

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS AND A  
COMMISSION ON PROFESSIONAL COMPETENCE  
NEWPORT-MESA UNIFIED SCHOOL DISTRICT  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

LIANNE PFISTER,  
A Permanent Certificated Employee,

Respondent.

OAH No. 2014010104

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) in Costa Mesa on March 10-13, 17-20, 24-26, 30, 2015; April 1-2, 2015; June 13-17 and 20-22, 2016; and August 8-10, 2016. The Commission consisted of Christianne Off, M.A., CCC-SLP; Susan Svendsen, M.S., CCC-SLP; and Erlinda G. Shrenger, Administrative Law Judge, Office of Administrative Hearings, State of California, who presided.

Anthony P. De Marco, Esq., and Barbara J. Ginsburg, Esq., Atkinson, Andelson, Loya, Ruud & Romo, represented Newport-Mesa Unified School District (District). Daniel J. Kolodziej, Esq., Trygstad, Schwab & Trygstad, represented Lianne Pfister (Respondent).

Oral and documentary evidence was received, and the hearing was concluded on August 10, 2016. The record was held open for the submission of written closing briefs as follows: the District's brief was due by August 26, 2016, Respondent's brief was due by September 26, 2016, and the District's reply brief was due by October 7, 2016. The parties timely filed their briefs. The District's closing brief was marked as Exhibit 58 and its reply brief was marked as Exhibit 59. Respondent's closing brief was marked as Exhibit 1518. The record was closed and the case was submitted for decision on October 7, 2016.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. Respondent is a permanent certificated employee of the District.

2. On November 12, 2013, a Statement of Charges was filed with the District's governing board by John Caldecott, Executive Director of Human Resources for the District. The District's governing board adopted a resolution on November 12, 2013, indicating its intent to dismiss Respondent from employment based on the acts and conduct described in the Statement of Charges.

3. On November 15, 2013, the District served respondent with a Notice of Intent to Immediately Suspend Without Pay and Dismiss, which notified Respondent of the District's intent to dismiss her within 30 days unless she demanded a hearing. On December 6, 2013, Respondent filed a Request for Hearing. On December 17, 2013, the District served Respondent with a Notice of Accusation, Accusation, and related documents. Respondent filed a Notice of Defense. All jurisdictional requirements have been met.

### *Respondent's Background*

4. Respondent is 58 years old. She is of Hawaiian descent and was born and raised in Hawaii. She is married and has two sons (ages 25 and 19). Her younger son has high functioning autism.

5. Respondent received her bachelors of science degree in speech pathology and audiology from the University of Hawaii in 1980. She received her master's degree in speech pathology and audiology from California State University, Los Angeles. In 2005, she began a Ph.D. program through Walden University. Respondent progressed through the Ph.D. program up to the point of doing her dissertation but her progress was delayed for reasons not specified in her testimony. Respondent testified that she is allowed to include in her title the initials "ABD," which means "all but dissertation."

6. Respondent holds a Certificate of Clinical Competence (CCC) from the American Speech-Language-Hearing Association (ASHA). She holds a California state license to practice as a speech language pathologist. She also holds a Clinical Rehabilitative Services Credential with Special Class Authorization and a certificate of school audiometry.

7. Since 2013, Respondent has worked for Chapman University as an adjunct professor of communication disorders and sciences. She teaches in the post-baccalaureate program. She also supervises master's degree students when they are in the field to get hours needed for their licensure. Respondent is authorized to supervise the students in various activities such as assessment, providing therapy, and writing reports. In addition, Respondent works in a private practice office and per diem for home health care agencies and in hospital settings.

8. Respondent has approximately 29 years' experience working as a speech language pathologist (SLP) in public schools. She began her career working in preschools and elementary schools in various school districts. Respondent did itinerant SLP work in those settings for many years but what she really wanted to do was work in high schools because she felt her skills were best served in that setting. Respondent was hired by the

District as an SLP on August 23, 2006. She worked at Corona Del Mar High School for five years prior to her assignment to Mariners Elementary School (Mariners) for the 2012-2013 school year.

### *Position and Duties*

9. The District's Special Education Procedural Handbook (Handbook) "provides special and general educators information regarding the process and procedures for students with special needs who require special education services." (Exh. 1, p. 175.)

10. The basic functions of an SLP for the District are to "screen, assess and provide specialized speech and language services and assistance for children and young adults with communication disorders who qualify for services as established by State Standards; participate in developing and implementing Individual Education Plans (IEPs) for students who qualify for Designated Instruction and Services (DIS); provide speech and language therapy to individuals and/or groups of students." (Exh. 1, p. 347) These basic functions are performed by the SLP "[u]nder the direction of the Principal and Director of Special Education." (*Id.*)

11. The representative duties of an SLP for the District include, but are not limited to, providing "specialized services and assistance with the assessment and screening of children and young adults with speech and language disorders; utilize age-appropriate standardized and non-standardized testing and assessment tools; provide phonological, language voice and fluency training in individual or small groups of students"; "[p]repare, type and maintain a variety of related records and reports, such as IEP's, annual assessment reports, daily speech logs, attendance register, notes and files." (Exh. 1, p. 347.)

12. A "case carrier" is the IEP team member who is in charge of a student's IEP and schedules and runs the IEP meetings, prepares all IEP documentation, maintains the student's records, and ensures that services and supports are being implemented in accordance with the IEP. In short, the person designated as a student's case carrier is responsible for all aspects of that student's IEP. In general, an SLP will be designated a student's case carrier when the only service the student is receiving is for speech and language. However, when the student has needs in academic areas, a special education teacher will be designated the case carrier. In that situation, the SLP participates as an IEP team member only with respect to the student's needs in the area of communication and has no case carrier responsibilities.

### *Confidential Files*

13. The District maintains a "confidential file" (also referred to as a "brown file" or "legal file") for each special education student. The District requires that "[a]ll confidential special education files beginning with an initial IEP must be organized in the manner detailed [in the Handbook]." (Exh. 1, p. 277.) The procedures to organize the confidential file include the following:

"1. The student's case carrier is responsible for maintaining the ONE Confidential file at the student's school site. [¶] . . . [¶]

"4. Case carrier and team members (SLP, Psych, APE, OT) will place ALL original documents, i.e. all original correspondence, IEP documents, all protocols, etc. in the appropriate sections (see ***Confidential File Organization*** chart; no duplicates). [¶] ... [¶]

"6. ALL protocols, from the last **6 years**, are to be placed in a manila envelope and stored at the back of the Brown File. Protocols beyond 6 years are to be placed in manila envelopes, labeled with the student's name and birth date, and sent to Special Education Records, Attn: Student Records Technician, at the District Office.

"7. This file is considered the **ONLY** Confidential [file] for each student. It contains ALL original documents and is to be stored in a common area in the front office of the school where the student attends. It is to be kept in a cabinet that can be locked. [¶] ... [¶]

"9. When an IEP meeting is held, the case carrier will bring the CONFIDENTIAL file to the meeting, and will be responsible for the [sic] maintaining an organized file. [¶] ... [¶]

"11. Zone Coordinators will need to rely on Genesee [now Synergy, discussed below] for IEP information and will travel to school sites when needing access to the Confidential File. It [is] imperative that ALL information be entered into Genesee (including notes) ensuring that Coordinators and attorneys have access to current data."

(Exh. 1, p. 277 [bold and italics in original].)

#### *Synergy Computer System*

14. An SLP for the District must have knowledge of, among other things, record-keeping techniques, and must have the ability to, among other things, maintain records and prepare reports, operate a computer terminal to enter data, maintain records and generate reports, and maintain current knowledge of program rules, regulations, requirements and restrictions. (Exh. 1, p. 348.)

15. The District's computer system for entering data, maintaining records, and generating documents and reports is called Synergy.<sup>1</sup> Synergy is a web-based program for

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<sup>1</sup> Synergy was formerly known as Genesee. An example of the Synergy screen is found at Exhibit 1, page 637.

generating IEPs and all related and supporting documents for an IEP, such as IEP meeting notices and assessment plans. Synergy keeps track of when IEPs are due. Every case carrier has a "portfolio" in Synergy which lists all of the students that the case carrier is servicing and keeps track of all IEP dates and deadlines. The program will send alarms or signals as IEP related dates and deadlines approach.

16. Workflow is a section of Synergy that keeps track of the steps for completing an IEP. Once the case carrier has the assessment plan signed by the parent, the case carrier initiates the Workflow process through Synergy. The Workflow screen guides the case carrier through the various steps for preparing an IEP and ensuring that none of the required steps in the process are missed. The case carrier enters the date each step in the IEP process is completed and/or the status of the particular step. For example, the case carrier will input the date that the student's parent responded to an IEP meeting notice and agreed to a meeting date; the date the IEP meeting was convened and whether the parent attended; the date the parent gave full consent to the IEP; and the date the "IEP is finalized as current or FAPE offer."<sup>2</sup> The data entered in the Workflow section of Synergy is not reported to the State.

17. CASEMIS is another section of the Synergy program.<sup>3</sup> The information in CASEMIS is reported by the District to the State two times per school year, in December and June, as required under special education law. When an IEP is finalized in Synergy, data from the IEP will auto-populate the fields in CASEMIS. For example, the "effective date" shown in CASEMIS is supposed to match the date the IEP is finalized and approved and consented to by the parent. The "effective date" in CASEMIS is used to determine whether the IEP complies with IEP timelines. A report or alarm goes out if the "effective date" in CASEMIS indicates non-compliance with IEP timelines for the particular student's IEP. Although the "effective date" in CASEMIS is auto-populated by data from the finalized IEP, the "effective date" can also be manually changed, for example, to a date that gives the appearance that an IEP is timely or to prevent alarms indicating the IEP is untimely.

#### *Mariners Elementary School*

18. Mariners is a school with approximately 800 students. It has one preschool special day class (SDC) and classrooms for kindergarten through sixth grade (K-6). At all relevant times, Pam Coughlin was the principal at Mariners.

