about respondent's conduct in 2019, and she told Dr. Signoret she believed respondent behaved unprofessionally, both verbally and physically, towards her. Ms. Swize prepared a written complaint dated October 5, 2022, in which she described in detail her allegations. During this meeting, Ms. Swize was very emotional, upset, and was in tears more than once.

Dr. Signoret found the allegations significant. He specifically cited a video of respondent masturbating that respondent sent to the group text chat created for the teachers attending the Las Vegas conference.

10. Because Ms. Swize was married to Mr. Swize, the District Superintendent, Dr. Signoret determined it was necessary to retain outside support in conducting the investigation because he felt the school could not. In this regard, after consulting with the District's counsel, the District retained the services of Ms. Jarvis, an independent investigator. During the investigation, the District placed respondent on administrative leave.

11. Ms. Jarvis conducted an investigation during which she interviewed Ms. Swize, respondent, and other attendees at the conference. Ms. Jarvis prepared a report with her findings dated February 9, 2023. Dr. Signoret reviewed Ms. Jarvis's report and recommended to the District's governing board that respondent be dismissed. The governing board accepted Dr. Signoret's recommendation, and on March 22, 2023, the District filed the Statement of Charges against respondent.

12. In reaching his recommendation to dismiss respondent, Dr. Signoret cited the District's Board Policy (BP) section 4119.11, that prohibits sexual harassment against any district employee "who complains, testifies or otherwise participates in the complaint process. . . ." Any District employee who violates this policy is subject to discipline "up to and including dismissal." (*Ibid.*)

13. Through annual trainings employees are required to attend, the District ensures that all employees are aware of the District's sexual harassment policy. Respondent attended and successfully completed these trainings, prior to June 22, 2019, as documented in a certificate of completion dated September 2, 2018.

14. In reaching his recommendation to the Board, Dr. Signoret considered a few factors: the impact of respondent's behavior on Ms. Swize and other employees present at the event, respondent's verbal comments and physical contact with Ms. Swize, the video of respondent masturbating, and the impact this had on all of them.

15. In answer to questions posed to him on cross-examination, Dr. Signoret acknowledged respondent had been at the District since 2007 and had no prior history of discipline. He agreed respondent's supervisors favorably evaluated her performance as a teacher over the years.

Dr. Signoret also acknowledged the more than three-year delay in the filing of a complaint with the District by Ms. Swize, during which time respondent was employed as a teacher without incident or complaint.

16. With regard to the incompatible employment charge, Dr. Signoret recognized respondent has gone without pay since April 23, 2023, and although the District pays for her health coverage, respondent has to reimburse the District.

Respondent offered into evidence a letter Dr. Signoret prepared dated March 1, 2023, in which he advised respondent she was placed on paid administrative leave pending further notice but she was prohibited from reporting to the school campus. He further advised her in the letter she was required to be available by phone during work hours and available to return to work upon request.

### **TESTIMONY OF JOY SWIZE**

17. Ms. Swize has been employed at the District for 33 years. For the last 11 years she has worked at Cielo Vista Charter School where she is a TOSA as an academic coach.

18. Between June 20 and 22, 2019, Ms. Swize attended the International Reading Conference in Las Vegas with fellow teachers from the Cielo Vista Charter with other teachers and respondent. They stayed at the Planet Hollywood Hotel and returned on Sunday, June 23. The site of the conference was not at the hotel but at another location about 30 minutes from the hotel.

19. On the afternoon of Saturday, June 22nd, the attendees were permitted to leave the conference for "pool time" at the hotel. It was during this time that respondent made sexual advances toward Ms. Swize. Respondent touched Ms. Swize's bathing suit, pulled it up between her buttocks, told Ms. Swize that her bathing suit looked better pulled up between her bottom, and slapped Ms. Swize on her buttocks. Ms. Swize moved away from respondent and told her to stop. Respondent asked Ms. Swize to go to the 21-and-older pool, as opposed to another pool that was not near a bar. Ms. Swize told respondent she did not want to go to the 21-and-older pool, and she wanted to stay with Ms. Milem Gordon and her baby on the lounge chairs. About 20 to 30 minutes later, respondent asked Ms. Swize to come to the pool with her, and

Ms. Swize again told respondent she wanted to stay with Ms. Milem-Gordon. Respondent told Ms. Swize she wanted to buy her a drink, which Ms. Swize declined. Respondent then asked Ms. Swize to help her carry drinks from the bar back to the pool for the other attendees. Ms. Swize asked Ms. Milem-Gordon to accompany her, which she did. The bartender asked Ms. Milem-Gordon, who was carrying her baby, to leave the area due to the 21-and-over limitations. While waiting for drinks, Ms. Swize observed respondent openly making out with a woman at the bar. This woman engaged in oral sex with respondent while respondent was on a bar stool. Ms. Swize did not provide any further details about this in either her testimony or her written statement. Ms. Swize returned to the pool with two drinks as soon as they were ready.

