

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS AND THE
COMMISSION ON PROFESSIONAL COMPETENCE FOR THE
LOS ANGELES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

MELINDA CALLAHAN (EN 684977),
A Permanent Certificated Employee,

Respondent.

OAH No. 2015030018

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California on February 1, 2, 4, 5, 8, 9, 10, 11, 29, March 1, 2, 3, April 11, 12, 13 and 18, May, 26, August 1, 2, 3, 4, 22, 23, 24, and September 22, 2016. The Commission consists of the following members: Luciano Ortiz, teacher, Mary Bennett, retired teacher and Glynda B. Gomez, Administrative Law Judge, Office of Administrative Hearings, who presided.

The Los Angeles Unified School District (District or Complainant) was represented by Michele M. Goldsmith, attorney at law. Respondent Melinda Callahan (Respondent) was represented by Rosemary O. Ward, attorney at law, and Deborah Eshaghian, attorney at law. Rulings on motions were made on the record during the proceedings. A confidential names list was sealed to protect the privacy of the students.

The record remained open until October 13, 2016 for the submission of closing briefs. The briefs were received and marked as Exhibits AAAA and 345, respectively and the record was closed and the matter submitted for decision on October 13, 2016.

SUMMARY OF DECISION

The issue before the Commission is whether to uphold District's decision to dismiss Respondent from her permanent position as a certificated employee.

Complainant contends that Respondent was a poorly performing teacher, abusive to students and generally disruptive to the school environment. Complainant also contends that despite assistance and guidance, Respondent failed to improve her performance.

Respondent contends that she was a good teacher and was retaliated against by principals and administrators.

The Commission considered the matter in executive session. After due consideration of the record, the Commission determined that the dismissal of Respondent Melinda Callahan should be sustained. Accordingly, the Commission makes the following factual findings, conclusions of law, and order sustaining the Accusation and Charges and dismissing Respondent.

FACTUAL FINDINGS

1. The Accusation and Statement of Charges were brought by Justo H. Avila, Chief Human Resources Officer for the District.

2. On February 11, 2015, Respondent was given written notice of the District's intention to dismiss Respondent unless she demanded a hearing. Respondent submitted a timely demand for a hearing.

3. The Statement of Charges, dated January 23, 2015, and the Accusation, dated March 4, 2015, recommended the dismissal of Respondent from District for the following legal causes under Education Code sections 44932 and 44939: (1) unprofessional conduct; (2) immoral conduct including egregious misconduct; (3) immoral conduct; (4) unsatisfactory performance; (5) evident unfitness for service; (6) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school employing Respondent; and (7) willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of the employing district.

4. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

Background Information

5. Respondent has been a teacher with the District for 18 years. Respondent's teaching experience included teaching third through seventh grades. Respondent received a Bachelor of Science degree in nutrition from California State University, Los Angeles. She holds a multiple subject K-12 teaching credential, and the required Cross-cultural Language and Development (CLAD) certificate. Immediately prior to the time frame at issue in this matter, Respondent had been on assignment as a middle school teacher at Carver Middle School. As a result of a threat made against her at Carver Middle School, Claimant asked for a transfer to a different school as an accommodation. When Respondent made this request she was deemed to be a "must place" by the District. The term "must place" has a negative

connotation to administrators because teachers who have been designated as “must place” are not interviewed and hired by the school principal. Instead, they are placed at a particular school by the District administration.

Los Feliz Elementary School 2012-2013

6. Respondent was assigned to Los Feliz Elementary school (Los Feliz) for the 2012-2013 school year. Katherine Pilkington (Pilkington) was the principal at Los Feliz. Pilkington earned her Bachelors and Masters of Arts degrees from California State University, Northridge and a teaching credential from National University. At the time of the administrative hearing, Pilkington was a doctoral student at the University of Southern California. Pilkington has 28 years of experience with the District, including 11 years at Los Feliz. Pilkington had 12 years of experience in elementary school, including four years as the Assistant Principal and seven years as the Principal of Los Feliz.

7. In early August of 2012, Rowena La Grossa, the administrator in charge of operation for the local school district, called Pilkington and informed her that Respondent would be placed at Los Feliz as an accommodation and on a “must place” basis. At the time, Los Feliz had an opening for a sixth grade teacher because a teacher had been laid off as part of the prior spring reduction in force. Pilkington had hoped to hire the teacher back for the position. Pilkington contacted the principal at Carver Middle School, Respondent's previous school, to inquire about Respondent's accommodations and the reason for her change of schools. At that time, she learned that a threat had been made against Respondent at Carver and ascertained from the conversation that Respondent had a classroom management problem.

8. Respondent and Pilkington had a rocky relationship from the start. On or about August 8, 2012, Pilkington called Respondent and invited her to attend the two teacher “buy back” days on August 9 and 10, 2012 and a pupil-free day on August 12, 2012. During the conversation, Pilkington asked Respondent what her discipline style was, to which Respondent answered that her style was a blend of “strict” and “compassionate.” Pilkington responded, “you are scaring me” and expressed concerns about Respondent's discipline style. She told Respondent all of the teachers at Los Feliz were “nothing but loving and kind.” Pilkington explained to Respondent Los Feliz uses a school-wide positive discipline program because it is an elementary school. She notified Respondent that Respondent would be teaching a sixth grade class. The tone of the conversation made Respondent apprehensive and concerned.

9. Miriam Kupalian (Kupalian) is currently the Assistant Principal of Los Feliz. At the time that Respondent was at Los Feliz, Kupalian was the English-Language Development (ELD) Coordinator and Title I Contract Administrator, and functioned as the administrator in charge or administrative designee when Pilkington was not on campus and otherwise as a resource for parents, students and teachers.

10. At the August 9 and 10, 2012 sessions, both Pilkington and Kupalian presented information concerning the school-wide discipline policies and the "Caught Being Good" program¹, the homework policy. During the August 10, 2012 session, Pilkington noticed that Respondent had been taking copious notes but did not orally participate in the session. She walked up behind Respondent, looked over her shoulder, read Respondent's notes and demanded the notes. In an effort to get along with her principal, Respondent gave Pilkington the notes. Pilkington took the notes from Respondent and photocopied them. Pilkington was somewhat surprised to find out that Respondent was making notes about Pilkington's conduct and the telephone conversation that the two had on August 8.

11. Respondent was not present for the pupil-free day and professional development seminar on August 13. Pilkington met with Respondent privately to cover the information that was provided to the staff on those days.

12. The day before school started, Pilkington changed Respondent's sixth grade class and room assignment to a fourth grade assignment in a different classroom. Pilkington made the change right after she learned that she would be able to rehire Ms. Vo, her prior sixth grade teacher. There was only one sixth grade class, but there were three fourth grade classes. Respondent had never taught fourth grade and had to familiarize herself with the curriculum as well as set up her classroom. Since she had only found out about the change in assignment the day before school started, Respondent busied herself reviewing fourth grade curriculum and lesson planning. She did not have time to work on bulletin boards because she only had a few hours to prepare.

13. Respondent was overwhelmed with the change of classroom, change of grade, and new school. At Pilkington's direction, Kupalian ensured that Respondent had the proper fourth grade textbooks. Kupalian also set up some of the bulletin boards in Respondent's class and gave Respondent a general explanation of the Title I and English-language development (ELD) requirements as well as the requirements for the use of Envision and Treasures which were the District mandated curriculum for English-language arts and math. At the request of Pilkington and Respondent, Kupalian also provided some classroom instruction and management advice and educational materials to Respondent. Kupalian made arrangements for and accompanied Respondent on visits to other fourth-grade classrooms to observe colleagues.