19. At all relevant times, Heidi McDowell was a special education zone coordinator for the District. The District is divided into zones. McDowell was the zone coordinator for the zone that included Mariners. In general, the duties of a zone coordinator are to act as a special education administrator for the schools within their zone, provide support to staff, parents, and site administrators, attend IEP meetings, and work with staff on compliance

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<sup>2</sup> Examples of the Workflow screen are found at Exhibit 1, pages 598, 639, 649, 665, and 690.

<sup>3</sup> Examples of the CASEMIS screen are found at Exhibit 1, pages 595, 635, and 638.

preparing for IEPs and other special education issues that may arise at a school site. The zone coordinator's duties also include supervising the SLPs assigned to schools within their zone. McDowell was Respondent's supervisor when she was the SLP assigned to Mariners.

20. McDowell has over 20 years' experience working in special education. She has a general education credential, a special education credential, and an administrative credential. She also has a master's degree in special education. McDowell is not an SLP.

21. McDowell first became familiar with Respondent when they both worked at Lincoln Elementary School. At that time, McDowell was a program specialist and was not Respondent's supervisor. They interacted during the course of attending IEP meetings. McDowell's impression of Respondent as the SLP at Lincoln was that Respondent was very good. She did interesting things with therapy and was very cutting edge in using technology as part of her therapy. There were many students with autism at Lincoln. Respondent was very knowledgeable about autism and did a nice job working with those students.

22. Respondent and Lindsey Murphy were the assigned SLPs at Mariners for the 2012-2013 school year. The SLPs assigned to Mariners in the prior school year (2011-2012) were Mimi Turgeon and Kathy Murphy. At the end of the 2011-2012 school year, Mimi Turgeon retired and Kathy Murphy was reassigned to Corona Del Mar High School. Mimi Turgeon had been the SLP at Mariners for over 20 years before she retired. Principal Coughlin was good friends with Turgeon and held her in high regard.

23. Respondent worked five days per week at Mariners while Lindsey Murphy only worked one day per week (Tuesday) at Mariners. Jessica Haffar was a graduate student at Chapman University. She worked as a graduate student intern at Mariners three days per week and assisted Respondent and Lindsey Murphy during therapy sessions. Respondent was Haffar's graduate student supervisor. Haffar worked at Mariners for the first half of the 2012-2013 school year until December 13, 2012.

#### *2012-2013 School Year*

24. Respondent and Lindsey Murphy were both new SLPs to Mariners. In early September, they sent a letter to the parents of Mariners students introducing themselves and student intern Jessica Haffar and expressing that they were looking forward to working collaboratively with the parents and teachers. (Exh. 1040.)

25. The school hours at Mariners were from 8:35 a.m. to 3 p.m. The schedules for the library, physical education, computer lab, music, science, and RSP groups, were distributed the week of September 5, 2013. (Exh. 1043.) Respondent and Lindsey Murphy prepared the speech schedule for the students on the SLP caseload. (Exh. 1070.) On the speech schedule, starting from 9:15 a.m., the school day was divided into 30-minute blocks of time, with each block designed for a particular speech activity, push-in sessions, pull-out sessions, group sessions, assessments, consults, Synergy and Medi-Cal billings. The speech schedule for Tuesday, when Respondent and Lindsey Murphy were both at the Mariners



campus, indicated that therapy sessions with Lindsey Murphy occurred in Room C and therapy sessions with Respondent occurred in Room D. Teachers were expected to direct their students to the correct room.

26. According to emails between Respondent and Heidi McDowell in September 2012, the SLP caseload at Mariners consisted of 13 SDC preschoolers and 65 K-6 students, for a total of 78 students. (Exh. 1049.) In the emails, Lindsey Murphy was identified as case carrier for 13 students, and Respondent was identified as case carrier for the remaining 65 students. This division of caseload accounted for the fact that Lindsey Murphy was at Mariners only one day per week while Respondent was at Mariners five days per week. For students who required more than one speech therapy session per week, Lindsey Murphy would provide therapy on Tuesday and Respondent would provide the additional therapy sessions on other days of the week.

27. Respondent and Lindsey Murphy worked with all students and did not differentiate between preschool SDC students and the K-6 students. This was in contrast to the division of work between Mimi Turgeon and Kathy Murphy in the previous school year. Kathy Murphy was at Mariners two days per week and all of preschool students were assigned to her caseload. Mimi Turgeon was the full-time SLP and only had K-6 students on her caseload.

28. At the start of the 2012-2013 school year, Respondent and Lindsey Murphy found that SLP Mimi Turgeon had qualified many students for speech services solely on the basis of articulation issues. Both Respondent and Lindsey Murphy were of the impression that many of the articulation-only students should not have been qualified for speech. They felt that those students' issues should have first been addressed through interventions provided by their teachers in the classroom. Respondent and Lindsey Murphy exited many students from speech at the start of the school year, either because the student's speech issue had resolved itself or there were no longer any speech issues with the student.

29. Respondent and Lindsey Murphy implemented a new procedure for teachers to refer students for speech services. Respondent notified the teachers of the new procedures in an email dated September 26, 2012, which read: "Aloha Awesome Mariners teachers! [¶] If you have a student you want to refer for speech consult (i.e. to determine if we need to pursue further action), I will have a stack of forms in my mailbox for you to access and fill out for documentation. If a child has other issues other than speech/articulation sounds, they should go through the SST process as there may be other factors involved that possibly need to be addressed. Let me know if you have any questions or need additional assistance. Thanks for your patience!!!" (Exh. 1053.)

30. As the 2012-2013 school year unfolded, there was some confusion about the new speech procedures implemented by the SLP team. For example, on October 10, 2012, Respondent sent an email to Mariners teachers to address the situation that "some students are being sent to speech at their unscheduled times leading to some confusion." (Exh. 1058.) Respondent's email reminded the teachers that on Tuesdays, speech students have to be

directed to a specific speech therapy room, either Room D (for sessions with Respondent and student intern Jessica Haffar) or Room C (for sessions with Lindsey Murphy). The room assignments for Tuesday were indicated on the speech schedule. Respondent believed that some of the "confusion" was due to students not going to the correct assigned room.

31. Some teachers complained to Principal Coughlin about Respondent. They did not first speak with Respondent before complaining to the principal. For example, one teacher complained that her students went to the speech room for therapy on Wednesday and Respondent was not there. (Exh. 1064.) As it turned out, the teacher had sent her students to the speech room on the first Wednesday of the month. Respondent had previously informed all teachers that she had an SLP meeting at the district office on the first Wednesday of every month from 1:00 p.m. to 3:00 p.m., but she was available on other Wednesdays for make-up sessions. Other teachers complained that their speech referrals were not being handled promptly. Respondent explained to the teachers the new procedure and that Lindsay Murphy would handle all speech referrals in the order received. According to Respondent, Principal Coughlin came to the speech room and was angry because of the complaints she had received from the teachers.

32. Respondent had asked Principal Coughlin if the SLP team could do an in-service training for the teachers and staff at Mariners to introduce the SLP team and explain the new speech procedures. The principal's response was to allow the SLP team to provide in-service training to teachers on an individual basis, which Respondent thought was impractical. However, later on, the principal allowed the SLP team to do an in-service but only for the kindergarten teachers.

33. On October 16, 2012, the SLP team (i.e., Respondent, Lindsey Murphy, and Jessica Haffar) was coming back from lunch and entered the main office. The SLP team's scheduled lunch time was from 12:00 p.m. to 12:40 p.m., and then they had collaboration time scheduled from 12:40 p.m. to 1:00 p.m. The SLP team returned from lunch and entered the main office at 12:55 p.m. Principal Coughlin called out all of the SLP team for returning late from lunch in front of everyone who was in the main office. The SLP team members were shocked and offended by the principal's angry tone and how she berated them in front of everyone who was in the main office. The team had been discussing speech cases over lunch and during the drive back to school. Later, Lindsey Murphy spoke with Principal Coughlin about the incident. During that conversation, Principal Coughlin stated she received complaints from six teachers that Respondent was not seeing students according to the speech schedule, which Respondent disputed. The principal stated she was going to be checking every day whether Respondent was back from lunch at 12:40 p.m. and students were being seen according to the speech schedule. Lindsey Murphy's impression was that Principal Coughlin was listening to the teachers' reports but not speaking to Respondent about them. (Exhs. 1071, 1077.)

34. For the first half of the 2012-2013 school year, Respondent felt unduly stressed and overwhelmed by the SLP workload at Mariners. She felt hostility and resistance from Principal Coughlin and certain teachers. Respondent was handling all SLP duties almost



single-handedly since Lindsey Murphy was at Mariners only on Tuesday. All of the duties and tasks related to student IEPs, providing therapy to students, conducting assessments, etc., fell on Respondent. By emails to Heidi McDowell and others, Respondent requested help to address the SLP issues and concerns that were arising at Mariners. (E.g., Exhs. 1054, 1104.) By December 2013, Respondent requested to be transferred to another school site. (Exhs. 1144, 1149.) The subject line on her December 19, 2012 email to Denise Knutsen was "Still needing help." (Exh. 1152.) Respondent was not transferred and continued as the SLP at Mariners for the second half of the 2012-2013 school year.

35. In January 2013, Respondent was working on IEPs that she acknowledged were "a bit late." (Exh. 1156.) She communicated by email with Lindsey Murphy about evaluations and recommendations for exiting some of the students from speech. (Exhs. 1155, 1156, 1159.)

36. As noted in Finding 26, above, Lindsey Murphy was identified in September 2012 emails as the carrier for 13 students. (Exh. 1049.) However, Lindsey Murphy apparently was not identified as a case carrier in Synergy. This was confirmed in Lindsey Murphy's email to Heidi McDowell on March 5, 2013, in which she wrote that she "was not the case carrier for any cases at Mariners" and Respondent "does them all since I am only one day." (Exh. 1163.)