20. While walking back to the pool with the drinks, respondent told Ms. Swize about her sexual feelings toward her, asked her questions about sexual fantasies, and asked whether she had sexual preferences for women. Respondent told Ms. Swize respondent was a "carpet muncher," and liked to please women with oral sex. Ms. Swize told her she was not interested. Respondent then asked Ms. Swize about a threesome with Ms. Swize's husband, Dr. Swize. She shared her sexual history and details about other people she had been involved with in this way. Ms. Swize again told her she wasn't interested. Ms. Swize testified respondent was offended and said Ms. Swize was judging her. Ms. Swize told respondent she was not judging her and repeated she wasn't interested in having a sexual relationship with respondent. Respondent then told Ms. Swize she believed Ms. Swize to be mad at her because of an incident between them in the workplace over a common student they shared. Ms. Swize responded that her lack of interest in her sexually had nothing to do with that incident, and she repeated she was not interested. Respondent asked Ms. Swize to prove it by kissing her. Respondent tried to kiss Ms. Swize on the lips, and Ms. Swize turned her head so that respondent kissed her cheek.



21. Ms. Swize walked away from her with the drinks for the other attendees. Respondent appeared a few minutes later with drinks and started dancing to music a DJ was playing. She proceeded to grind her genitals on Ms. Swize's shoulder. Ms. Swize got into the pool and walked to the stairs to exit the pool. Respondent followed her and asked where she was going. She told respondent she didn't want to stay in the pool and was going back to Ms. Milem-Gordon. At the lounge chairs near the pool, Ms. Swize told Ms. Milem-Gordon and Ms. Perezchica what happened. She told them that respondent's behavior was out of control, and respondent had too much to drink.

22. Soon after this discussion, the attendees went to their hotel rooms. Ms. Swize said respondent texted and "Face-timed" her several times and left messages asking her to come to her room. She did not respond to these messages. Ms. Swize stated in response to questions on cross-examination she did not save the messages or show anyone else these messages.

23. After receiving the text messages, while the attendees were still in their rooms, respondent sent, through the conference attendees group chat text, a video of her masturbating. Ms. Perezchica immediately replied through the group text to everyone to delete it, that it was private, and not meant for the group. Ms. Swize deleted it and did not see it. She later learned of the nature of the video. Ms. Swize believes that the video was meant for her.

24. Ms. Swize returned from Las Vegas in a van with other attendees including respondent. Nothing unusual occurred between respondent and Ms. Swize during this ride.

25. On Sunday June 23rd, Ms. Swize shared what had happen with her husband Mike Swize, who at the time was Assistant Superintendent of the District. He laughed and said, "I told you she had the hots for you."

26. At the start of the new school year, in August 2019, Ms. Swize asked for a separate workspace because she did not want to work in close proximity to respondent. A separate room was provided for her to conduct her work as a TOSA academic coach.

27. Ms. Swize did not report the incident to school administration due to a change in leadership at Cielo Vista, the Cielo Vista charter school dissolving, and because a number of persons were serving as interim principals at that time.

In December 2019, Ms. Perezchica was appointed principal of Cielo Vista and after winter break, in January 2020, Ms. Swize reported the sexual harassment incident in person to her and Roxanna Angles, a school counselor. It was her understanding that Ms. Perezchica reported the incident to Dr. Signoret, but this did not seem to occur as discussed above. Ms. Swize met with Dr. Signoret close to two years later, in October 2022, to file a complaint regarding respondent's behavior, per BP section 4119.11. As a result of the District's delay in processing the complaint as a Title IX complaint, after Ms. Swize filed a civil claim notice with the District, the District paid Ms. Swize about \$240,000 in damages for the delay, according to her testimony.

28. Ms. Swize testified she decided to make a written complaint, because in July 2022, she learned respondent was attending staff events and this made her uncomfortable. She wanted to protect others from respondent's behavior. Ms. Swize, however, did not file a written complaint because between July 2022 and October

2022 she was on family leave out of state to support her sister and her niece, who was having health issues.

29. Ms. Swize learned in September 2022, while she was supporting her sister with her niece's health problem, that her husband and respondent were having an affair. Ms. Swize denied that this was her motivation in filing a complaint.

### **TESTIMONY OF BONNA MILLEM-GORDON**

30. Ms. Millem-Gordon has been a teacher at Cielo Vista for ten years. She was one of the attendees at the Las Vegas conference and is Ms. Swize's close friend. She testified about the events on the afternoon of June 2019.

31. Ms. Millem-Gordon saw respondent approach Ms. Swize while she and Ms. Swize were sitting on the lounge chairs by the pool. Respondent wanted to buy Ms. Swize a drink, Ms. Swize initially said no, but respondent was insistent. Respondent was visibly intoxicated. Respondent moved closer to Ms. Swize and touched Ms. Swize's swimsuit pulling at the straps, exposing Ms. Swize's bottom. Respondent told Ms. Swize it was "sexier" this way.

Respondent then slapped Ms. Swize's bottom. Ms. Millem-Gordon heard Ms. Swize say "No" when respondent did this, and Ms. Swize told respondent she did not enjoy having her swimsuit touched. Ms. Swize was visibly uncomfortable.