14. The relationship between Respondent and Kupalian quickly deteriorated. Initially, Respondent seemed to welcome Kupalian's assistance. But Respondent later became suspicious that Kupalian was working in conjunction with Pilkington to terminate her. Respondent expressed to both Pilkington and Kupalian that she no longer wanted any

¹ A positive discipline program emphasizing rewards and encouragement for good behavior.

classroom management or instructional assistance from Kupalian other than what Kupalian would normally provide to ELD students. Kupalian was concerned about Respondent's erratic behavior. For that reason, she wrote a memorandum to Pilkington with a copy to Al Vega, the District operations coordinator, advising that she would no longer be willing to assist Respondent without another adult present during her interactions with Respondent.

15. Respondent's relationship with Pilkington continued to deteriorate throughout the school year. Pilkington left notes in Respondent's box on a regular basis about deficiencies that she saw in Respondent's performance and issued directives to Respondent on a routine basis. Pilkington perceived Respondent as lazy. Pilkington instructed Respondent to provide weekly lesson plans and place them in Pilkington's mail box. Pilkington also instructed Respondent on what should be displayed on the classroom bulletin boards and how the student seating should be arranged in her classroom. Pilkington was frustrated by Respondent's failure to turn in lesson plans and complete required training and certifications. She was alarmed by her observation of Respondent's classroom management and the complaints from parents and students about Respondent.

16. Pilkington was very rigid in her approach to teaching and expected the teachers to strictly adhere to the curriculum, assess students on a strict schedule and provide homework to students on a daily basis. Pilkington had a practice of regularly visiting classrooms to observe teachers and students. Because Respondent was new to the school and was due to be evaluated in the 2012-2013 school year, Pilkington made frequent visits to her classroom. During one of the visits Pilkington took stickers and a journal away from I [REDACTED] V a student in the classroom. Although there was no confirmation, I [REDACTED] claimed that Pilkington had slapped her hand when taking the journal. Pilkington described her action as "snatching" the stickers and, later, the journal that I [REDACTED] attempted to hide. According to Pilkington, I [REDACTED] was writing a memo about Pilkington and she found that to be inappropriate. She took the journal from I [REDACTED] and left the classroom. Respondent did not see the interaction, but learned of it when students told her I [REDACTED] was crying and Pilkington had taken the journal. Respondent interviewed a few of the children to determine what had happened. Consistent with her duty as a mandated child abuse reporter, Respondent reported the incident to the police. She also told I [REDACTED]'s parents of the incident. I [REDACTED]'s parents were enraged by Pilkington's actions and confronted her in the school office. Pilkington called the police to the parents and wrote a letter to them setting forth restrictions on their access to the campus. Pilkington was removed from the school for two days while the operations director, Al Vega (Vega), conducted an investigation of the incident. Vega did not find a basis to substantiate any child abuse claim about by Pilkington and she was returned to the classroom. At hearing, Pilkington testified that she was not aware that Respondent had filed the complaint against her and that she had assumed I [REDACTED]'s parents filed the report. Nevertheless, Respondent remained suspicious of Pilkington and very uncomfortable around her.

17. Respondent was removed from the classroom and required to report to the local district office also known as "ESC" during the period of October 19 to October 29 while investigations were conducted about the incident with [REDACTED]. During this time, she was not allowed to communicate with personnel at the school and was not aware of what documents were due. She had a meeting with Pilkington on October 29, 2012, at which time she was notified that she would be going back to Los Feliz. Respondent returned to the campus on October 30, 2012 at which time there was a substitute in her classroom. She used the day to catch up on her paperwork as much as possible. She did not have access to assessments, school bulletins or any other materials during the time she was at ESC.

18. Pilkington made a number of observations in Respondent's class some of which some of which focused on [REDACTED]. Student [REDACTED] was new to Los Feliz. Respondent had placed [REDACTED] at a kidney-shaped table to separate her from students that she perceived to be bullying [REDACTED]. Respondent also gave [REDACTED] responsibility for determining which students were misbehaving and writing their names on the board, as well as grading some of the classwork of other students. Pilkington instructed Respondent to reseat [REDACTED] with the other students and cease allowing her special privileges. Pilkington told Respondent that [REDACTED] was "fooling her." Respondent complied with Pilkington's directives. By mid-October, Pilkington moved [REDACTED] to another class over her parents' objections because she believed that Idaly needed a different environment.

19. Pilkington received written and verbal complaints from a few parents about the lack of homework and lack of order in Respondent's class. Several parents asked for their children to be moved to other teachers. Parents also complained to Kupalian, but she referred them to Pilkington. Two students were moved from the class, but Pilkington refused to move any other students because of the contractual limits on class size. A few teachers complained to Pilkington about Respondent's strange behavior, inappropriate comments and shouting. In one incident, upon meeting Michelle Bruno (Bruno), a young, relatively new teacher, she asked how old she was and "whose butt did you kiss to get the job?" She also commented to Bruno that Ms. Vo, a colleague, was a "witch hunter." For a time, Respondent was seen walking around campus and in the teacher's lounge with a tape recorder and a microphone hanging around her neck, appearing to record the conversations of other teachers, until Pilkington directed her not to wear the microphone or tape students or colleagues without permission.

20. Respondent's usual classroom routine started with a warm-up activity, and then moved to academics which, depending on the day, included reading and language arts, recess, math, social science, history and health. Respondent ended each class day with 30 minutes of physical education instruction. The students generally liked having physical education each day.

21. On December 12, 2012, Pilkington was in the administrative office with the door closed when Respondent walked by with her class enroute to the cafeteria. Respondent's class was unruly and did not follow her directions to walk quietly in two lines.

As she passed the administrative buildings, Respondent's class grew noisy. In response, Respondent yelled at them to be quiet and get in straight lines. Pilkington heard the commotion, exited her office and in front of the students instructed Respondent to lower her voice.

22. Pilkington also became aware of a situation involving student B [REDACTED] S. in Respondent's class. Pilkington learned of the incident when police came to investigate and Kupalian advised her of reports from students about the incident. On February 5, 2013, student B [REDACTED] S. spilled juice on her desk. She got up and went to the sink in the back of the classroom to obtain paper towels because she did not want to use her sleeve to clean up the mess. Respondent instructed B [REDACTED] to sit down. B [REDACTED] attempted to explain that she had spilled juice, but Respondent interrupted her and accused her of "talking back." Instead of sitting down, B [REDACTED] obtained paper towels and returned to her seat. Respondent threatened to suspend B [REDACTED], then told her she was suspended, opened the classroom door, threw B [REDACTED]'s backpack outside, grabbed her by the arm and ordered her out of the classroom. B [REDACTED] "shrugged off" Respondent's grasp, sat back down in her chair with her head on the desk and cried. Other classmates attempted to console B [REDACTED] S.

23. When Pilkington learned of the incident with B [REDACTED] S., and after the school police department advised her that she could handle the matter administratively, she interviewed students, advised Vega and prepared an incident report on the District's computerized incident recording system known as ISTAR. Vega determined that Respondent should be removed from the classroom. Respondent was removed from Los Feliz and did not return.

24. On February 7, 2013, Pilkington wrote to the parents of all of the students in the class and notified them that Respondent had been removed from the classroom because of an incident that occurred on February 5, 2013 and the ensuing investigation. On February 5, 2013, at the direction of the operations director, Pilkington completed a confidential report to the District's Office of General Counsel detailing the information she had obtained from witnesses.