37. Teacher complaints about Respondent continued. For example, on March 12, 2013, a teacher complained to Principal Coughlin that she saw students playing with Legos during speech therapy. (Exh. 1167.) The teacher did not first speak with Respondent before complaining to the principal. Respondent denied the students were "playing." She explained the students were helping the kindergartners to build a structure that they were problem solving. The kindergartners had come to the speech office 10 minutes early. According to Respondent, the teacher "swung the door open, saw the children helping the kinders, and did not say ONE word then closed the door --- she could have easily called me instead." (Exh. 1167.) Respondent later emailed the teacher to explain that the students were not simply "playing" with Legos and that she uses Legos or other manipulatives during therapy. (Exh. 1183.) Teachers continued to complain to Principal Coughlin that Respondent was absent or not in the speech office when they sent their students for therapy. (Exh. 1171.) According to Respondent, there were some teachers who sent their students to speech before their scheduled therapy time.

38. (A) On March 22, 2013, Heidi McDowell, Special Education Coordinator, held a conference with Respondent to discuss issues related to maintaining compliance with IEPs. McDowell called the meeting with Respondent after receiving email alerts in Synergy of overdue IEPs for students with Respondent designated as the case carrier. The conference is summarized in a memorandum dated March 28, 2013. (Exh. 1, p. 712.)

(B) During the conference, McDowell and Respondent discussed that CASEMIS data indicated Respondent had 16 overdue IEPs as of March 18, 2013. Respondent admitted she was not in compliance with IEP timelines for the IEPs for seven

students: KB, SD, KG, LN, ZP, ZR, and BW.<sup>4</sup> Respondent acknowledged the problems with the IEPs and that she understood the importance of complying with IEP timelines, and she agreed that in the future her IEPs would meet required deadlines. McDowell directed Respondent to complete all of her overdue IEPs by no later than April 12, 2013. That gave Respondent three weeks to complete all of her late IEPs. (Spring Break was April 15-19, 2013.) During the conference, Respondent indicated she could get the paperwork in order and complete the overdue IEPs by the April 12, 2013 deadline.

39. On March 22, 2013, Lindsey Murphy notified McDowell that she had taken over as case carrier for four students. (Exh. 1184.) On May 1, 2013, McDowell moved eight more students from Respondent to Lindsey Murphy as case carrier. (Exh. 1213.)

40. (A) Patti White (White) is an SLP who has been employed by the District since June 2004. She has known Respondent for 17 years. Respondent was her daughter's SLP. White became an SLP because of Respondent, who mentored her. White wrote a character reference letter for Respondent dated June 1, 2012. (Exh. 1248, p. 19.) White testified credibly at this hearing.

(B) On April 29 and 30, 2013, White went to Mariners to help Respondent. White finished work at her assigned school site at 1:30 p.m., so she went to Mariners in the afternoon. Mariners was just down the street from White's assigned school site. White helped to organize Respondent's files, which were in disarray. White was "shocked" that Respondent's speech office was so disorganized and there were piles of papers everywhere. White could not open the bottom drawer of the filing cabinet. White found that students confidential files were incomplete and missing documents, such as notices, assessment plans, and signature pages. She also found that IEPs were indicated as current on Synergy but were not printed out and placed in the confidential files. White printed out 10 of the IEPs to help get things organized. (Exhs. 1208; 1194, 1202.) She printed out the IEPs at her assigned school site and brought the documents back to Mariners. Although White was focused on getting the paperwork in order, she did notice there were also CASEMIS errors in Respondent's records. White testified that Respondent was good working with the students. But when she saw the paperwork in Respondent's office, White felt like Respondent was using her to clean up her mess.

(C) On May 6, 2013, at Heidi McDowell's request, White returned to Mariners to assist with providing therapy and screening students for speech. Many of the teachers wanted their students screened for articulation errors. White worked at Mariners at least three to four times per week in May and June, after Respondent had been removed. According to White, there were at least four others who worked on fixing the problems with Respondent's files and records.

41. On May 2, 2013, Respondent was placed on paid administrative leave. (Exh. 1, p. 714.) A conference was held with Respondent and her union representative Nicholas

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<sup>4</sup> Students are identified by their initials to protect their privacy.

Dix. Respondent indicated that documents missing from student confidential files might be at her home. Respondent and Dix retrieved documents from Respondent's home and brought them to the District. They brought back at least one bankers box, although the evidence was not clear on the exact number of boxes. Respondent estimated that she retrieved approximately 2,000 pages of documents from her home.

42. Heidi McDowell reviewed the materials in the boxes from Respondent's home. She placed documents that she could identify as pertaining to a specific student in that student's confidential file. All other remaining documents she left in the box. McDowell testified the boxes contained random papers and materials. At the hearing, Respondent and her counsel raised issues that the District did not properly maintain the box or boxes of Respondent's documents. Respondent testified that documents missing from the confidential files of students were in the boxes retrieved from her home or in the speech office. She did not have an opportunity to organize or review the contents of the boxes from her home after she was placed on administrative leave on May 2, 2012. Respondent claimed she would have been able to identify which students her notes belonged, even though she did not write student names on her notes, because she knew her students so well and could recognize them from the information in the notes.

43. After Respondent had been placed on administrative leave, the Director of Special Education requested Heidi McDowell to review some of Respondent's student files at Corona Del Mar High School, where Respondent was assigned in the prior school year before her assignment to Mariners. McDowell reviewed a sampling of files. Three of the charges in the Accusation (Charges 11, 12, and 13) are based on McDowell's findings at Corona Del Mar High School.

44. The factual allegations for the charges in the Accusation are based on the findings of Heidi McDowell's review of the confidential files and Synergy records for the students on Respondent's caseload. McDowell reviewed the confidential files and records in the spring of 2013.

#### *Assessments and Protocols*

45. As used in this Decision, the term "protocol" refers to the preprinted booklet provided with the testing and assessment materials from the testing company for the purpose of recording identifying student information, the date of assessment, etc., and for recording data, and calculating scores and assessment results. Typically, the protocols include instructions to be followed by the assessor in administering the assessment. The cover page of the protocol includes space for indicating the name of the student being assessed and other identifying information, the date of assessment, and recording and tallying scores. Protocols may have practice questions to be administered to the student before the actual testing begins.<sup>5</sup>

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<sup>5</sup> Examples of protocols are found at Exhibit 1, pages 370-389 and 390-421 and Exhibits 4-14.

46. Under special education law, assessments are to be administered according to instructions provided by the producer of the assessment. The District is required by law to retain, as mandatory interim pupil records, records of participation in special education programs, including required tests. The District requires original protocols to be placed in the student's confidential file and organized according to the detailed procedures set forth in the Handbook.

47. A Psychological-Educational Multidisciplinary Assessment (PEMA) report is a written report that reviews all assessments and testing conducted with the student and reports the results. The PEMA report interprets the results of that testing and then applies that testing to determine the eligibility of a student for special education. It also would identify the areas of unique needs for the student. There are multiple designated specialists working to compile that report. The PEMA report is presented and discussed at the student's IEP meeting. Respondent's contribution to the PEMA report would be the section of the report that listed the speech and language assessments given, reporting on the findings and results of the speech and language assessments, and presenting the analysis to determine if there was a speech and language impairment.

### *Charge 3 – Student DC<sup>6</sup>*

48. On September 28, 2012, a written PEMA report was prepared for student DC. As the student's SLP, Respondent indicated that she administered the Test of Language Development -Primary: Fourth Edition (TOLD-4) and the Comprehensive Assessment of Spoken Language (CASL), and reported raw scores, scaled scores, and percentile rank. However, as of spring 2013, student DC's confidential file contained blank protocols for the TOLD-4 and CASL, except that the student's name, the date tested, and the notation "3rd grade" was written on the cover page of the TOLD-4 protocol, and the cover page for the CASL protocol showed the student's name and sex, his school, Respondent as the examiner, and the reason for testing was "triennial," but the space for providing the date of the testing was blank. The cover pages for both protocols provided spaces for recording data and calculating scores but those spaces were blank. Respondent admitted she did not use the preprinted protocols but instead recorded data and scores on a separate notepad. Her intent was to transfer the data from her notepad to the protocols at a later date when she had time to do so. She testified her notes should have been in the speech office or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

49. It was established that Respondent failed to retain assessment protocols as required by special education laws and the Handbook. The blank protocols for the TOLD-4 and CASL, with only sparse information on the protocol cover pages, were not sufficient.

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<sup>6</sup> The acts and omissions that are the basis of the District's charges against Respondent are set forth in the Accusation at paragraphs 3 through 26, which are referred to in this Decision as Charges 3 through 26.

50. It was established that Respondent failed to properly assess student DC as required by special education laws and the Handbook. She did not administer the TOLD-4 and CASL in accordance with instructions provided by the producer of the assessments, in that she used a separate notepad instead of the preprinted protocols for recording data and calculating the student's scores. In addition, because the protocols contained no scoring data, the confidential file contained no substantiating data for the scores and percentiles Respondent reported in the PEMA. The TOLD-4 and CASL are standardized tests. Proper assessment using standardized testing requires that data substantiating the reported scores must be in the student's confidential file. Such was not the case with Respondent's assessment of DC.

#### *Charge 4 – Student ME*

51. On January 9, 2013, Respondent prepared a Speech-Language Diagnostic Report for student ME in which she indicated having administered the Early Functional Communication Profile (EFCP) and reported her observations and interpretation of the student's behavior during the assessment. However, student ME's confidential file contained an EFCP protocol that was blank. For example, there was no data reported in the spaces on the cover page for identifying categories of skills as "emerging" and "mastered." Respondent testified that she made notes of her observations on a separate notepad and then typed information from her notes directly into the Speech-Language Diagnostic Report. Respondent appears to have used a "cut-and-paste" method to copy and transfer information from the EFCP protocol into her Speech-Language Diagnostic Report.