32. Despite this, Ms. Swize went with respondent to the pool bar, although she did not want to be alone with respondent. Ms. Swize sked Ms. Millem-Gordon to accompany her and respondent. Because she was holding her infant, Ms. Millem-Gordon was asked to move to an area outside the immediate pool bar. She could still see respondent and Ms. Swize, although she could not hear their conversation. Ms.

Millem-Gordon testified, however, she heard respondent say she was an employee at the District and in Las Vegas for a conference. Ms. Millem-Gordon left the bar area and went back to the larger pool area with other attendees.

### **TESTIMONY OF ROXANNA ANGLES**

33. Ms. Angles is a counselor for the District and was assigned to Cielo Vista. She has worked for the District for 11 years. She worked with both Ms. Swize and respondent and had a good working relationship with them.

34. In 2019, Ms. Perezchica called Ms. Angeles into her office with Ms. Swize. Ms. Swize told her what happened at the conference in Las Vegas and was very upset; she was crying and shaking about respondent's behaviors as she recounted what happened. Usually, Ms. Angles found Ms. Swize to be reserved, and Ms. Angeles was shocked at how emotional she was. At the same time, Ms. Swize was reluctant to take any further steps because she was embarrassed by what happened to her. She was not comfortable talking to other people about what happened.

35. Ms. Swize said respondent made her feel uncomfortable and she did not want to be around respondent anymore.

### **Respondent's Evidence**

36. Respondent called these witnesses on her behalf: Jessica Whiteman, Director of Elementary School Curriculum and Instruction and Curriculum at the District, who testified regarding respondent's performance evaluations; Juanita Perezchica, the Principal at Cielo Vista; Stefanie Burkett Stephenson, also a teacher at Cielo Vista; and Mike Swize, Ed.D., the District's former superintendent. Respondent also testified.

## **TESTIMONY OF MIKE SWIZE, ED.D.**

37. Dr. Swize testified that he worked at the District for 33 years and “wound up” his employment at the District on June 30, 2023, when he resigned as Superintendent. He said there was not a confidential agreement relating to his departure.

Dr. Swize has been married to Ms. Swize for 23 years, they separated in June 2022, and a petition for divorce has been filed.

38. Dr. Swize denied Ms. Swize told him about respondent’s behavior towards her at the pool. Ms. Swize told him that people were drinking, dancing, and she was uncomfortable. He remembered that Ms. Swize was upset because she had left her Kindle reading device at the hotel, and he contacted the hotel to see if it could be found. It was not found and he arranged for Ms. Swize to obtain a replacement Kindle device within an hour.

39. Dr. Swize came to know respondent through the gym they attended where they were workout partners in a program called “Fit in 42,” meaning 42 days. The program had specific fitness and dietary goals that participants hoped to achieve. They shared their goals and efforts primarily through text messages.

40. In terms of his relationship with respondent, Dr. Swize said their relationship developed after his separation from Ms. Swize in June 2022, and he asked respondent on “dates” in late December 2022, and January 2023. Before that time, they met at the gym and for coffee. As he put it, their “real relationship” began in December 2022.

## **TESTIMONY OF STEPHANIE BURKETT-STEPHENSON**

41. Ms. Burkett-Stephenson is respondent's friend and attended the June 2019 conference with her. She has worked at the District for 11 years.

42. Ms. Burkett-Stephenson testified that she was with respondent at the poolside during the afternoon of June 22, 2019. She said that respondent was not intoxicated. She said she does not recall respondent's interactions with Ms. Swize that afternoon. She had told Ms. Jarvis that she did not see respondent acting inappropriately. She commented, however, that she could not speak to anyone else's comfort level. She commented further that respondent and Ms. Swize have very different personalities. Respondent is very outgoing, and Ms. Swize is very reserved.

43. Ms. Burkett-Stephenson said the ride back home from Las Vegas was uneventful, she did not perceive any tension between respondent and Ms. Swize, and they interacted normally.

## **TESTIMONY OF JUANITA PEREZCHICA**

44. Ms. Perezchica is presently the principal at Cielo Vista, has been a certificated teacher for 23 years, and holds a master's degree in education. She has worked for the District for between 15 to 16 years. Prior to becoming principal at Cielo Vista, she has worked as a teacher and academic coach.

Ms. Perezchica interreacted with respondent as a fellow teacher, and then as principal, her direct supervisor.

45. With regard to the events of June 22, 2019, Ms. Perezchica organized the conference and supervised the attendees. On the last day of the conference, the attendees asked to return to the hotel after lunch instead of attending the afternoon

session. MS. Perezchica agreed, and a number of attendees with their significant others spent the afternoon at the pool at the hotel.

Ms. Perezchica stressed that, although the attendees were not on their own time, as she put it, and though it was not a requirement that the attendees go to the pool, she expected attendees to treat their participation at the conference as work, noting that the District paid for the hotel for the attendees. She regarded the afternoon as a great opportunity for a bonding session among the attendees.

46. Ms. Perezchica spoke to respondent and other attendees about their alcohol consumption and cautioned them not to drink too much. She noted that in 2016, at a social event during a conference in Anaheim, she saw respondent "beyond drunk" and involved in a fight with a colleague. Ms. Perezchica was not respondent's supervisor in 2016.