25. Respondent was scheduled for her evaluation in the 2012-2013 schoolyear. On April 26, 2013, Pilkington prepared Respondent's Stull evaluation. According to the April 26, 2013 evaluation, Pilkington's evaluation was based upon observations made on September 6, 2012, September 10, 2012, October 4, 2012, October 11, 2012, November 14, 2012, December 11, 2012 and January 9, 2013 and conferences dated September 7, 2012, September 12, 2012, October 5, 2012, October 25, 2012, November 30, 2012, December 14, 2012 and January 22, 2012 reflected an overall "Below Standard" rating. Pilkington rated Respondent as meeting standards only in the category of "Regularly arrives on time, starts class on time, starts class on schedule." According to the evaluation, Respondent was absent on nine days and never tardy. Respondent was rated as needing improvement in eight areas and not meeting standards in 18 areas.

Specific Allegations from Los Feliz

26. Complainant made specific allegations relative to Respondent's behavior and performance at Los Feliz. The Commission considered the evidence and determined that Complainant failed to prove the allegations set forth in paragraphs 10 and 23 of the Accusation by a preponderance of the evidence. With respect to the remaining allegations asserted about Respondent's conduct during her time at Los Feliz, the Commission made findings of fact with respect to those allegations as follows.

27. In Paragraph 1 of the Accusation, District alleges:

On or about November 8, 2012, CALLAHAN, fourth Grade teacher at Los Feliz Elementary School, called the parent of K [REDACTED] G., a former student, and told the parent that she intended to call LAPD to file a report against Principal Katherine Pilkington. She alleged that the principal was going to take the student out of the home and away from the parents. The parent later requested that her daughter be removed from the teacher's classroom because the phone call frightened her.

28. District failed to establish the allegations set forth in Paragraph 1 of the Accusation by a preponderance of the evidence. District established that Respondent contacted the mother of K [REDACTED] G. who only spoke Spanish. Respondent did not speak Spanish. She had called the mother of K [REDACTED] G. from home. When she discovered that K [REDACTED] G's mother spoke only Spanish, she had one of her neighbors who is bilingual and had been a teacher, translate for her. It was established that there was a lot of confusion during the telephone call, but not that Respondent said the things that are alleged in paragraph 1. It was established that K [REDACTED] G's mother was confused and frightened by the call and asked for her daughter to be moved to a different classroom.

29. District proved the allegations of paragraph 2 of the Accusation by a preponderance of the evidence that: "On or about November 13, 2012, CALLAHAN turned in Quarter 1 progress Reports, which were due on November 8, 2012."

30(A). District proved the allegations paragraphs 3a, c, d, e and f of the Accusation by a preponderance of the evidence that: "On or about December 11, 2012, CALLAHAN failed to turn in the following documents on their due dates: the Treasures On-line Completion Certificate due on November 2, 2012; Quarter 1 Periodic Writing Assessments due on November 9, 2012; Assessment administered throughout Reporting Period 1 due on November 14, 2014; Grade Book due on November 14, 2014; Annotated RFEP Rosters due on November 29, 2012 and Letters re: notice of Annual Progress of Reclassified Students due on November 29, 2012."

31(B). District failed to prove the allegations of paragraph 3b. Instead, it was established that Pilkington refused to accept the Parent Title I compacts that Respondent had collected, she insisted that all compacts be turned in at the same time and Respondent was unable to obtain all of them from the parents.

32. District proved the allegations of paragraph 4 of the Accusation that: "[o]n or about December 12, 2012, CALLAHAN screamed at her students, 'Get in a straight line,' using a harsh manner and with an enraged, angry red face."

33(A). District proved the allegations of paragraph 5a, d, e, f, g, and h of the Accusation that Respondent "failed to notify the office of her absences, not later than 30 minutes before the schedule began the day of the absence, and at least one hour before the end of the day to inform the office is she was returning" on October 8 and 30, 2012, November 27, 2012 and December 5, 13 and 14, 2012.

34(B). District failed to establish the factual allegations of paragraphs 5b and 5c of the Accusation. Instead it was established that while Respondent was not in class on October 19, 2012 and October 26, 2012, she was "housed" at the District's East office and was not absent. It was also established that Respondent had been instructed by District administrators not to contact the school or any staff at the school on those days.

35. District proved by a preponderance of the evidence as alleged in aragraph 6 of the Accusation "[o]n or about January 31, 2013, CALLAHAN failed to submit her on-line child abuse certification as previously directed to do by January 18, 2013."

36. District proved the allegations of paragraph 7a, b and c of the Accusation:

On or about February 5, 2013, CALLAHAN in the presence of students, did the following to student B [REDACTED] S. when she got out of her seat without permission:

a. Screamed at B [REDACTED] S. "You're suspended!" causing B [REDACTED] S. to become fearful and cry.

b. When B [REDACTED] S. refused to leave the classroom CALLAHAN :

i. Grabbed B [REDACTED] S.'s backpack and threw it in the hallway.

ii. Pulled B [REDACTED] S. by her arm.

iii. Yelled at her, 'Get out of my room!'

c. Continued to yell at B [REDACTED] S., 'If you don't want me to suspend you, sit down and shut your mouth.'

37. District failed to prove the factual allegations set forth in paragraph 7d of the Accusation that Respondent "[s]creamed, 'You should be happy. You should be partying because I'm never coming back. You got your wish!'" and did not provide any direct evidence to support the allegation by a preponderance of the evidence.

38. District proved by a preponderance of the evidence the factual allegations of paragraphs 9, 11, 12, 13, 16, 17, 18, 19, and 20 of the Accusation, as follows:

9. On or about September 10, 2012, during the period beginning at 10:15 a.m., CALLAHAN was ineffective in responding to and monitoring student behavior when she did not respond to the following off task student behaviors:

- a. I [REDACTED] was out of his seat;
- b. J [REDACTED] was out of his seat;
- c. A [REDACTED] was out of [her] seat;
- d. R [REDACTED] was out of her seat;
- e. N [REDACTED] was out his seat;
- f. B [REDACTED] was throwing paper at I [REDACTED];
- g. D [REDACTED] was throwing paper at B [REDACTED] and I [REDACTED];
and
- h. L [REDACTED] and H [REDACTED] were running in the classroom.
(para.9)

11. On or about September 10, 2012, during the period beginning at 10:15 a.m., which was designated as Language Arts time, CALLAHAN did not teach an English lesson because she assigned students to independently complete pages 48 and 49 in the math book.

12. On or about September 10, 2012, during the period beginning at 1:20 p.m, CALLAHAN was ineffective in responding to and monitoring student behavior when she did not respond to the following off task student behaviors:

- a. K [REDACTED] was playing with items in her desk;
- b. B [REDACTED] was talking to J [REDACTED];
- c. B [REDACTED] was playing with paper;

- d. [REDACTED] was playing with a paper folding game;
- e. S [REDACTED] was passing papers to another student'
- f. A [REDACTED] had his head down on the desk; and
- g. [REDACTED] was out of his seat.

13. On or about September 10, 2012, during the period beginning at 1:20 a.m., CALLAHAN was disrespectful to students when she said to J [REDACTED] and R [REDACTED], "Keep your mouth shut!"

14. On or about November 14, 2012, CALLAHAN did not present a teacher directed, planned lesson when, for the entire science period, she assigned students to copy the definitions for 10 words from the glossary in the book and said to students, 'I know you did this before, but we are going to do it again...Does it help to copy the definition again? And again? Yes, each time you copy them, it helps you to learn.' She did not discuss or teacher [sic] the meaning of the terms.