52. It was not established that Respondent failed to retain an assessment protocol for the EFCP. The EFCP is a criterion referenced assessment tool, and not a standardized test. Consequently, it was appropriate for Respondent to make notes on a separate notepad and then type her observations directly into the Speech-Language Diagnostic Report and copy applicable portions of the assessment tool into the Report. Respondent was not required to place her notes in the student's confidential file.

53. It was not established that Respondent failed to properly assess student ME using the EFCP. The Commission finds the evidence insufficient to make that determination. Insufficient evidence was presented about student ME and the copy of the Speech-Language Diagnostic Report was incomplete. However, there were email communications between Respondent and Lindsey Murphy on January 7 and 8, 2013, regarding their respective observations about student ME. (Exhs. 1261, 1262, and 1263.) Based on the information presented, the Commission finds that Respondent's observations of student ME, as reported in the Speech-Language Diagnostic Report, appear to be proper and appropriate.

#### *Charge 5 – Student JL*

54. On April 11, 2013, a written PEMA report was prepared for student JL. Respondent contributed to the Speech and Language Assessment section which indicates she



administered 10 diagnostic assessments. (Exh. 1, p. 447.) Although not identified in the list of 10 diagnostic assessments, the PEMA report also included raw scores, standards scores, and percentile ranks for the CASL and the Test of Auditory Processing and Reasoning (TARPS). (Exh. 1, p. 449.)

55. It was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Informal Speech and Language Sample diagnostic assessment, the Pragmatic Language Skills Checklist (ABC Unified), the Informal Oral Motor Evaluation assessment, and the Damaico Clinical Discourse Analysis assessment. None of those assessments have protocols.

56. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Peabody Picture Vocabulary Test, Fourth Edition (PPVT-4) and the Expressive Vocabulary Test, Second Edition (EVT-2). Respondent reported raw scores, scaled scores, and percentile ranks for the PPVT-4 and the EVT-2 in the PEMA report. However, in the student's confidential file, the protocols for those two assessments were blank except that student JL's first name and his sex were indicated on the cover pages of the protocols. (Exh. 1, pp. 454, 462.) There was no data recorded in the protocols to substantiate the scores and percentile ranks that Respondent reported in the PEMA report. Respondent testified that the data for these assessments were recorded on a separate notepad, and those notes should have been in the speech office or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

57. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the CASL and TARPS. Those two assessments have preprinted protocols to be used for recording data and calculating scores. Respondent reported raw scores, scaled scores, and percentile ranks for these two assessments. However, the student's confidential file contained no completed protocols to substantiate the scores and percentile ranks for the CASL and TARPS reported in the PEMA report. Respondent testified that she recorded data for the CASL and TARPS on a separate notepad, and those notes should have been in the speech office or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

58. It was established that Respondent failed to use and/or retain a protocol, as required by special education laws and the Handbook, for the Clinical Evaluation of Language Fundamentals, Fourth Edition (CELF-4). A protocol for the CELF-4 was presented at the hearing showing student JL's name handwritten on the cover page, although it did not indicate the date of the testing. (Exh. 1284.) The protocol is incomplete, as it does not include scoring calculations in the spaces provided on the cover page. Respondent testified this was the protocol she completed for the CELF-4 scores she reported in the April 11, 2013 PEMA.

59. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Pragmatic Language Observation Scale (PLOS). In the PEMA report, Respondent reported a total score of 110, a



percentile of 75, and a descriptive term of "average" for the PLOS. (Exh. 1, p. 452.) Only the Summary Sheet and Rating Scale page for the PLOS protocol were presented at the hearing. (Exh. 1286.) The Summary Sheet is blank except for student JL's name handwritten in the section for the student's identifying information. The Summary Sheet has spaces for recording and interpreting scores and data. The Rating Scale page has ratings indicated for "Descriptor Items" numbered 1 through 30. Respondent testified that the scores she reported in the PEMA report for student JL are based on notes she took on a separate notepad and the ratings shown on the Rating Scale page. Respondent testified her notes should have been in the speech office or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

60. It was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Language Processing Test-Revised (LPT-R) assessment and the Social Language Development Test-Elementary assessment. Although the two assessments were listed in the PEMA report among the diagnostic assessments administered by Respondent, the PEMA report contains no scores or data or discussion for these two assessments.

61. (A) It was established that Respondent failed to properly assess student JL using standardized tests for which she reported scores and data in the PEMA report, namely, the PPVT-4, EVT-2, CELF-4, TARPS, and CASL. For standardized tests, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, do not constitute a proper assessment. Respondent provided no interpretation in the PEMA report of the TARPS scores she reported, and her interpretation of the CASL scores, that the student recalled and formulated sentences in the average range, does not match the percentile ranks she reported for the recall sentences and formulated sentences subtests, which were not in the average range. (Exh. 1, p. 449.)

(B) Further, it was established the Respondent failed to properly assess student JL with the aforementioned five standardized assessments in addition to the PLOS. Proper assessment requires administering the assessment according to the testing company's instructions, which in this case required use of protocols for recording scores and data, which Respondent did not do. Finally, it was established that Respondent failed to properly assess student JL with the Pragmatic Language Skills Checklist (ABC Unified), in that she reported a total score of 89, but there is no data reported in the PEMA or contained in the student's confidential file that explains the basis for that score or how it was calculated. A proper assessment requires that substantiating data for reported scores must be maintained in the student's confidential file.

62. Respondent testified that she recorded data and made notes on a separate notepad when she administered the PPVT-4, EVT-2, TARPS, CASL, and PLOS, which she intended to transfer to the preprinted protocols when she had time. Respondent did not keep her notes in the student's confidential file. Respondent testified that she kept her notes in the speech office at school, or they were among the documents that she and Nicholas Dix

retrieved from her home on May 2, 2013. The Commission finds that Respondent's practice of recording data and scores on a separate notepad instead of the preprinted protocol provided by the testing company does not comply with special education laws requiring that assessments are to be administered according to the testing company's instructions. Administering an assessment not in accordance with the testing company's instructions does not constitute a proper assessment.

#### *Charge 6 – Student DP*

63. On April 21, 2013, Respondent completed a Speech-Language Assessment report which indicates she administered seven diagnostic assessments. (Exh. 1, p. 489.) She reported raw scores, standard scores, and/or percentile ranks for the PPVT-4, EVT-2, CELF-4, LPT-R, and the Goldman-Fristoe Test of Articulation Competence (Goldman-Fristoe), which are standardized tests. She reported her observations for the Informal Speech and Language Sample and the Oral Motor Peripheral Examination.

64. It was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Informal Speech and Language Sample and the Oral Motor Peripheral Examination. Neither of those assessments has a preprinted protocol nor involves standardized test scores.

65. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the raw scores, standard scores, and/or percentile ranks she reported in the Speech-Language Assessment report for the PPVT-4, EVT-2, CELF-4, LPT-R, and the Goldman-Fristoe assessment. These assessments have preprinted protocols. However, respondent recorded data for these assessments on a separate notepad, and her notes were kept in the speech office at school or were among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

66. By failing to use the preprinted protocols for recording data and scores for the standardized assessments in Finding 65, above, Respondent failed to administer the assessments according to the testing company instructions and, thus, failed to properly assess the student in accordance with special education laws and the Handbook. The Commission finds that Respondent's practice of recording data and scores on a separate notepad instead of the preprinted protocol provided by the testing company does not comply with special education laws requiring that assessments are to be administered according to the testing company's instructions and, therefore, do not constitute proper assessments. For standardized tests, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, do not constitute a proper assessment.

#### *Charge 7 – Student IP*

67. On January 18, 2013, a written PEMA report was prepared for student IP. Respondent contributed to the Language and Communication Skills section of the report.

She listed seven diagnostic assessments as having been administered for this report. (Exh. 1, p. 498.) Two of the assessments listed -- the Informal Speech and Language Sample and the Oral Motor Speech Evaluation -- are not standardized tests and do not have preprinted protocols for recording and calculating standardized scores.

68. Respondent reported a raw score, standard score, and percentile rank for the EVT-2. (Exh. 1, p. 500.) The confidential file for student IP contained a protocol for the EVT-2, but the evidence was unclear if the protocol was an original or a copy. (Exhibit 1, pp. 504-523.) The cover page of the protocol was only partially completed. The test date is incomplete, in that the month and year are indicated (i.e., January 2013) but the day is missing. The section entitled, "Calculating the Raw Score," was incomplete, in that a "Total Raw Score" of 78 was recorded, but no data for the "Ceiling Item" and "Total Number of Incorrect Items" for calculating the raw score was provided. There was data recorded in the "Score Summary" section, but no indication of the source of the data in the protocol. Except for the cover page, the rest of the protocol was blank. Respondent testified that the data for the scores reflected on the protocol cover page were recorded on her separate note pad, and those notes were either kept in the speech office or were among the documents retrieved from her home on May 2, 2013.

69. Respondent reported a raw score, scaled score, standard score, and percentile rank for the TARPS. (Exh. 1, p. 501.) The confidential file for student IP contained only the cover page for the TARPS protocol. (Exh. 1, p. 524.) Respondent completed the "Test Results" section of the cover page, but no other pages from the protocol were retained in the confidential file. Respondent admitted that the TARPS protocol consists of more than the cover page. Respondent testified that the scores reported in the "Test Results" section were based on data she had recorded during the assessment on a separate note pad, and those notes were either kept in the speech office or were among the documents retrieved from her home on May 2, 2013. She calculated the scores from the data in her notes and in reference to the TARPS manual. Respondent testified the District did not regularly stock protocols for the TARPS, so she borrowed a TARPS protocol from her private practice office.