47. On June 22, 2019, in the afternoon, Ms. Perezchica saw respondent consuming alcohol. Ms. Swize reported to her that respondent was "out of control," intoxicated, but she did not elaborate further. Ms. Perezchica did not see respondent intoxicated or out of control, however.

48. Ms. Perezchica testified further that during the afternoon of June 22, 2019, she could not say that Ms. Swize was in any discomfort because she was not around Ms. Swize.

49. With regard to the video that respondent transmitted through the group text chat, respondent told Ms. Perezchica that she accidentally sent a video in the group chat and everyone should delete it. Ms. Perezchica did not view the video. She contacted all the recipients of the videos asking them to delete the video. Later at dinner respondent apologized to her for sending it.

Ms. Perezchica did not observe Ms. Swize to be in any discomfort during the dinner later that night.

50. Regarding her meeting with Ms. Swize in January 2020, Ms. Perezchica did not ask Ms. Angles to be present. She noted that Ms. Swize was tearful in this meeting and said she was sexually harassed six months earlier and detailed the behavior. Ms. Swize told Ms. Perezchica she did not want anyone else to know. Ms. Perezchica said she had to report this to District administrators, which she did.

51. Ms. Swize had previously asked for a change in assignment. She said there was a verbal altercation with respondent, and she wanted to be moved away from her. Ms. Swize did not, however, say anything about being sexually harassed. Thus, before the 2020 conversation, Ms. Swize was moved to her own space.

### **TESTIMONY OF JESSICA WHITEMAN**

52. Ms. Whiteman has been at the District for 23 years and has served in various capacities, including as an elementary school teacher and principal. She is currently the Director of Elementary Curriculum and Instruction for the District. Ms. Whiteman directly supervises respondent, who is one of 11 TOSAs to help with curriculum at 15 school sites.

53. Ms. Whiteman met respondent every week, observed her in various educational settings, and received feedback from site administrators in her new role as math TOSA. For the 2022-2023 school year, she evaluated respondent's performance under six different categories: Professional Development, Assessing Needs, Collaborate/Coordinate with District, and School and Community Stakeholders, District Curriculum and Development, and Developing as a Professional Educator. Respondent met District standards in four categories and exceeded them in the areas of



“Collaborate/Coordinate with District, and School and Community Stakeholders” and “Developing as a Professional Educator.”

54. In her comments in the evaluation Ms. Whiteman wrote:

[Respondent] has built relationships with coaches and partnered with identified schools in need to develop targeted plans of support. She has worked through resistance by meeting teachers where they are, using reflective practices, and doing what is best for students. [Respondent] is respectful of the administrator’s role, empathetic with teachers, yet hold [sic] high expectations for what students deserve.

55. Ms. Whiteman acknowledged that she was not aware of the sexual harassment charge against respondent when she prepared the evaluation.

### **RESPONDENT’S TESTIMONY**

56. Respondent has been a teacher at the District since 2007. Respondent has no history of discipline with the District, and she has not had any written complaints or notices of complaints. She was nominated by staff as Teacher of the Year at Cielo Vista four years in a row. She was also nominated as District Teacher of the Year, and she was a semi-finalist for Riverside County Teacher of the Year.

57. Prior to the Las Vegas conference, respondent worked with Ms. Swize for six years. They did not socialize as friends, but in 2019, respondent was friendly with her.

58. Respondent admitted to many of Ms. Swize's allegations regarding her behavior on June 22, 2019, although she disagreed about certain aspects of Ms. Swize's testimony. Respondent admitted she touched Ms. Swize's bathing suit but denied she "slapped" Ms. Swize's buttocks. Instead, respondent testified she "tapped" Ms. Swize's bottom. She admitted she used the phrase "carpet muncher," but respondent did not use the phrase to proposition Ms. Swize. She testified she is not bisexual and did not have the "hots" for Ms. Swize. Instead, she relayed to Ms. Swize what the husband of a woman, who was wearing a red bathing suit, she met at the pool bar told her about his wife being a "carpet muncher," to see if respondent was interested in a sexual relationship with him and his wife. She said she told Ms. Swize this due to the unusual and surprising nature of what he told respondent. To substantiate this woman in the red bathing suit, respondent submitted into evidence a photo showing this woman at the pool with respondent and school attendees. The photo was taken by this woman's husband according to respondent.

59. Because there was tension between respondent and Ms. Swize over a previous incident involving a student, at the pool, respondent spoke to Ms. Swize about the incident and told her she did not harbor ill feelings about the incident. Respondent then told Ms. Swize to "prove it," did a "hug it out" sort of gesture with Ms. Swize, and kissed Ms. Swize on the cheek. Respondent denied she grinded her genitals on Ms. Swize. She said she was dancing at the corner of the pool near where a DJ was playing music. She was dancing right before the picture of the woman in the red bathing suit was taken. Respondent also denied she was extremely drunk. She said she had about one drink every hour while at the pool that afternoon. Her credit card statement, which was admitted as evidence, appears to substantiate this.