15. On or about November 14, 2012, CALLAHAN did not present a teacher directed, planned lesson, when, for the entire math period, she had four multiplication and four division problems on the board and asked students to tell her what to multiply or divide and where to put the answer.

16. On or about November 14, 2012, CALLAHAN did not use academic language when she did not refer to place values as hundreds, tens and ones.

a. When she asked students where to write each part of the answer to math problems, she accepted answers such as "Under the four" rather than, "In the hundred column.

b. When a multiplication yielded 30, she asked, "Where do I put the zero and where do I put the three?" She accepted 'above the five', as opposed to encouraging and modeling language such as 'above the tens column.'

17. On or about November 14, 2012, CALLAHAN did not establish and maintain standards for student behavior. During the math lesson, there were no consequences for off task behaviors:

- a. M [REDACTED] was reading a book.
- b. L [REDACTED] was playing with a map.
- c. M [REDACTED] was looking at his library book.
- d. E [REDACTED] and L [REDACTED] were chatting with each other and not paying attention.
- e. Two students at the back of the room and two on the left side at the front did not participate at all.
- f. Although the teacher called on students individually, many students yelled out answers.

18. On or about November 14, 2012, CALLAHAN did not use a variety of instructional strategies and resources when she called students up one at a time to work out problems on the board, leaving all of the other students to sit idly, chat or read books.

19. On or about January 11, 2013, CALLAHAN did not show evidence of planning when:

- a. She wrote in her plan book, 'Mini-lesson page 367,' but then told students to take out their Treasures book and read page 370.
- b. Upon hearing, students say that they had read that page, she then assigned vocabulary words from a pocket chart.
- c. She informed students that they would take a spelling test, but after students questioned how they could be prepped for a test, she responded, 'Good point! Do you want to look the works up in the dictionary?'

20. On or about January 11, 2013, CALLAHAN did not present any lesson when she assigned students to copy words from a glossary for 20 minutes, and then told students, who finished, to look up those words in a dictionary.

39. District proved by a preponderance of the evidence that Respondent did not check for understanding and sat at the side of the room without circulating or checking students as they worked on January 11, 2013 as alleged in paragraph 20 of the Accusation.

However, District failed to prove by a preponderance of the evidence her conduct was improper. At the time the students were taking a test and Respondent was monitoring the testing..

40. District proved the factual allegations of paragraphs 22, 24, and 26 of the Accusation by a preponderance of the evidence except that, as stipulated by the parties, the lesson was presented on January 9, 2013, not January 22, 2013.

22. On or about January 22, 2013 [January 9, 2013], CALLAHAN did not effectively present a lesson on context clues when, while reading the selection aloud with the students, she had them use context clues to determine the meaning of only one word, 'skyscraper,' although the Teacher's Edition indicated that six highlighted words were to be understood using context clues in preparation for the subsequent story in the anthology.

24. On or about January 22, 2013[January 9, 2013], CALLAHAN did not adequately prepare or preview materials when:

a. She assigned students to copy a chart from the text, and then, after students noticed a similar chart in their workbooks, allowed them to use that chart instead. The chart in the workbook was actually meant to be used on a different selection from the anthology.

b. She asked students to copy the definition of the words highlighted in the selection from both the glossary and the dictionary and did not use the page in the Practice Book (pg. 181) that supports the vocabulary lesson for the story.

25. On or about January 22, 2013 [January 9, 2013] CALLAHAN read the book *Ronald Reagan* with (ELD) students, but only had students take turns reading and did not participate in any activities in the English Language Development (ELD) Teacher's Edition.

26. On or about January 22, 2013 [January 9, 2013], CALLAHAN did not have current student work posted. The ELD board had been posted by the coordinator three months ago. There was no student writing displayed.

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City Terrace Elementary 2013-2014

41. For the 2013-2014 school year, Respondent was moved to City Terrace Elementary School where Elaine Fujiu (Fujiu) was the principal. Fujiu holds an elementary teaching credential, a reading specialist credential, and an administrative credential. When Fujiu was advised by the District that Respondent would be placed at City Terrace as a "must place," she asked that Respondent be placed somewhere else. Fujiu runs a community based school where parents and teachers sit on the committee with Fujiu when interviewing new teachers. Fujiu liked to pick her own teachers to ensure that a new teacher would be the right fit for the school. Nevertheless, she welcomed Respondent and never asked her why she was a "must place."

42. On September 12, 2013, Marsha Oh-Bilodeau, Coordinator for the Peer Assistance and Review Program (PAR) wrote to Fujiu advising her that Respondent would be participating in the PAR program. She included reference information from the PAR program and identified the PAR teacher. (Exhibit 76.)

43. Respondent was assigned to teach third grade. There were two other third grade teachers: Luz Baltazar and Erin Roberts. These two teachers had spent a significant amount of time preparing curriculum and pacing plans for the third grade during the summer recess and invited Respondent to collaborate with them. During the first quarter, Nancy Guardardo replaced Luz Baltazar as a third grade teacher because Ms. Baltazar received a promotion to a coordinator position and assigned responsibility for implementation of a new computer based teacher evaluation system. At grade level meetings, the teachers discussed the third grade pacing plan, homework and graded each other's assessments to ensure uniformity in grading across all third grade classes. Respondent did not participate. When she did attend meetings, she took notes in her journal and did not contribute to the discussion. Ms. Roberts and Ms. Guardardo resented Respondent because she created more work for them and did not maintain an orderly classroom. On one occasion, the two reported to administration that Respondent had been sending text messages on her cellphone during a joint third grade music rehearsal for a holiday assembly and left the auditorium during the rehearsal leaving her students behind and unattended. Respondent had been sending text messages to E [REDACTED]'s father about his behavior during the rehearsal. Respondent's colleagues were annoyed that she left without telling them, her students were not prepared for the rehearsal and were not well behaved.

44. Respondent did not align her homework assignments or class instruction with that of the other third grade teachers. Respondents' students spent an inordinate amount of time in recess or physical education in comparison to the other classes and she rarely assigned homework. As a result, her students fell behind and her instruction was disjointed and confusing. The poor instruction was seen by Ms. Fujiu when she conducted classroom observations and reported by parents. During parent-teacher conferences, Respondent did not have appropriate materials available to support the grades she gave students and did not have report cards available. Respondent yelled at students and threatened to leave the

classroom and never come back and on at least one occasion called a student a moron. Parents at City Terrace had become accustomed to structure and were instructed on the importance of homework and parent participation. Respondent's approach to teaching was not consistent with what the parents had seen in other classrooms and concerned them. Within the first few weeks of school starting, parents began complaining to Principal Fujii that Respondent was strange, did not assign homework and the students were confused by her instruction. Several parents asked for their students to be removed from Respondent's classroom. By mid-year, the students and staff were consumed with gossip about whether Respondent would be fired. Respondent aggravated the situation by telling students that she might get fired because of certain parents and expressing her opinion that the principal was a liar.

45. Principal Fujii spent a considerable amount of time interviewing students about their experiences in Respondent's classroom and documenting incidents and observations involving Respondent's classroom.

46. Fujii conducted observations of Respondent's classroom both in preparation for her Stull evaluation and out of concern based upon the comments she received from parents about the classroom dynamics and instruction on September 23, 2013, October 10, 2013, October 14, 2013, October 25, 2013, November 7, 2013, January 7, 2014 and documented her observations. She was concerned about the lack of rigor and planning in Respondent's instruction and the Respondent's grading policies. She was also concerned about Respondent's failure to follow school rules and what she believed to be Respondent's poor judgment in allowing students to use her personal cellular phone during class time and allowing students to stay in her classroom during recess and after school.