70. Respondent reported raw scores, standard scores, and percentile ranks for the PPVT-4 and for the various subtests on the CELF-4. (Exh. 1, pp. 499, 500.) Student IP's confidential file contained completed protocols for the PPVT-4 and CELF-4 assessments. (Exhs. 1307, 1308.)

71. In the PEMA report, Respondent reported information for the Goldman-Fristoe Test of Articulation Competence related to student IP's speech and articulation skills. Respondent testified she did not complete the protocol for this assessment. She testified that she used the Goldman-Fristoe assessment solely to gather information about the student's initial consonant sounds. Respondent testified she used the assessment "informally" and not for generating standardized scores.

72. The confidential file for student IP contained a protocol for the LPT-R. The cover page for the protocol contained raw scores, age equivalencies, percentile ranks, and

standard scores for six subtests, but the date of testing was not indicated. (Exh. 1, pp. 526-531.) The LPT-R was not listed in the January 18, 2013 PEMA report as one of the diagnostic assessments administered by Respondent, and there was no reference to the LPT-R in the report.

73. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the EVT-2 and TARPS, in that the protocols for those assessments contained in student IP's confidential file did not contain complete information and/or pages.

74. It was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Informal Speech and Language Sample and the Oral Motor Speech Evaluation, because those assessments do not have protocols for recording and calculating standardized scores. Also, it was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the PPVT-4 and the CELF-4 because completed protocols for those assessments were found in the student's confidential file. Finally, it was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Goldman-Fristoe assessment, because she used that assessment informally to gather information about the student's articulation and not to generate standardized test scores. The Commission finds that Respondent's use of the Goldman-Fristoe assessment in that manner was appropriate and did not require completion of a protocol.

75. It was established that Respondent failed to properly assess student IP using the EVT-2 and the TARPS assessments, when she recorded data from the assessment on a separate note pad instead of using the preprinted protocols from the testing company, thereby administering the assessment not according to instructions of the testing company, as required by special education laws and the Handbook. For standardized assessments, such as the EVT-2 and the TARPS, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols do not constitute a proper assessment.

#### *Charge 8 – Student JS*

76. On November 14, 2012, a written PEMA report was prepared for student JS. Respondent contributed to the Language and Communication Skills section of the report.<sup>7</sup> She listed 11 diagnostic assessments as having been administered for this report. (Exh. 38, p. 4217.)

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<sup>7</sup> Exhibit 1, pages 533-539, is an excerpt of the PEMA report and does not include the entire section regarding speech. A complete copy of the PEMA report is found at Exhibit 38, and the Language and Communication Skills section starts at page 4217.

77. The Informal Speech and Language Sample and the Oral Motor Speech Evaluation are not standardized tests and do not have preprinted protocols for recording and calculating standardized scores. Respondent testified that the Theory of Mind Development Chart does not have a formal protocol. Respondent did not report results for the PLOS, except to say that "[r]esults are pending completion of surveys from classroom teacher and parents at this time." (Exh. 38, p. 4223.)

78. In the PEMA report, Respondent reported raw scores, standard scores, and percentile ranks for the PPVT-4, the Expressive Vocabulary Test (EVT), and the CASL, which are standardized assessments. The confidential file for student JS did not contain completed protocols with supporting data for those scores. Respondent testified that she recorded data and scores on a separate note pad instead of using the preprinted protocols provided by the testing company. She testified her notes were in the speech office or among the documents that she and Nicholas Dix retrieved from her home on May 2, 2013. Respondent testified she utilized the Goldman-Fristoe assessment informally, to gather information about the student and not to generate standardized scores. She did not complete a protocol for the Goldman-Fristoe assessment.

79. In the PEMA report, Respondent reported results on the Social Development Language Test – Elementary assessment that student JS "demonstrated skills generally within the low average range at this time." She also reported results for the Damaico Clinical Discourse Analysis that the student's skills were "[g]enerally within normal limits" and his expressive skills were "within the low average range at this time." These results are expressed as standardized scores. As such, the student's confidential file must contain data to substantiate the standardized scores. There was no such data in the confidential file for student JS.

80. In the PEMA report, Respondent reported a raw score of 65/70 for the "Pragmatic Skills Checklist – Interpersonal Skills." (Exh. 38, p. 4223.) However, there was no data in the confidential file of student JS to substantiate this standardized score or explain how it was calculated.

81. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the PPVT-4, the EVT, and the CASL, which are standardized assessments with preprinted protocols for recording data and calculating standardized scores. Respondent recorded her data and scores on a separate note pad instead of the protocols provided by the testing company. The student's confidential file contained no data to substantiate the standardized scores reported by Respondent.

82. It was established that Respondent failed to properly assess student JS with the PPVT-4, the EVT, and the CASL, in that she did not administer the assessments according to the testing company's instructions as required by special education laws and the Handbook, and thus did not properly assess student JS. For standardized assessments, a proper assessment consists of properly completed protocols which provide the data and evidence to



support the standardized test scores reported. Protocols that are missing, blank, or incomplete do not constitute a proper assessment.

83. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Social Development Language Test-Elementary and the Damaico Clinical Discourse Analysis. There was no data in the student's confidential file to substantiate the standardized results Respondent reported in the PEMA report. Consequently, it was also established that Respondent failed to properly assess student JS using these two assessments.

84. It was not established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the Goldman-Fristoe assessment and the PLOS. Respondent used the Goldman-Fristoe assessment informally to gather information about the student's articulation and not to generate a standardized score. Thus, a completed protocol was not required. No completed protocol was required for the PLOS because the results for the PLOS were reported in the PEMA as still pending.

#### *Charge 9 – Student AT*

85. On April 10, 2013, a written PEMA report was prepared for student AT. Respondent contributed to the Language and Communication Skills section of the report. Respondent reported a raw score, standard score, and percentile rank for the Goldman-Fristoe assessment. (Exh. 1, p. 545.) She also reported results for the TARPS that student AT scored below the 7th percentile in certain areas. (Exh. 1, p. 546.) The confidential file for student AT did not contain completed protocols or supporting data for the Goldman-Fristoe and TARPS scores reported in the PEMA. Respondent testified that she recorded data and scores for the TARPS using a separate note pad instead of the preprinted protocol and her notes were in the speech office at school or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013. Respondent testified she used the Goldman-Fristoe informally to gather information but not to generate a standardized score. But the PEMA report includes standardized scores for the Goldman-Fristoe assessment (i.e., a raw score, standard score, and percentile rank).

86. It was established that Respondent failed to use and/or retain protocols, as required by special education laws and the Handbook, for the TARPS and Goldman-Fristoe assessment. Because she reported standardized scores for both assessments, she was required to have completed protocols in the student's confidential file with data to substantiate the standardized scores she reported. There were no such protocols in student AT's confidential file.

87. It was established that Respondent failed to properly assess student AT with the TARPS and Goldman-Fristoe assessment. Respondent did not use the protocols for these assessments to generate the standardized scores she reported in the PEMA report. By not using the protocols, Respondent failed to administer the assessments according to the testing company's instructions, as required by special education laws and the Handbook, and thus



did not properly assess student AT. For standardized assessments, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols do not constitute a proper assessment.

*Charge 10 – Student KW*

88. On April 29, 2013, a written PEMA report was prepared for student KW. The findings of the PEMA report were discussed at student KW's IEP meeting on April 29, 2013, which the student's parent attended. (Exh. 40.) Respondent contributed to the PEMA report as the SLP for student KW. The PEMA report lists six diagnostic assessments administered by Respondent: Informal Speech and Language Sample, Damaico Clinical Discourse Analysis, Michelle Garcia-Winner Double Interview, Conversational Effectiveness Profile, CASL, and Social Responsiveness Scale. The District contends that the confidential file for student KW contained no substantiating data and/or protocols for the assessment information reported by Respondent in the PEMA report. Respondent testified that she administered all of the diagnostic assessments listed in the PEMA report, and also administered the PLOS but did not report results in the PEMA report.

89. The Informal Speech and Language Sample and Damaico Clinical Discourse Analysis are not standardized assessments and do not have a protocols for recording data to generate standardized scores. All information and observations from Respondent's notes for the two assessments are contained in the PEMA report. Similarly, the Michelle Garcia-Winner Double Interview is not a standardized assessment and does not have a protocol. Respondent testified that the information in the PEMA report for this assessment came from her notes, which she did not keep because all of the information from the notes is contained in the PEMA report.

90. Respondent reported on the Social Responsiveness Scale. She testified that she administered this assessment and recorded raw scores and T-scores in the spaces provided on the cover page of the protocol. (Exh. 1326.) Respondent testified that the scores are based on her notes and information reported by the parents. Respondent testified that she had information available to her to complete the entire protocol by May 2, 2013, if she had been given an opportunity to do so.

91. Respondent reported standard scores and percentile ranks for the CASL, which is a standardized assessment with a protocol for recording data and calculating standardized scores. Respondent recorded her data and scores on a separate note pad instead of the protocol provided by the testing company. The student's confidential file contained no data to substantiate the standardized scores reported by Respondent in the PEMA report.

92. The Conversational Effectiveness Profile is listed in the PEMA report as one of the diagnostic assessments administered. However, results from that assessment are not mentioned in the PEMA report. Respondent testified she administered the Conversational Effectiveness Profile but gave two possible explanations as to why the results were not

included in the PEMA report. Her first explanation was that the results of the Conversational Effectiveness Profile justified or corroborated the results of the other assessments given, so Respondent determined, in her judgment, that it was not necessary to include the Conversational Effectiveness Profile in the PEMA report. Respondent's second explanation was that she prepared her section of the PEMA report ahead of time and included items she anticipated completing but did not update the document to account for changed circumstances. The Commission finds both of Respondent's explanations reasonable and plausible.