60. For the remainder of the afternoon at the pool, respondent encountered Ms. Swize but did not perceive that Ms. Swize was uncomfortable around her. She denied persistently trying to get Ms. Swize to go with her to the bar; she said she was only trying to include her. In support of this, she offered a photo of her and Ms. Swize in which respondent was holding Ms. Swize's leg and Ms. Swize seemed to be smiling. She denied Ms. Swize said anything to her to suggest her behavior was unwelcome, like "no", "stop," or "don't."

61. Respondent testified she does not remember whether she "FaceTimed" Ms. Swize. She denied she intended to send the video of her masturbating to Ms. Swize. She intended to send it to her husband because she was thankful her husband was taking care of their two children while she was at the conference. Respondent described how she "mis-transmitted" the video on her smartphone. She tried to delete it, became mortified when she realized she sent it, "freaked out," and immediately contacted Ms. Perezchica. Respondent went down to dinner where the attendees had gathered because she needed to "face the music" about what she had done. She apologized to Ms. Perezchica.

62. With regard to the 2016 incident at the conference in Anaheim where Ms. Perezchica observed respondent drunk and agitated, respondent explained that Ms. Bannon, who was her best friend, was upset because she thought respondent had left her at a bar in Long Beach. They got into an argument and Ms. Perezchica came between them. She denied she was "beyond drunk" as Ms. Perezchica put it. She noted she and Ms. Bannon restored their relationship after they had a sit down.

63. With regard to the confrontation she and Ms. Swize had over the student, respondent did not see it as an altercation or incident involving verbal

aggression, but as a disagreement between two people, as she put it, who were passionate about getting services for the student.

64. With regard to her statement to Ms. Jarvis about her relationship with Dr. Swize, respondent said she was honest when she said that in December 2022, she was not in a “romantic or sexual relationship” with Dr. Swize. She commented she was as honest as she could be due to the “confusing and dumb-founded information” she was given about the subject of the interview. Respondent had separated from her husband in April 2022, and Mr. Swize had separated from Ms. Swize in June 2022. Between June 2022 and December 2022, they continued to be friends: they met each other for dinner or coffee and were helping each other cope with their separations; they were both trying to get through broken marriages.

65. Respondent testified she takes responsibility for making Ms. Swize feel uncomfortable and for relating the “carpet muncher” comment to her. She “definitely” takes responsibility for what happened to Ms. Swize emotionally.

66. Respondent now fully grasps what she said was not appropriate, and agreed that perception matters. She is sorry Ms. Swize ever felt respondent’s communications to her were not received as friendly or playful.

67. Respondent stated that she is working presently at Classical Academies, a charter school, where she is an at-will employee without a contract. She works there in order to support herself and her teenage son while she is under suspension by the District. She said if the District recalled her to return to work at the District she would return to work.

## **Parties' Closing Arguments**

68. In its closing, the District argued that respondent sexually harassed Ms. Swize and her conduct constituted immoral conduct based on Ms. Swize's credible testimony and is sufficient to warrant dismissal. Respondent made sexually explicit comments to Ms. Swize which included: sharing her sexual feelings toward Ms. Swize, asking Ms. Swize if she had sexual preferences for women, stating she was a "carpet muncher" and liked to please women with oral sex, and asking Ms. Swize about a threesome with Ms. Swize's husband.

The District argued that respondent's own testimony was sufficient evidence to dismiss her: Respondent admitted touching Ms. Swize's bathing suit, tapping Ms. Swize's bottom, kissing her, using the "carpet muncher" phrase, drinking, and sending the video of herself masturbating. The District stressed that respondent was extremely intoxicated at the pool on the afternoon of June 22, 2019.

With regard to the dishonesty charge, the District asserted that respondent intended to deceive the investigator with her response that she was not in a romantic relationship with Dr. Swize.

With regard to the evident unfitness to serve as a teacher charge, the District argued that respondent has a fixed character trait that shows she is temperamentally unfit to serve as a teacher. She should have known the conduct she engaged in was bad considering the extensive trainings she received regarding the District's sexual harassment policy, and she blatantly disregarded these trainings or she failed to follow them or both.

With regard to the persistent violations of District policies, the District asserted that she violated numerous policies on the afternoon of June 22, 2019, and ignored Ms. Perezchica's counsel to her before the conference regarding her alcohol use.

The District addressed the factors articulated by the court used to determine whether immoral conduct constitutes unfitness to teach in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230. The District argued these factors overwhelmingly warrant dismissal; respondent's conduct had an adverse effect on the District because the District had to pay a claim to Ms. Swize in the amount of \$240,000 because the District did not process her sexual harassment complaint timely, and she failed to maintain professional boundaries towards Ms. Swize which affected her. As an aggravating factor, respondent sexually assaulted Ms. Swize, and her conduct was egregious because she ignored the trainings she received concerning the District's sexual harassment policy over the years.

The District argued further that respondent will likely engage in this conduct again because she ignored these years of training and she did not apologize to Ms. Swize for her behavior.