47. Clara Garcia had also become weary from coping with Respondent. Ms. Garcia was the instructional coach and categorical program coordinator at City Terrace during the 2013-2014 school year. She has 14 years of experience with the District and holds an Administrative Credential, a teaching credential and a Bilingual Cross-Cultural Language Arts Development (BCLAD) certification. During the 2013-2014 school year she served as the intervention and instruction coach. In that role, she provided assistance to teachers regarding instruction of English language learners. Ms. Garcia was a credible witness, without bias or ill motive. Her concern was clearly for the instruction, safety and dignity of children. She presented as a dedicated and compassionate educator. Ms. Garcia tried many times to provide Respondent with support to deal with E [REDACTED], an English speaking student with behavioral challenges and a complicated family dynamic.

48. At hearing, Ms. Garcia credibly explained that E [REDACTED] needed structure, consistency and support and she had attempted to assist Respondent in designing supports for E [REDACTED]. His attention wandered, but he was good natured and wanted to please. Ms. Garcia had a small resource specialist class (RSP) and had no problems redirecting E [REDACTED] in the small group setting. At the time, E [REDACTED] was being evaluated by the Student Study Team (SST) and an SST plan had been developed for him that required

Respondent to keep a behavioral chart and walk E [REDACTED] to the principal's office afterschool with the chart. Respondent rarely followed the behavioral chart component of the SST and was often disrespectful to E [REDACTED]. Respondent yelled at E [REDACTED], sent him out of the classroom on errands, to the principal's office, and to Ms. Garcia's RSP classroom whenever possible.

49. On one occasion, Respondent called Ms. Garcia's classroom and insisted that she come to her classroom and deal with E [REDACTED]'s behavior. On another occasion, she called Ms. Garcia's classroom during instructional time to ascertain whether E [REDACTED] had stolen an eraser. Respondent made efforts to deal with E [REDACTED]'s behavior by calling his father who was in the military and stationed on the east coast and sometimes talking to his mother who lived locally, but was ill equipped to deal with E [REDACTED]'s challenges and showed her frustration in her dealings with him.

50. Facing overwhelming opposition from the parents, Ms. Fujui contacted District administration for assistance. In December of 2013, Francisco Gonzales, the District Instructional Director came to the campus to meet with some of the complaining parents to discuss their concerns about Respondent who was not present and had not been invited to the meeting. Based upon his brief observations of Respondent's classroom and the reports from Ms. Fujui, Mr. Gonzales had concerns similar to those of the parents. At hearing, he described Respondent as providing poor quality instruction and creating a "toxic environment." Respondent resisted assistance from her peers and ignored instructions Principal Fujui's directives. As the situation became more intense, Respondent became more agitated and her temper flared with students.

51. Respondent often raised her voice, yelled at students and showed a lack of classroom management skills. On April 9, 2014, Respondent attempted to deal with two students that were playing with the water in the sink in her classroom. She became angry, yelled at the students in a voice loud enough to be heard outside of the classroom and threatened to leave the classroom. Principal Fujui was walking by Respondent's classroom and heard her yelling at the students and threatening to leave. Principal Fujui walked into the classroom in the midst of the situation and witnessed Respondent's demeanor as she continued to yell at the students about their use of the sink and the water.

52. Principal Fujui became concerned for the students after witnessing Respondent's demeanor. Respondent was subsequently relieved of her classroom duties and reassigned to the local District Office. She was not permitted to return to a District classroom after the April 9, 2014 incident. In May of 2014, Respondent received a Notice of Unsatisfactory Act and a Suspension as a result of the April 9, 2014 incident. She also received a below standard Stull evaluation for the 2013-2014 school year in May of 2014.

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Specific Allegations from City Terrace

53. Complainant also made specific allegations relative to Respondent's behavior and performance at City Terrace. The Commission considered the evidence and determined that Complainant failed to prove the allegations set forth in paragraphs 29, 40a, 40c, 42, and 49 of the Accusation, by a preponderance of the evidence. With respect to the remaining allegations asserted about Respondent's conduct during her time at City Terrace, the Commission made findings of fact with respect to those allegations as follows.

54. Complainant established by a preponderance of the evidence the allegations contained in paragraph 27,30-34, 36, 39, 40a, 40b, 40d, 41,43- 47, and 51-55 of the Accusation as follows :

27. On or about October 8, 2013, CALLAHAN, when introducing Unit 2 Week 1 *Let's Trade* vocabulary words, provided a low level introduction to the words.

- a. The teacher did almost all of the talking during the lesson activity.
- b. Student participation was at a minimum, with one or few word answers.
- c. The students were only required to copy what the teacher wrote on the board onto their papers.
- d. There were no illustrations provided for a connection to the word as provided in *Treasures* on the CD or hard copies.

30. On or about September 23, 2013, CALLAHAN did not identify or review with the students the learning objective on page 72A or the *envision Math* Teacher edition, which stated that students would 'solve problems by subtraction with mental math,' resulting in the following response from students to the question, 'What are you learning and why?'

- a. Student J [REDACTED] M. said, 'Mental Math.' When the principal asked him why he said, 'I can learn about mental math.'
- b. Student K [REDACTED] responded, '"To learn Mental math.' When asked why she responded, 'To learn new math.'
- c. Student K [REDACTED] R. said, 'Mental Math.' Her response to why was, 'That is a hard question.'

d. Student A [redacted] responded, 'Subtracting 74-18.'
The response to why was, 'It is the right price (referring to problem number nine).'

31. On or about September 23, 2012, CALLAHAN failed to provide evidence of lesson planning (i.e. plan book or other documentation).

32. On or about September 23, 2013, CALLAHAN did not follow the plan in the *envision Math* Teacher Edition (pages 72A, 72B, 72, 73) which indicated the following:

a. Develop the Concept via an interactive activity in which the teacher is to:

i. Set the Purpose and make a connection to real life.

ii. Pose a problem and allow students to work collaboratively to solve the problem.

iii. Create a link to prior learning using the problem that was just solved.

iv. Instruct in small steps by showing them another strategy.

v. Have the students work in pairs to solve a given problem.

b. develop the Concepts via the Visual Learning Bridge at the top of pages 712 and 73 in the T.E. and student textbook.

i. Provide guided Practice with ideas for error intervention and reteaching.

ii. Provide independent practice.

c. Instead she:

i. Had written on the board 'Math page 72#1-35 fold it 4x.'

ii. Asked for a volunteer to read the title of the lesson and then asked for a volunteer to find the lesson on mental math in Chapter 3.

iii. Copied problems from the textbook onto the board vertically rather than horizontally as they were in the book.

iv. Asked students, 'What should I write under (number)' and solved problems 1-6 in this manner.

v. Told the students to write problems 1-2 again and explained a different estimation strategy where one changes both numbers in the same way and then subtracts.-

33. On or about September 23, 2013, CALLAHAN did not teach a directed lesson that followed the Gradual Release Responsibility Model (I do, we do, you do approach). As a result, the delivery of the content was not effective.

a. CALLAHAN did almost all of the talking during the lesson activity. The students were only required to copy what the teacher wrote on the board onto their papers.

b. Instead of teaching the students how to solve a problem in their head by rounding (mental math), she wrote the problems on the board and showed them how to solve via paper/pencil.

c. She did not teach or reteach a concept or skill to the students and instead moved straight to the guided practice.