93. Respondent testified that she administered the PLOS as she indicated in testimony regarding other students. She recorded data on a separate note pad, and her notes were in the speech office at school or were among the documents that she and Nicholas Dix retrieved from her home on May 2, 2013. Two pages from a PLOS protocol were retrieved from Respondent's home. (Exh. 1, pp. 560-561.) The Summary Sheet is blank except that student KW's first name is handwritten in the space for the student's name. The Rating Scale contains ratings for the Descriptor Items numbered 1-30 and handwritten notations next to some of the items. Respondent did not report scores or provide information about the PLOS in the PEMA report.

94. It was established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the CASL, which has a preprinted protocol to be used for recording data and calculating scores. Respondent reported standard scores and percentile ranks for this assessment. However, the student's confidential file contained no completed protocols to substantiate the scores and percentile ranks for the CASL reported in the PEMA report. Respondent testified that she recorded data for the CASL on a separate notepad, and those notes should have been in the speech office or among the documents she and Nicholas Dix retrieved from her home on May 2, 2013.

95. It was not established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the Informal Speech and Language Sample, Damaico Clinical Discourse Analysis, Michelle Garcia-Winner Double Interview, Conversational Effectiveness Profile, and Social Responsiveness Scale. These assessments do not involve standardized testing. The Commission finds it was appropriate for Respondent to record her observations on a separate note pad and then transfer the information into the PEMA report, which she did. It was not necessary that Respondent maintain her notes in the student's confidential file, where the information is reflected in the PEMA report.

96. It was not established that Respondent failed to properly assess student KW using the assessments identified in Charge 10, except for the CASL. Respondent's failure to use and retain the protocol for the CASL constitutes a failure to administer an assessment in accordance with the testing company's instructions, as required by special education laws and the Handbook, and thus, constitutes a failure to properly assess the student. For standardized tests, a proper assessment consists of properly completed protocols which provide the data

and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, does not constitute a proper assessment.

#### *Review of Files at Corona Del Mar High School*

97. Heidi McDowell testified that, after Respondent was placed on administrative leave, she was asked by the Director of Special Education to go to Corona Del Mar High School and review some of the triennial assessments Respondent conducted to determine if Respondent's difficulty at Mariners "was a more chronic problem." As directed, McDowell reviewed nine triennial assessments that Respondent had conducted and found "very similar issues" as had occurred at Mariners, namely, no protocols or blank protocols in the confidential files to substantiate reported assessment data and results. The factual allegations of the following Charges 11, 12, and 13, involve the confidential files for students at Corona Del Mar High School when Respondent was the assigned SLP.

98. Respondent testified that she completed all assessments as reported in the PEMA reports for the Corona Del Mar students and, as far as she knew, all completed protocols were in the confidential files for each student. She testified she administered all assessments stated in the PEMA reports and completed all required protocols. In response to Heidi McDowell's findings, Respondent argues that she had no access to the student files after she left Corona Del Mar High School at the end of the 2011-2012 school year. She does not know who else may have had access to the student files. The Commission is not persuaded by Respondent's contention that her case files at Corona Del Mar High School may have been tampered with or sabotaged. This argument is pure speculation, as no evidence was presented of any person having any motive to tamper with or sabotage the confidential files of Respondent's students. Respondent herself claimed she was happy working at Corona Del Mar High School and there was no evidence of any difficulty in her relationships with the staff there.

#### *Charge 11 - Student CL*

99. Student CL was a student at Corona Del Mar High School when Respondent was the assigned SLP. On May 2, 2011, a written PEMA report was prepared for student CL. Respondent contributed to the report as the SLP. She indicated having administered 10 diagnostic assessments listed in the PEMA report, and reported data and results for each assessment.

100. Four of the assessments listed in the PEMA report are not standardized assessments and do not have protocols used for generating standardized scores. The assessments are: Informal Speech-Language Sample, Oral Motor Peripheral Examination, Functional Communication Profile-Revised, and Pragmatic Language Skills Rating Form (ABC USD). No data for these assessments was found in the student's confidential file in the spring of 2013. Respondent was not required to utilize and/or retain protocols for these non-standardized assessments. Her findings were contained in the PEMA report.

101. The remaining six diagnostic assessments listed in the PEMA report are standardized tests with protocols. They are: Goldman-Fristoe Test of Articulation Competence, PPVT-4, EVT-2, Structured Photographic Expressive Language Test-II (SPELT-II), Test of Oral Language Development-Primary, 3rd edition (TOLD-P:3), and the Preschool Language Scale-4th edition (PLS-4). Respondent reported raw scores, standard scores, percentile ranks, and/or age equivalents for those assessments. No data or completed protocols were found in the student's confidential file in the spring of 2013.

102. It was established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the PPVT-4, EVT-2, SPELT-II, TOLD-P:3, and PLS-4. Because Respondent reported standardized scores or age-equivalents for those assessments in the PEMA report, she was required to retain completed protocols containing the data which substantiates the reported scores. Such data was not found in the student's confidential file during Heidi McDowell's review in spring 2013. However, Respondent was not required to retain the protocol for the Goldman-Fristoe assessment because she did not report any standardized scores for that assessment.

103. It was established that Respondent failed to properly assess student CL. She failed to use and retain the protocols for the standardized assessments in Finding 102, which constitutes a failure to administer an assessment in accordance with the testing company's instructions, as required by special education laws and the Handbook, and thus, constitutes a failure to properly assess the student. For standardized tests, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, does not constitute a proper assessment.

#### *Charge 12 – Student AM*

104. Student AM was a student at Corona Del Mar High School when Respondent was the assigned SLP. On October 21, 2011, a written PEMA report was prepared for student AM. Respondent contributed to the report as the SLP. She indicated having administered five diagnostic assessments listed in the PEMA report: Informal Speech and Language Sample, Damaico Clinical Discourse Analysis, Michelle Garcia-Winner Double Interview, CASL, and the Social Language Development Test-Adolescent (SLDT-A). In the PEMA report, Respondent reported data and results with respect to each of these assessments (including scores, observations, and/or percentiles). Heidi McDowell reviewed student AM's confidential file and found no protocols to substantiate the five assessments.

105. It was established that Respondent failed to utilize and/or retain protocols for the CASL and SLDT-A, as required by special education laws and the Handbook. These are standardized assessments for which Respondent reported standardized scores and percentiles. As such, she was required to retain completed protocols with data to substantiate the standardized scores reported. Further, by failing to utilize the protocols, Respondent failed to administer the assessments according to the testing company's instructions, as required by special education laws and the Handbook, and thus failed to properly assess the student. For

standardized tests, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, does not constitute a proper assessment.

106. The Commission finds there was no failure to utilize and/or retain protocols, and no failure to properly assess, with regard to the Informal Speech and Language Sample, Damaico Clinical Discourse Analysis, and the Michelle Garcia-Winner Double Interview. These are not standardized assessments. Respondent observations from these assessments are reflected in the PEMA report.

### *Charge 13 – Student KP*

107. The confidential file for student KP contained a written PEMA report prepared on May 14, 2012. Respondent contributed to the report as the SLP. She reported having administered the 11 diagnostic assessments listed in the report. (Exh. 1, p. 583-584.) She reported data and results with respect to each assessment. Heidi McDowell reviewed student KP's confidential file in or about May 2013 and found no completed protocols.

108. It was not established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the Informal Speech and Language Sample, Oral Motor Evaluation, [PLOS,] Michelle Garcia-Winner Double Interview, Damaico Conversational Profile, and Theory of Mind Checklist. These assessments do not have protocols for recording data and generating standardized scores. It was sufficient for Respondent to make notes of her observations on a separate note pad, and input the information from her notes directly to the PEMA report, which she did. She was not required to retain her notes in the student's confidential file.

109. It was not established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the Goldman-Fristoe Test of Articulation Competence. Respondent did not report a standardized score for this assessment in the PEMA report. Respondent used the Goldman-Fristoe assessment informally, to gather information and to explain her observations and clinical judgment about the student. It was appropriate for Respondent to write her observations directly into the PEMA report. She was not required to retain her notes in the student's confidential file.

110. It was established that Respondent failed to utilize and/or retain protocols, as required by special education laws and the Handbook, for the PPVT-4, EVT, TOLD-4, Social Language Development Test-Adolescent (SLDT-A). For these assessments, Respondent reported raw scores, standard scores, percentiles, and/or age equivalents in the PEMA report. As such, she was required to maintain completed protocols with data to substantiate the scores reported. Heidi McDowell's review in or about May 2013 found no protocols for these assessments in the student's confidential file.



111. It was established that Respondent failed to properly assess student KP. Respondent failed to administer the assessments in Finding 110 according to testing instructions when she failed to use protocols. For standardized tests, a proper assessment consists of properly completed protocols which provide the data and evidence to support the standardized test scores reported. The absence of protocols, blank protocols, or incomplete protocols, does not constitute a proper assessment.

#### *Charge 14 - Student AA*

112. Charge 14 involves student AA's exit from special education. On November 7, 2012, student AA's mother signed an Assessment Plan in which she agreed to an exit assessment of her child. (Exh. 1, p. 593-594). On November 20, 2012, student AA was assessed by graduate student intern Jessica Haffar, who administered the Goldman-Fristoe Test of Articulation. (Exh. 1408.) An exit IEP meeting was subsequently held on December 4, 2012. Student AA's mother attended the meeting and signed the IEP, thereby indicating her consent for AA to be exited from special education. (Exh. 1409, p. 3773.) On CASEMIS, Respondent entered student AA's exit date from special education as December 4, 2012. (Exh. 1, p. 595.)

113. It was not established, as alleged in Charge 14, that Respondent failed to conduct a speech assessment regarding student AA, failed to prepare a written report, and failed to provide any documentation explaining why the student was to be exited from special education. Student AA was assessed on November 20, 2012, by intern Jessica Haffar. Student AA scored in the 24th percentile on Goldman-Fristoe assessment. (Exh. 1408.) Respondent testified that a student is ready for dismissal with a score above the 7th percentile. The December 4, 2012 IEP indicates the reason for student AA's exit from special education is that he met his goals for articulation, he no longer demonstrates an articulation disorder, and he produces target sounds with 100 percent accuracy in conversational and spontaneous speech. The IEP also notes that the Goldman-Fristoe was used to assess AA's articulation skills. (Exh. 1409, p. 3771.)