The District commented that if this conduct was done by a man that man would be dismissed.

69. Respondent argued that the District should not impose "career capital punishment" to ensure what happened does not happen again. Respondent stressed that what is not in the charges is important to consider: Respondent is not charged with having an affair with Dr. Swize, but respondent argued that this is how the District proceeded against respondent. Respondent asserted that based on the credible evidence, respondent's conduct did not constitute immoral conduct.

Respondent stressed she does not disagree she did something wrong, but her conduct does not justify dismissal; the District chose to not charge respondent with unprofessional conduct or seek a disposition less than dismissal, which the Board's sexual harassment policy permits.

Respondent noted that in weighing the evidence, the Commission should consider that Ms. Swize did not file the formal complaint until October 2022, Ms. Swize had three and a half years to shape the events she characterized in her complaint, and Dr. Swize disputed Ms. Swize's testimony that she was upset about respondent's conduct soon after it occurred. Respondent argued given the amount of time that passed, memories fade and there are natural inconsistencies between Ms. Swize's account of what happened and respondent's as well as other witnesses.

Respondent took specific issue with the District's effort to blame respondent for the District's payment of \$240,000 to Ms. Swize due to its failure to process timely Ms. Swize's sexual harassment claim. Any failure by the District to address Ms. Swize's allegations was the District's responsibility, not respondent's.

With regard to the dishonesty charge, respondent did not intend to deceive the investigator or act with bad faith. The investigator "ambushed" her on December 6, 2022, about events three years after. These events have nothing to do with her relationship with Dr. Swize on December 6, 2022.

With regard to the evident unfitness charge, the District incorrectly is trying to carve out a four-hour period in a 16-year career to show a "fixed character trait" which is inconsistent with fitness to teach.

Concerning the persistent violation charge, the District is attempting to "stretch" the behavior in 2019 to an incident in 2016 to reach this assertion that

respondent has engaged in conduct relating to abuse of alcohol. But the only "history" concerns this one incident in 2019.

Concerning the incompatible employment charge, respondent argued that the District locked her out of a job without income, and told her not to come to the school campus. Respondent stated she is willing and able to return to work at the District. Respondent commented that this charge shows a real animus against respondent.

70. In reply, the District denied that the case is about respondent's affair with Dr. Swize. Ms. Swize is the real victim here, and respondent should not be given a pass because respondent suggests the charges involving her conduct are not serious. The District argued that the conduct involved three separate assaults: pulling up Ms. Swize's bathing suit, slapping Ms. Swize, and kissing her. The District added it was required to investigate Ms. Swize's complaint, and at its own expense, retained an investigator to do so.

## **Evaluation of Testimony of Respondent and Witnesses and Evidence**

71. To assess the credibility of respondent and the District's witnesses, the Commission considered the factors under Evidence Code section 780. Evidence Code section 780 states that when "determining the credibility of a witness" the trier of fact may consider "any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing," including "the extent of his capacity to perceive, to recollect, or to communicate any matter about which he testifies," "the extent of his opportunity to perceive any matter about which he testifies," "[t]he existence or nonexistence of a bias, interest, or other motive," previous statements the witness has made that are "consistent with his testimony at the hearing," and previous statements the witness has made that are "inconsistent with any part of his testimony



at the hearing.” The trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected available material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 777.)

After applying these factors to the witnesses in this matter, the Commission makes the following credibility findings with respect to testimony regarding respondent’s conduct at the pool and the dishonesty charge:

### **CREDIBILITY FINDINGS REGARDING THE SEXUAL HARASSMENT ALLEGATIONS AND EVALUATION**

72. Respondent’s testimony was, overall, credible concerning her conduct at the pool at the Las Vegas hotel on the afternoon of June 22, 2019. The Commission specifically finds credible her explanation that she was not propositioning Ms. Swize for a sexual relationship when she made the “carpet muncher” and “threesome” comments to her; she was relating comments the husband of the woman in the red bathing suit made to respondent due to their unusual, surprising, and shocking nature. In the greater context, respondent shared this information with Ms. Swize as an effort, certainly misguided, to socialize with her. Respondent testified she asked Ms. Swize to go with her to the bar for drinks to include her in socializing with other attendees. Photographs taken at the bar and poolside show the attendees socializing together and also show Ms. Swize and respondent comfortable with each other and the other attendees (including the woman in the red bathing suit in one photo).

The Commission, in addition, does not find, based on the credible testimony of Ms. Burkett-Stephenson, respondent, and Ms. Perezchica, that respondent was extremely intoxicated at the pool.

73. In other respects regarding her conduct, respondent does not dispute she engaged in poor behavior towards Ms. Swize. Respondent admitted responsibility for some of her behavior and for making Ms. Swize uncomfortable. She touched Ms. Swize's bathing suit and buttocks, although respondent described it as a "tap" instead of a "slap." She also admitted to kissing Ms. Swize on the cheek to "hug it out" in order to bridge the gap between them due to the disagreement she had with Ms. Swize concerning the student intervention. She also did not dispute Ms. Gillem-Gordon's credible testimony that when respondent touched Ms. Swize's bathing suit, respondent said something to the effect that this made her "sexier."