34. On or about September 23, 2013, CALLAHAN did not clearly communicate directions, procedures, and information to the students which resulted in the students being confused.

a. She told the student to, 'Copy new number one, two and three instead of doing number nine (referring to problem number nine in the textbook).'

b. the students did not understand what she, so CALLAHAN said, 'Where you would be doing number nine do number one. Where number nine should have been (on the students' paper) do this one (pointed to problem on the board). Number 10 this one (points to another problem on the board).'

c. She said, 'Maybe you should copy number four the right way. Oh well, just leave it like this. Number six, this is actually number four but I made a mistake. Life goes on.'

d. When a student said, 'I'm confused,' she responded, 'You got unconfused. You didn't know what I was asking now you do.'

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36. On or about September 23, 2013, CALLAHAN did not monitor student learning in order to inform her instruction and advance student learning.

a. during the 35-minute observation, she circulated the perimeter of the classroom only one time.

b. She did not look at the students work.

c. She did not ask questions of individual students to check for understanding.

d. She stood at the front of the room or sat at the table in the front of the room.

e. She did not model how to solve a problem using mental math.

f. She did not have students come up the board to solve the problems; she solved them at the board.

g. She did not have the students share one of the mental math strategies used to solve a problem (rounding, changing both numbers in the same way).

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39. On or about October 10, 2013, CALLAHAN did not use instructional time effectively.

a. She sent student A [REDACTED] to the office at 8:25 a.m. to turn in the attendance note envelope; even though she had previously been told that the attendance notes are to be kept in her room until the end of the school year.

b. She sent students E [REDACTED], P [REDACTED], and M [REDACTED] down to the office to turn in the PTA movie tear off.

i. P [REDACTED] informed the administrator that at least five students told the teacher the tickets were to be given to the PTA when entering the movie on Friday. This was also indicated on the flyer.

ii. The administrator walked to CALLAHAN's class with the student to clarify the procedures to follow regarding attendance notes and the PTA movie ticket. CALLAHAN stated to the administrator, 'I knew the PTA ticket was turned in at the movie, but I just wanted to verify. I don't know how to mark an absence online. I didn't have to do it last school year.'

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a. On or about the week of October 7, 2013, CALLAHAN was ineffective in monitoring and responding to student behavior when she constantly interrupted the Resource Program with her questions regarding student behavior and with demands for the Resource Teacher to come up to her room to discipline her students.

b. She called the RSP room to ask if S. Zermeno, RSP aide, had given a student a sharpener/eraser.

...

d. On October 10, 2013, at approximately 10:00 a.m., CALLAHAN called the RSP room to say that E [REDACTED] V. was screaming, and then asked if T. Moren, RST, could come and watch her students for an hour or so because she was having an 'emergency.' Ms. Moren informed CALLAHAN that she was teaching students, and that she need to inform the principal of her emergency.

41. On or about October 10, 2013, CALLAHAN was ineffective in monitoring and responding to student behavior when she:

a. Did not walk student E [REDACTED] V. down to the office at 2:30 p.m. With is Daily Behavior Chart (as the administrator had requested her to do on several occasions) so that the administrator could support CALLAHAN with the monitoring of E [REDACTED]'s behavior. Instead CALLAHAN sent a note stating that the administrator should look for E [REDACTED] in YDP.

b. Failed to document on the Daily Behavior Chart for student E [REDACTED] V. the negative student actions and very few, if any, positive actions.

43. On or about November 1, 2013, CALLAHAN did not use good judgment when she allowed student V [REDACTED] O. to use her (CALLAHAN'S) personal cell phone to call home because she was not feeling well. Because the mother did not recognize the phone number, she did not answer the call. V [REDACTED] then called her sister, who took the call and informed the mother.

44. On or about November 4, 2013, CALLAHAN did not use good judgment when she allowed student V [REDACTED] O. to use her personal (CALLAHAN'S) cell phone to call her older sister while the sister was also in school to ask if she could go to a friend's house after school.

45. On or about the period from October 24, 2013 to November 4, 2013, CALLAHAN failed to provide parent communications regarding E [REDACTED] V. when she did not give Daily Behavior Chart to his sister E [REDACTED] V. on October 24, 25, 28, 29 and November 4, 2013.

46. On or about November 7, 2013, CALLAHAN did not demonstrate evidence of having designed instruction that engaged students in cognitively challenging work that was aligned to grade level content standards.

a. The *Treasure's* Reading Language Arts Teacher Edition lesson plan (pages 275C and 275D) for the day of the observation indicated that the focus of the writing was on strong verbs and that the teacher should do the following:

i. Use the example from the story *A Castle on Viola Street* to show the author's skilled use of strong verbs.

ii. Read a paragraph about *Jell-o* and discuss how the author used strong verbs to help the student imagine the moment.

- iii. Ask focus questions to explore the students' reactions to particular passages in the reading and to deepen their connection to the text thus improving their own writing.
 - iv. Write the following journal prompt on the board, 'Imagine you're fixing up a house for someone. Select one moment. Write a short paragraph about that moment.'
 - v. Tell the students that the teacher would be reading and commenting on their writing during Writing Conference time.
 - vi. Model how to use the Writer's Checklist to write and revise their work.
- b. There was no evidence (i.e. Writer's Checklist, teacher model, list of strong verbs) to reflect that CALLAHAN did any of this. Instead the (*sic*) she did the following:
- i. Wrote the writing prompt on the board: 'Suppose you are a parent in Castle on Viola Street. Write about why you want a house.'
 - ii. Circulated around the classroom periodically writing words on the board that the students asked her to spell. She said, 'Raise your hand if you have finished.'
 - iii. Grouped the students and told them to read their stories to each other, but she did not give the students a purpose for sharing (i.e. listen for the strong verbs).
- c. The Teacher's Edition also indicated that this was part of a six week writing process that focused on a different skill each week in order to help the students get a solid foundation on the various aspects of Expository/Description and thus write an independent piece at the end of week six. These skills were the following:
- Week 1-Strong Sentences: Showing
- Week 2-Strong Paragraphs: Showing

Week 3-Expository/Description (Guided Writing)

Week 4-Strong Sentences: Strong Verbs

Week 5-Strong Paragraphs: Strong Verbs

Week 6-Expository/Description (Independent Writing)

There was no evidence (i.e. charts, student work samples, teacher models) anywhere in the classroom to reflect that the teacher had done any of the suggested activities for Weeks 1-3 which would have prepared the students for the Week 4 assignment.

47. On or about November 7, 2013, CALLAHAN did not state or review the language and content objectives for the writing lesson nor were they posted anywhere in the classroom.

51. During the period commencing on or about January 13, 2014, and ending on or about February 24, 2014, CALLAHAN told her students to tell their parents not to complain to the principal about her because if parents complained, she would be fired.

52. During the period commencing on or about January 13, 2014, and ending on or about February 24, 2014, CALLAHAN made the following statements to students regarding Principal, Elaine Fujiu:

- a. 'Ms. Fujiu is a liar.'
- b. 'Ms. Fujiu said that I write on the board and do not teach the students.'
- c. 'The principal is using E [REDACTED] to get me fired.'
- d. 'Ms. Fujiu tells lies about me.'
- e. 'I do not give homework some days because the copy machine is not working.'
- f. 'I am better than the principal and kids like me better.'

53. During the period commencing on or about January 13, 2014, and ending on or about February 24, 2014, CALLAHAN called student A [REDACTED] a 'moron' in response to A [REDACTED]'s off-task behavior.

54. During the period commencing on or about January 13, 2014, and ending on or about February 24, 2014, in the presence of her class of students, CALLAHAN did the following to student E [REDACTED]:

- a. Told E [REDACTED] to 'shut up.'
- b. Told the class that 'E [REDACTED] doesn't listen and the class will not get a cupcake and will be in trouble.'
- c. Told the class that she was going to be gone for 20 days and that it was E [REDACTED]'s fault.