114. It was not established, as alleged in Charge 14, that Respondent failed to obtain written consent from student AA's parent for the IEP meeting held on December 4, 2012. Written consent for a meeting must be obtained from the parent at least 10 days prior to the meeting date. No evidence was presented of written consent having been obtained from student AA's parent at least 10 days prior to the December 4, 2012 meeting. However, the absence of evidence of the parent's prior written consent to the December 4, 2012 meeting date is mitigated by the fact that student AA's mother actually showed up and attended the meeting on December 4, 2012, and signed the IEP at that meeting. (Exh. 1, p. 592; Exh. 1409, p. 3773.)

115. It was established, as alleged in Charge 14, that Respondent failed to obtain the signature of an administrator or otherwise qualified local educational agency representative on the Participants and Consent page of the December 4, 2012 IEP. (Exh. 1, p. 592; Exh. 1409, p. 3773). It was also established, as alleged in Charge 14, that



Respondent herself failed to sign the IEP on that date. The Commission finds there were mitigating circumstances. The Meeting Notes for the December 4, 2012 IEP indicate that Mrs. Overstreet was introduced at the meeting as the administrative designee. (Exh. 1409, p. 3771.) Respondent testified that Mrs. Overstreet had to leave the meeting early due to a family emergency. The Commission finds it understandable that Respondent did not get signatures on the IEP before the meeting concluded, given Mrs. Overstreet's unexpected emergency and the typical rush of activity at an IEP meeting. It is not uncommon that participants at an IEP meeting forget to sign the IEP document before they leave. Respondent's failure to sign the IEP herself does not invalidate the IEP, when, as here, the parent consented to and signed the IEP.

116. It was not established, as alleged in Charge 14, that Respondent exited student AA from special education services effective December 4, 2012, without notice to or consent from student AA's parent. As discussed above, student AA's mother attended the IEP meeting on December 4, 2012, and signed and initialed the IEP to indicate her consent that AA was no longer eligible for special education. (Exh. 1, p. 592; Exh. 1409, p. 3773) Respondent testified that, prior to December 4, 2012 meeting, student AA's mother had indicated to her that she wished to have AA exited from speech. No evidence was presented that student AA's mother made any complaint about her child being exited from special education without her consent.

117. It was not established, as alleged in Charge 14, that Respondent failed to properly notice, obtain consent, and/or complete documentation for an IEP dated December 21, 2012. In the CASEMIS record for student AA, Respondent entered December 21, 2012, as the "Last IEP Date." Respondent, in her testimony, could not explain the December 21, 2012 entry in CASEMIS. However, the IEP documents for student AA contain no reference to any meeting on December 21, 2012, and no evidence was presented that Respondent held any meeting for student AA on that date. In short, there was no meeting on December 21, 2012, for which Respondent was required to give notice, obtain consent, and complete documentation.

#### *Charge 15 - Student JA*

118. Student JA and student AA (discussed in Charge 14, above) are siblings. As discussed above, their mother attended an IEP meeting on December 4, 2012, for student AA. During that meeting, their mother expressed that she also wanted student JA exited from special education. Both children were discussed at the December 4, 2012 meeting. According to Respondent, the mother had indicated, prior to the December 4, 2012 meeting, that she wanted both of her children exited from special education.

119. It was established, as alleged in Charge 15, that Respondent failed to properly notice and obtain consent from the parent for a December 4, 2012 IEP meeting for student JA. In mitigation, the mother was present for an IEP meeting on December 4, 2012, that was arranged specifically to discuss student AA's exit from special education, but student JA's exit was also discussed. The mother wanted both of her children exited.

120. It was established, as alleged in Charge 15, that Respondent failed to complete documentation regarding an IEP for student JA for December 4, 2012. There are no signatures of required IEP team members on the IEP for student JA. (Exh. 1, p. 597; Exh. 45, p. 3832.) The IEP is mostly blank. (Exh. 45.) The IEP cover page does not indicate that the purpose of the meeting was to exit student JA from special education (see Exh. 45, p. 3823), in contrast to student AA's IEP which stated on the cover page that the purpose of the meeting was "Exit from special ed." (Exh. 1409, p. 3764.)

121. It was established, as alleged in Charge 15, that Respondent negligently recorded data in Workflow. It was not established, however, that Respondent falsified data in Workflow. Respondent made entries in Workflow for the date November 19, 2012, indicating that student JA's mother attended a meeting on November 19, 2012, where she gave full consent to the IEP on that date. Respondent testified that she used Workflow as a calendar for her assessments. Respondent testified that she considered Workflow dates to be "irrelevant" because only the CASEMIS data is reported to the State. The Commission finds that Respondent's Workflow entries for November 19, 2012, constitute negligent recording because they do not reflect actual events, namely, that student JA's mother attended an IEP meeting and gave consent on December 4, 2012. Respondent's use of Workflow as her own internal calendar does not excuse her failure to enter accurate dates in Workflow.

#### *Charge 16 – Student IB*

122. On December 12, 2012, an IEP meeting was held for student IB, who was a student on Respondent's caseload receiving only speech-related services. The IEP document indicates a meeting was held on December 12, 2012, where Respondent, administrative designee Mrs. Overstreet, and student IB's father were present. (Exh. 1417, p. 3975) The IEP indicated that the purpose of meeting was to exit IB from special education and speech services. (Exh. 1417, pp. 3968, 3975.) There are no signatures on the Participants and Consent page of the IEP. (Exh. 1417, p. 3977.)

123. It was established, as alleged in Charge 16, that Respondent failed to properly notice and obtain consent for the December 12, 2012 meeting. Respondent testified that the father was present at the December 12, 2012 meeting, but he did not sign the IEP document at meeting because he wanted to discuss it first with student IB's mother before signing. Respondent's testimony that the father was present at December 12, 2012 meeting is unconvincing as there was no signature by the father on the Participants and Consent page of the IEP. Respondent admitted that it would have been better if she had obtained the father's consent in writing for student IB's exit from special education/speech services.

124. It was established, as alleged in Charge 16, that Respondent failed to complete documentation regarding an IEP for student IB. The 2012 IEP looks like a copy of 2011 IEP. The teacher for 2012 was Stephanie Parole [Exh. 1, p. 600] and the teacher for 2011 was Pat McLaughlin [Exh. 46, p. 3987], yet the "Input from General Education Teacher" in the 2012 and 2011 IEPs is identical. (Compare Exhibit 46, page 3969 [2012 IEP] with page 3979 [2011 IEP].)

### *Charge 17 – Student SK*

125. It was established, as alleged in Charge 17, that Respondent failed to properly notice, obtain consent, and complete documentation regarding an IEP for student SK. An IEP meeting for student SK was due by January 8, 2013. Respondent was the case carrier for student SK, and she does not dispute that she failed to hold an IEP meeting for student SK by that date. Student SK's parent testified she did not attend a meeting with Respondent and did not receive notice of any meeting with Respondent.

### *Charge 18 – Student CAL*

126. On January 15, 2013, an IEP meeting was held where it was determined that student CAL "is not eligible for special education services." (Exh. 1, p. 619.) The IEP states that student CAL met his goals and demonstrated skills within normal limits, and he was found not eligible for special education. (Exh. 1428, pp. 4160, 4152.) The IEP was signed on January 15, 2013, by Respondent as case carrier, Lindsey Murphy as SLP, an administrator designee, and a general education teacher. The IEP was not signed by student CAL's parent. (Exh. 1, p. 619; Exh. 1428.) As of April 2013, there was still no IEP signed by the parent in student CAL's confidential file regarding his exit from special education.

127. The Synergy records indicate student CAL was exited from special education with an exit date of January 15, 2013. The transfer/exit screen indicated student CAL's exit from special education was "certified by" Respondent, meaning that Respondent entered the exit information in Synergy, including the exit date of January 15, 2013. (Exh. 1, p. 620.)

128. The confidential file for student CAL contained an IEP meeting notice dated January 7, 2013, which proposed meeting dates of January 15, 2013, and January 22, 2013. (Exh. 1, pp. 617-618.) The IEP meeting notice indicates that the parent's response should be returned to Respondent. (Exh. 1, p. 618.) In the parent response section of the IEP meeting notice, the box is checked for the response "I will not attend but proceed without me and forward a copy of the IEP for my review and signature." The response, however, was not signed and dated by the parent. (Exh. 1, p. 618.) As of April 2013, there was no IEP meeting notice signed by the parent confirming the parent's consent for the January 15, 2013 meeting to go forward without the parent's attendance.

129. Respondent testified that Lindsey Murphy was the case carrier for student CAL and was responsible for the dates entered in Synergy and preparing the IEP documentation and obtaining the parent's signatures. Respondent's testimony is not supported by the evidence. The Commission finds, despite Respondent's claims to the contrary, that Respondent was the case carrier for student CAL and responsible for all aspects of his IEP. Respondent signed the January 15, 2013 IEP which identifies her as the case carrier. (Exh. 1, p. 619.) Lindsey Murphy was not case carrying any students until March 5, 2013, when she notified Heidi McDowell that she would be case carrying four students. In April 2013, Respondent wrote a note reminding Lindsey Murphy to follow up

with student CAL's case. Respondent would not have needed to give such a reminder if Lindsey Murphy was, in fact, the case carrier for the student.

130. Respondent testified that she prepared the IEP meeting notice for the January 15, 2013 meeting. She testified that she already knew the parent had agreed to student CAL's dismissal from special education and that the parent would not be attending the January 15, 2013 meeting. Respondent testified that she expected Lindsey Murphy to make sure the IEP documents were sent to student CAL's parents, and that Lindsey was responsible for obtaining the parent's signature for the IEP documents. Nonetheless, Respondent was still the case carrier for student CAL and responsible for all aspects of his IEP.