74. In addition, with regard to the video respondent sent, respondent credibly testified she mistakenly sent the video to other attendees when she meant to send the video to her husband. After she transmitted this video, respondent quickly told Ms. Perezchica it was sent by mistake. She later apologized to Ms. Perezchica for sending it.

75. Ms. Swize's testimony was mostly credible, except to the extent it conflicted with respondent's testimony. It is noteworthy that Ms. Swize took over three years to prepare her written complaint and summarize the incident at the pool. She prepared this document after she learned about her husband's affair with respondent, which left her understandably with a strong bias against respondent. She thus sought to portray respondent in the worst possible light (which respondent invited by her behavior), including Ms. Swize's testimony that respondent was the recipient of oral sex at the bar and rubbed her genitals on Ms. Swize. This conduct was not

substantiated by any other witness, and its inclusion, significantly diminishes Ms. Swize's other testimony about respondent's behavior towards her. While respondent's behavior toward Ms. Swize is inexcusable, it appears more likely that it was precipitated by respondent's misguided efforts to socialize with Ms. Swize, rather than making unwanted advances.

### **CREDIBILITY FINDINGS REGARDING DISHONESTY**

76. On December 6, 2022, respondent told Ms. Jarvis that she was not in a romantic relationship with Dr. Swize. This answer was not dishonest. The word "romantic" can mean different things to different people, and particularly, between two people in a developing intimate relationship. Both respondent and Dr. Swize credibly explained the nature of their relationship as a developing one, and it is not for the Commission to characterize it as "romantic" or not, given the vagueness of this term.

In order to be dishonest, the District must prove by a preponderance of the evidence that respondent either intended to deceive or willfully misrepresented a material fact. (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456.) Because the term "romantic" is vague, in that it could mean various things to different people, the District failed to establish that respondent was dishonest or intended to deceive. This was bolstered by Dr. Swize's testimony that the relationship was developing during this period.

## **LEGAL CONCLUSIONS**

### **Burden and Standard of Proof**

1. 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.

The standard of proof in a teacher disciplinary 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.)

### **Applicable Education Code Sections**

2. 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. Education Code sections 44934 and 44938 outline the procedures the District must follow before acting on any charges brought against a permanent employee.

## Evaluation and Disposition

### IMMORAL CONDUCT

3. Cause does not exist pursuant to Education Code section 44932, subdivision (a)(1), to dismiss respondent based on immoral conduct. The District did not prove that respondent's conduct constituted immoral conduct.

Immoral conduct has been defined as:

The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare." (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

4. In this matter, the Commission cannot find, based on the credible evidence as a whole, that respondent's behavior at the pool, though inappropriate, constituted "depraved" or "dissolute" conduct evidencing unfitness to teach, considering respondent's credible testimony and the evidence as a whole. Respondent's behavior occurred within a short time frame on the afternoon of June 22, 2019, at the hotel pool. While Ms. Swize had a prior incident with respondent

involving a student, respondent was not aware that Ms. Swize was uncomfortable around her and had requested to move her workspace away from respondent.

In addition, although respondent sent a sexually explicit video to her coworkers in a group text message, the circumstances did not constitute immoral conduct. Respondent credibly testified that she mistakenly sent this video to her group instead of her husband. When she learned of the mistake, she immediately told Ms. Perezchica about it, who then instructed recipients of the video in the group text to delete it. Respondent further apologized to Ms. Perezchica for having mistakenly sent it.

5. With this conclusion, the Commission feels, however, that respondent's conduct towards Ms. Swize meets the definition of sexual harassment in BP 4119.11 and was unprofessional, though unprofessional conduct was not charged.

BP section 4119.11 prohibits sexual harassment against any district employee "who complains, testifies or otherwise participates in the complaint process. . . ." Any District employee who violates this policy is subject to discipline "up to and including dismissal." Sexual harassment is defined as unwelcome sexual advances, unwanted requests for sexual favors, or other unwanted verbal, visual, or physical contact of a sexual nature of the same or opposite in the work or educational setting. (*Ibid.*, citing Education Code section 212.5, Government Code section 12940, and California Code of Regulations, title 2, section 11034.)

Respondent's conduct towards Ms. Swize meets this definition of sexual harassment. She engaged in unwelcome conduct of a sexual nature in the workplace towards Ms. Swize, at the District-authorized training at the hotel pool. But the Commission notes that respondent's conduct was not related to her fitness to teach. Fundamentally, the Commission concludes that her conduct at the pool that afternoon

on June 22, 2019, did not affect her classroom performance, impact her students, or impact her ability to teach. From June 22, 2019, through the time the charges were filed against her, respondent performed her duties as a teacher without incident or complaint against her.

## **DISHONESTY**

6. Cause does not exist pursuant to Education Code section 44932, subdivision (a)(4), to dismiss respondent based on dishonesty. Dishonesty indicates a "lack of honesty or integrity;" a "disposition to defraud or deceive."