55. On or about April 9, 2014, CALLAHAN, 3rd grade teacher at City Terrace Elementary School, failed to follow an administrative directive when she screamed the following at her class of students, loudly enough to be heard through a closed door by the principal:

- a. 'If you don't leave the water alone, I am going to walk out of this room right now!'
- b. 'Quit touching the sink!'
- c. 'I am going to have them turn off the water if you don't quit touching the sink!'
- d. 'Stop turning on the water!'
- e. 'If you go to the water fountain, I'm going to go out, and I'm never coming back!'

55A. In paragraph 28 of the Accusation, the District alleged:

On or about the period from September to October 2013, CALLAHAN assigned daily student journal writing which was ineffective and not aligned to instructional standards for third grade.

- a. She assigned students to copy sentences that she wrote on the board about the date, where we live, names of other United States cities, the seven continents, names of the colors and the names of the months.
- b. Most of the journal entries were repeated over and over for many weeks.

55B. District established the factual allegations of paragraph 28a and 28b of Accusation by a preponderance of the evidence. However, District generally failed to prove that the student journal writing was ineffective and not aligned to instructional standards for third grade. District proved by a preponderance of the evidence that the copying of the names of the colors and the names of the months was not aligned with state standards.

56A. In paragraph 35 of the Accusation, the District alleged:

On or about September 23, 2013, CALLAHAN did not identify or define vocabulary terms that were relevant to the lesson such as: mental math, rounding, estimation, subtract.

56B. District established by a preponderance of the evidence that Respondent did not identify or define the vocabulary terms "mental math", "rounding" and "estimation" that were relevant to the lesson. The term "subtract" was not new to the class and therefore Respondent was not required to identify or define "subtract."

57A. In paragraph 37 of the Accusation District alleged

On or about September 23, 2012, CALLAHAN interacted with some students negatively or inappropriately.

a. the teacher constantly called attention to student R [REDACTED] N. for behaviors that other students were exhibiting. She asked him three times if he had written his name on the paper and did not ask any other students if they had written their names on their papers, despite the fact that at least two other students did not have their names on their papers.

b. The teacher told R [REDACTED] N. to, 'Turn around and face your desk,' when there were two girls in the back of the classroom that were turned in their seats and not facing the front and the teacher did not address them.

c. The tone in the teacher's voice when addressing student R [REDACTED] N. was that of irritation, 'Leave that chair alone and get your name on the paper?' 'I can't tell you how many levels of bad that is.'

d. Student J [REDACTED] H. wanted to say something but the teacher gave her a stern look and she responded, 'Never mind.'

e. At approximately 1:20 p.m. student E [REDACTED] V. brought his behavior chart up to the teacher and she

responded, 'I can't finish that until 2:30 p.m.' followed by, 'All right, I'm sorry I was interrupted.'

57B. District proved the factual allegations of paragraph 37a, b, and d of the Accusation by a preponderance of the evidence. It was also established by a preponderance of the evidence that Respondent made the statements alleged in paragraph 37c. However, District failed to prove by a preponderance of the evidence that the 'tone' of the teacher's instruction to the students was 'that of irritation.' District failed to prove the factual allegations set forth in paragraph 37 e of the Accusation. Furthermore, District failed to prove by a preponderance of the evidence that the allegations that were proven were either negative or inappropriate.

58A. In paragraph 38 of the Accusation, District alleged:

October 25 at 1:30 to 1:45 p.m., CALLAHAN spent 15 minutes of instructional time reviewing the directions for homework. The homework assignment directions were repeated consistently weekly for the third grade such as: 'Draw a picture to represent the word. Write each work in a sentence. Practice fluency and record it daily. Practice the times tables.' Also the directions were written on each assignment and the assignment sheet. There were no questions on the homework assignment from the students as CALLAHAN reviewed them for fifteen minutes.

58B. District proved by a preponderance of the evidence that Respondent made the statements attributed to her in paragraph 38 of the Accusation. However, District failed to prove by a preponderance of the evidence that the statements and conduct were inappropriate.

59A. In paragraph 48 of the Accusation, Complainant alleged:

On or about November 7, 2013, did not monitor and respond to student behavior effectively as she did not respond to the following off task behaviors:

- a. Students A [redacted] and V [redacted] O. passed notes back and forth.
- b. Student A [redacted] turned in her seat to talk to Student K [redacted] F.
- c. Student O [redacted] G. was up out of his seat talking to student J [redacted] M.

59B. District proved by a preponderance of the evidence that the facts alleged in paragraph 48a, b and c occurred, but failed to prove that these behaviors were off task or that a response was required to the behaviors.

60A. In Paragraph 50 of Accusation, Complainant alleged:

During the period commencing on or about Tuesday, January 21, 2014, and ending on or about January 28, 2014, CALLAHAN failed to follow an administrative directive not to retaliate against anyone who had filed or was participating in the investigation of a complaint when she stated the following, in the presence of her class of students:

- a. 'I might be fired because of V [REDACTED]'s mother. She did not want me to let V [REDACTED] use my cell phone. She complained to the principal.'
- b. 'I might get fired and I will miss you a lot and you'll have another teacher for the rest of the year.'
- c. 'I hope I don't get fired.'

60B. District proved the factual allegations of paragraph 50a, b and c of the Accusation by a preponderance of the evidence, but failed to prove by a preponderance of the evidence that such facts constituted failure to follow an administrative directive or retaliation.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. In this case, the District has the burden of proving the allegations of the Charges by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.) Preponderance of the evidence means that "the evidence on [the District's] side outweighs, preponderates over, is more than, the evidence on the other side." (*Glage v. Hawes Firearms Co.* (1990) 226 Cal.App.3d 314, 325.) The "preponderance of the evidence" standard requires the trier of fact to believe that the existence of a fact is more probable than its nonexistence. (*In re Michael G.* (1998) 63 Cal.App.4th 700, 709.)

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Cause for Dismissal

2. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in Education Code² section 44932 and 44939 are established. In this case, the District seeks respondent's dismissal based on (1) unprofessional conduct, (2) immoral conduct, (3) egregious misconduct, (4) unsatisfactory performance, (5) evident unfitness for service, (6) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the state board or by the governing board of the school district employing him or her and (7) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district.

3. Complainant established by a preponderance of the evidence that Respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(2). Unprofessional conduct in the teaching profession has been defined as that which violates the rules or ethical code of the profession or is unbecoming a member of the profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.) Respondent's conduct was inconsistent with the rules of the profession and unbecoming of a member of the profession in good standing. Specifically, the preponderance of the evidence demonstrated that Respondent failed to comply with administrative directives, yelled at students, demeaned students, failed to provide students with appropriate instruction and allowed them to use her cellular telephone during class time.

4. Complainant failed to establish by a preponderance of the evidence that Respondent engaged in immoral conduct within the meaning of section 44932, subdivision (a)(1). The term "immoral conduct" is not confined to sexual matters. Immoral conduct has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

5. Complainant also failed to establish by a preponderance of the evidence that Respondent engaged in egregious misconduct within the meaning of section 44932, subdivision (a)(1). While Respondent's handling of Barbara and her overall demeanor were unprofessional, they did not rise to the level of egregious misconduct.