(<https://www.merriam-webster.com/dictionary/>) "Dishonesty necessarily includes the element of bad faith." (*Small v. Smith, supra*, at p. 456.) "[I]t means fraud, deception, betrayal, faithlessness; an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Ibid.*) "Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute 'dishonesty' as a ground for discipline." (*Fontana Unified School Dist. v. Burman (Fontana)* (1998) 45 Cal.3d 208, 220, fn. 12.).

7. The District failed to prove that respondent was dishonest when she denied to Ms. Jarvis on December 6, 2022, that she was in a romantic relationship with Dr. Swize based on her credible testimony as found above.

## **EVIDENT UNFITNESS FOR SERVICE**

8. Cause does not exist pursuant to Education Code section 44932, subdivision (a)(6), to dismiss respondent based on evident unfitness for service.

Section 44932, subdivision (a)(6), provides that the District may suspend or dismiss a permanent employee for "evident unfitness for service." "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(6), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445.) Evident unfitness for service requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*)

9. The District did not prove, the Commission finds, that respondent has a temperamental defect or fixed character trait that makes her unfit to serve as a teacher. To the contrary, the evidence shows that she has performed her duties as a teacher both before June 22, 2019, and since that date without incidents or complaints.

### **PERSISTENT VIOLATIONS**

10. Cause does not exist pursuant to Section 44932, subdivision (a)(8), to dismiss respondent for persistent violation of or refusal to obey school laws or regulations. School regulations prohibit sexual harassment.

The word "persistent" is defined as "refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated." The word has been interpreted to mean "continuing or constant." (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82, citations omitted.) A single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher. The subdivision 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. (*Ibid.*, at 84.)

A violation of the Education Code for persistent violations of District regulations must also be established by reference to the "Morrison" factors. (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1182-1183.) 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." (*Ibid.*, citing *Governing Board of the Oakdale Union School District v. Seaman* 28 Cal.App.3d, *supra*, at p. 82). 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, 321.)

11. The District did not prove that respondent persistently failed to obey District policies. As discussed earlier, respondent's conduct involved a single course of inappropriate conduct on the afternoon of June 22, 2019, and was an isolated incident of poor behavior that is unlikely to reoccur. (See "*Morrison*" regarding likelihood of reoccurrence as factor in assessing fitness to teach at pp. 229-230.) Both before and since June 22, 2019, respondent has not engaged in similar behavior.

### **INCOMPATIBLE EMPLOYMENT**

12. Cause does not exist to dismiss respondent pursuant to Government Code 1126, California Code of Regulations, title 5, section 80334, and District Administrative Regulation 4136. These authorities prohibit "inconsistent, incompatible,

in conflict with, or inimical to his or her duties” outside employment while working as a teacher at the District. (Gov. Code, § 1126, subd. (a).) The District has defined outside employment as follows: “Outside paid activities are incompatible with district employment if they require time periods that interfere with the proper, efficient, discharge of the employee’s duties.” (Board Administrative Regulation, § 4136.)

13. Respondent’s employment at Classical Academies, a charter school, is not incompatible with district employment. It does not interfere with her employment at the District because the District has suspended her without pay, and barred her from the school and employment at the District. Upon suspending her, the District advised her to be available in the event the District called her back to work. Respondent testified she is available to return to employment at the District’s request if the District were to recall her to work. She explained she works as an at-will employee at the charter school without a contract and would be willing and able to return to the District if called upon to do so.

### **Application of “Morrison” Factors**

14. Because the Commission has not found that cause for dismissal exists, it is unnecessary to apply the “Morrison” factors, except as discussed above with regards to the assertion that respondent is evidently unfit to teach.<sup>1</sup> But even if cause to

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<sup>1</sup> Not all the “Morrison” factors must be considered, only the most pertinent ones. (*West Valley-Mission Community College District v. Conception* (1993) 16 Cal.App.4th 1766, 1777.) Additionally, the *Morrison* factors may be applied to all the charges in the aggregate. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1456-1457.) The determination of

dismiss were to have been found, the Commission would not conclude that respondent is unfit to teach after giving due consideration to applicable “Morrison” factors. (*Morrison*, 1 Cal.3d 214, at pp. 229-230.) Applying these factors, respondent’s conduct is now relatively remote in time, having occurred on June 22, 2019, respondent’s conduct did not adversely affect students, and the conduct as found above, is unlikely to reoccur.

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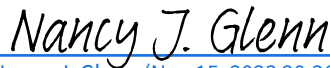
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fitness for service required by *Morrison* is a factual one. (*Id.* at fn. 3); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d. 208, 220-221; *Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.)

## ORDER

Respondent's appeal is granted. The Amended Statement of Charges is dismissed.

DATE: 11/15/2023



Nancy J. Glenn (Nov 15, 2023 20:36 PST)

NANCY GLENN

Commission Member

DATE: 11/16/2023



Andrea Gordon (Nov 16, 2023 05:24 PST)

ANDREA GORDON

Commission Member

DATE: 11/16/2023



Abraham M. Levy (Nov 16, 2023 07:33 PST)

ABRAHAM M. LEVY

Commission Member

Administrative Law Judge

Office of Administrative Hearings