6. Complainant established Respondent's unsatisfactory performance by a preponderance of the evidence within the meaning of section 44932, subdivision (a)(5). The

² All further references to Code shall mean the Education Code.

term “unsatisfactory performance” is not specifically defined in the Code or case law. Inasmuch as there is a separate cause for dismissal for unprofessional conduct in section 44932, it is not to be presumed that the Legislature intended to enact completely duplicative statutes and unsatisfactory performance must mean something different from unprofessional conduct. (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110.) In fact, section 44938, subdivision (c), specifies that “unsatisfactory performance” does not include any other cause for dismissal specified in section 44932. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance. Section 44660 et seq., referenced in section 44938, establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. An employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed in an unsatisfactory manner. It has been observed that the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass’n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Thus, cause for discipline may be established if a certificated employee performs in an unsatisfactory manner to her employing school district.

7. Respondent displayed a lack of planning and instruction, a lack of classroom environment and management and a failure to engage in professional development and growth. Respondent was given numerous warnings, directives and appropriate support and guidance to improve her performance including the services of a PAR teacher. After Respondent was removed from Los Feliz under unfavorable circumstances, she was given a second opportunity to teach at City Terrace. Despite provided meaningful opportunity to improve her performance, Respondent failed to improve. Importantly, her performance deteriorated as time passed.

8. Complainant established by a preponderance of the evidence that Respondent is evidently unfit for service as a teacher, pursuant to section 44932, subdivision (a)(6). “Evident unfitness for service” means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) “Evident unfitness for service” connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Id.*) In this case, Respondent demonstrated demeanor and fixed personality traits that were immutable and inconsistent with the teaching profession. The preponderance of the evidence demonstrated that Respondent lacks the demeanor, patience, skill and organization to perform as teacher. Moreover, she has displayed an inability to take direction and to collaborate with administrators, parents and/or colleagues in the delivery of education to students. Despite opportunities for professional development and collaboration, Respondent failed to show improvement.

9. Complainant established by a preponderance of the evidence that Respondent persistently violated or refused to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the Board, within the meaning of section 44932, subdivision (a)(8). Cause for discipline here may be based on the violation of school rules or district policies. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.) However, there must be a "showing of intentional and continual refusal to cooperate." (*Id.* at p. 1196.) The violation must be persistent or "motivated by an attitude of continuous insubordination." (*Governing Board of the Governing Board of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 322.) In this case, Respondent demonstrated a persistent refusal to turn in documents including certifications, documents, grades and assessments as instructed and abide by prescribed deadlines to complete tasks and instruction. Additionally, Respondent failed to abide by school policies regarding instruction, grades, pacing, and her interactions with student, staff and administrators.

10. Complainant established by a preponderance of the evidence that Respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district within the meaning of Code section 44939, subdivision (b) when she refused to turn in documents, grades, assessments, and certifications in a timely manner as required by school and District policies.

11. Generally, in deciding whether cause for dismissal on the grounds of unprofessional conduct and evident unfitness for service, it also must be established that a teacher's misconduct relates to her fitness to teach, within the meaning of *Morrison v. State Board of Education* (*Morrison*) (1969) 1 Cal.3d 214, 227-230). The *Morrison* analysis does not apply to cause for dismissal for unsatisfactory performance or persistent violation of school rules, laws or policies because such theories, by definition, have a direct nexus with teaching. (*Id.*, at pp. 227-230). With regard to the remaining identified causes for dismissal that must be analyzed, all of the factors suggested by *Morrison* were considered and compared to the facts established above. Not all "*Morrison* factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.) As applied in this case, the applicable factors support a nexus between Respondent's conduct and respondent's fitness to teach.

12. In *Morrison*, the California Supreme Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as (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.

13. In *Morrison*, the California Supreme Court noted that legislation authorizing disciplinary action against the holders of a variety of certificates, licenses and government jobs, other than teaching, contain general terms. The Court had not attempted to formulate explicit definitions of those terms, but had given those terms more precise meaning by referring to the particular profession or specific governmental position to which they were applicable. (*Morrison, supra*, 1 Cal.3d at p. 220). With regard to such general terms "immoral" or unprofessional conduct" and "moral turpitude," those terms had to be interpreted in a manner bearing upon the teacher's fitness to teach. "Without such a reasonable interpretation, the terms would be susceptible to so broad an application as possibly to subject to discipline virtually every teacher in the state." (*Ibid.*, at p. 225.) Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana Unified School District v. Burman* (1988) 45 Cal. 3d, 209, 220.) The *Morrison* factors are analyzed with regard to Respondent's conduct as follows:

(A) *Morrison* Factor: *The likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity.* Respondent's conduct adversely affected students and fellow teachers in a profound way. Respondent created a chaotic and negative environment for her students. Respondent refused to cooperate and collaborate with colleagues creating a toxic work environment for herself and those around her.

(B) *Morrison* Factor: *The proximity or remoteness in time of the conduct.* Respondent's conduct was recent.

(C) *Morrison* Factor: *The type of teaching certificate held by the teacher.* Respondent held a K-12 teaching credential which was the appropriate credential for her teaching assignments.

(D) *Morrison* Factor: *The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct.* In aggravation, Respondent engaged in bizarre behavior such as having a tape recorder around her neck in the teacher's lounge and about school premises, taking copious notes of the comments made by colleagues and administrators and writing in her journal and making rude comments to and about other staff members. In extenuation, Respondent was under a considerable amount of stress professionally having been at three schools in three academic years and being deemed a "must place." Additionally, Respondent had to familiarize herself with new administrators

and procedures at each school. Respondent was under personal stress due to a serious family illness.

(E) *Morrison Factor: The praiseworthiness or blameworthiness of the motives resulting in the conduct.* Respondent's motives were neither praiseworthy nor blameworthy.

(F) *Morrison Factor: Likelihood of Recurrence:* Respondent's conduct is likely to recur.

(G) *Morrison Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.* There is no constitutional right involved.

14. As described above, the District established by a preponderance of the evidence, after consideration of the *Morrison* factors, the Commission does not consider respondent temperamentally suited to be in the classroom with school students and finds that her conduct was unprofessional and related to her performance as a public school teacher.

15. The Commission affirms the Board's decision to terminate respondent's employment with the District. The District established that cause exists to dismiss respondent's employment for unprofessional conduct, evident unfitness for service, unsatisfactory performance, willful refusal to perform regular assignments and persistent violation of school laws and regulations.

16. The Commission unanimously determined that dismissal of Respondent was necessary and appropriate. Respondent was given numerous opportunities to improve her behavior and teaching at two different schools and failed to make any substantial improvement. On the contrary, Respondent's conduct and her ability to manage her students' behaviors and her classroom continued to erode until she was removed from the classroom. Respondent does not have the appropriate demeanor and disposition to work with children or in an environment that requires adherence to deadlines, intellectual curiosity, flexibility and collaboration with colleagues and administrators.

17. Respondent's claim that she was dismissed as a retaliatory measure is rejected. Respondent failed to establish that she was the subject of retaliation or that she engaged in any protected activity that resulted in retaliation against her.

ORDER

1. The Board of the District's decision to terminate respondent's employment with the District is affirmed.

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2. Respondent Melinda Callahan is dismissed as a permanent certified employee of the District.

DATED: January 6, 2017

DocuSigned by:
Mary Bennett
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Mary Bennett
Member
Commission on Professional
Competence

DATED: January 6, 2017

DocuSigned by:
Luciano Ortiz
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Luciano Ortiz
Member
Commission on Professional
Competence

DATED: January 6, 2017

DocuSigned by:
Glynda B. Gomez
BB367A214FA9483...

Glynda B. Gomez
Administrative Law Judge
Commission on Professional
Competence