131. It was established, as alleged in Charge 18, that Respondent, as case carrier, failed to properly notice, obtain consent, and complete documentation regarding student CAL's IEP and his exit from special education services. Respondent failed to give proper notice to the parent regarding the January 15, 2013 IEP meeting. The IEP meeting notice was not signed by the parent. Respondent's testimony that the parent waived their right to attend the meeting is uncorroborated and, thus, insufficient to establish a waiver. Respondent failed to obtain parental consent to exit student CAL from special education. The IEP for the student's exit was not signed by the parent, yet Respondent went ahead and entered data in Synergy for an exit date of January 15, 2013. Respondent failed to complete IEP documentation for student CAL, as the IEP for January 15, 2013, was still not signed by the parent as of April 2013. Notwithstanding the foregoing, it is noted that no evidence was presented of student CAL's parent making a complaint that CAL was exited from special education without the parent's consent.

#### *Charge 19 – Student MG*

132. On March 26, 2013, an IEP meeting was held for student MG for the purpose of exiting the student from special education. The IEP indicates that the persons who attended the meeting were Respondent, administrative designee Susan Overstreet, general education teacher Joan Duncan, and student MG's mother. (Exh. 1, p. 632.) The IEP states that Respondent, as SLP, recommended MG's dismissal from speech services, noting that MG met all of his speech goals. (Exh. 1, p. 632.) The IEP indicates the assessments used were "T-Mac, auditory discrimination test, and oral motor exam." (Exh. 1, p. 628.) The IEP contains no signatures by the meeting attendees to evidence their participation at the March 26, 2013 meeting. However, the Participant and Consent page of the IEP was signed on April 26, 2013, by student MG's mother, administrative designee Susan Overstreet, and Respondent, but there is no signature by the general education teacher Joan Duncan. (Exh. 1, p. 634.) Student MG's mother signed and initialed the IEP on April 26, 2013, to indicate her agreement that MG was no longer eligible for special education and giving consent for MG's exit from special education. (Exh. 1, p. 634) Student MG's mother testified she did not recall signing an IEP on April 26, 2013, but admitted that the signature on the document appeared to be her signature. (Exh. 1, p. 634.) Student MG's mother testified she attended IEP meeting on June 18, 2013, and MG was exited from speech. (Exh. 49, p. 4031.)

133. There are discrepancies with the dates reflected in the IEP and CASEMIS. The "Last IEP Date" indicated in CASEMIS was February 27, 2013, which should match the "Date of This Meeting" on the IEP cover page, which in this case shows a date of March 27, 2013. (Exh. 1, pp. 622, 635.) The dates do not match. Further, the IEP itself shows different meeting dates. The IEP cover page indicates a meeting date of March 27, 2013, whereas the IEP meeting notes indicate the meeting occurred on March 26, 2013. (Exh. 1, pp. 621, 622.) Finally, the CASEMIS record shows student MG's exit date from special education was April 2, 2013. However, student MG's mother did not sign the IEP for his exit until April 26, 2013. The exit date in CASEMIS should be the date the IEP meeting was held and the parent consented to the exit, which in this case was April 26, 2013. Respondent entered the exit date of April 2, 2013, in CASEMIS, which was prior to the student's mother giving consent on April 26, 2013.

134. Respondent testified that she had an IEP meeting scheduled with student MG's mother for February 27, 2013, but the mother could not attend. The meeting had to be rescheduled to a time that mother could attend. Respondent testified the meeting was rescheduled to March 2013. Respondent attributed the different meeting dates shown in the IEP (i.e., March 26 versus March 27) to either her mistake or that she prepared the IEP ahead of time with the intent to update the meeting date later in Synergy and CASEMIS once the meeting date was finalized. Respondent testified MG's mother was very busy and had to rush out of the meeting, but she verbally consented to MG's exit from speech as of March 26, 2013. Student MG kept coming to speech. Respondent entered April 2, 2013, as the exit date in CASEMIS because that was the date student MG finally stopped coming to speech. Respondent testified she did not wait for the mother's signature on the IEP before entering the April 2, 2013 exit date in CASEMIS since the mother had previously given verbal consent to the exit. Respondent denied that she attempted to deceive anyone about missed deadlines by entering incorrect dates in CASEMIS.

135. It was established, as alleged in Charge 19, that Respondent failed to properly complete documentation regarding an IEP for student MG and his exit from special education. Respondent failed to properly complete IEP documentation by failing to obtain signatures of the participants at the March 26 meeting, failed to obtain signatures of the participants for at the February 27 meeting which the parent did not attend, and failed to obtain the signature of the general education teacher even though IEP meeting notes indicated the teacher attended the March 26 meeting. Further, Respondent made inaccurate entries in CASEMIS showing the exit date as April 2, 2013, when the mother's consent was not given until she signed the IEP on April 26, 2013.

136. It was not established, as alleged in Charge 19, that Respondent failed to properly notice and obtain consent regarding an IEP for student MG and his exit from special education services. The Commission finds the evidence was insufficient to establish this charge. Student MG's mother testified that she has no record indicating that she attended an IEP meeting on March 26, 2013, and does not know why the IEP meeting notes would indicate otherwise. Mother testified she did not recall signing and dating an IEP on April 26,



2013, but admitted that the signature on the document appeared to be her signature. The mother's testimony for this charge is inconclusive.

#### *Charge 20 – Student ZR*

137. Student ZR's annual IEP meeting was due to be held by March 5, 2013. (Exh. 1, p. 637.) The CASEMIS record for student ZR showed an "Effective Date" of March 5, 2013, which indicated March 5, 2013, was the date that the student's last IEP was put into effect. (Exh. 1, p. 638.) In Workflow, Respondent made entries that she convened an IEP meeting on February 28, 2013, which the parent attended, and that partial consent was received from the parent on March 5, 2013. (Exh. 1, p. 639.) Respondent prepared an IEP document showing March 5, 2013, as the "Date of This Meeting" on the IEP cover page. (Exh. 1, p. 640.) However, the meeting notes for the IEP indicate the meeting took place on March 27, 2013. (Exh. 1, p. 641.) There is no explanation in the IEP meeting notes whether the meeting occurred on March 5, March 27, or on both dates. The IEP Participants and Consent page was not signed and dated until April 3, 2013. (Exh. 1, p. 644.) The IEP was signed by the parent on April 3, 2013. The IEP contains no signatures from the participants for a March 5 and/or March 27 meeting.

138. Laurie Smith was student ZR's third grade teacher for the 2012-2013 school year. Smith attended an IEP meeting for ZR in March 2013, where Respondent and administrative designee Susan Overstreet were present. The purpose of the meeting was to exit student ZR from special education services. Student ZR's mother did not arrive at the scheduled meeting time. Smith suggested that Respondent call ZR's mother, as Smith had known the mother to be prompt to meetings. Respondent responded that it was not necessary to call the mother because she had spoken to the mother two days earlier and the mother gave approval to exit ZR from services. At Smith's insistence, during the meeting, Respondent purportedly telephoned ZR's mother and, afterwards, stated that ZR's mother verbally consented for her son to be exited. Respondent indicated to Smith and the administrative designee that they should sign the IEP paperwork, which they did. Smith asked if it was proper to sign without the parent present at the meeting, and Respondent indicated it was. Later, Smith spoke with student ZR's mother, who was volunteering in Smith's classroom. According to Smith, the mother indicated she had received no call from Respondent.

139. Student ZR's mother testified that she did not have any recollection of attending meetings in March 2013 or April 2013. She did not recall speaking by telephone with Respondent or giving verbal consent to exit her son, ZR, from special education services. However, student ZR's mother testified that, in the 2012-13 school year, she agreed that student ZR and her other son should both be exited from speech.

140. Respondent contends that the IEP meeting was held on April 3, 2013, student ZR's mother gave consent over the phone for her son's exit from special education on that date, and the mother signed the IEP as of April 3, 2013. Respondent testified that the March 5, 2013 meeting date on the IEP cover page, and the March 27, 2013 meeting date in the IEP meeting notes, were mistakes which she should have corrected. Respondent testified that the



IEP meeting for student ZR occurred on April 3, 2013, and any other date indicated as the meeting date would be incorrect and the result of human error.

141. During the March 22, 2013 conference with Heidi McDowell, Respondent admitted that the IEP for student ZR was late and not in compliance with IEP timelines. (Exh. 1, p. 712.) The Commission finds that the District's argument that Respondent falsified dates in CASEMIS and Workflow to hide that student ZR's IEP was late was not persuasive.

142. It was established, as alleged in Charge 20, that Respondent failed to properly notice, obtain consent, and complete documentation for an IEP for student ZR and his exit from special education services. Respondent failed to properly complete IEP documentation. She prepared an IEP showing a meeting date of March 5 on the cover page, and a meeting date of March 27 in the meeting notes, both dates she admits were incorrect and the IEP should have reflected a meeting date of April 3, 2013. Respondent failed to properly obtain consent for an IEP meeting on April 3, 2013. She created an IEP meeting notice dated March 21, 2013, which proposed a meeting date of April 3, 2013. (Exh. 1, p. 645). The IEP meeting notice indicates the parent's response should be completed and returned to Respondent. (Exh. 1, p. 646.) In the parent response section, the box is checked for the response "I will not attend but proceed without me and forward a copy of the IEP for my review and signature." (Exh. 1, p. 646.) Respondent failed to obtain a parent signature on the consent form for an April 3, 2013 meeting. The student's confidential file did not contain a parent signature on the IEP meeting notice to indicate the parent's consent to the April 3, 2013 meeting being held without them. In mitigation, although the IEP meeting notice is not signed, the parent did sign the IEP participant and consent page on April 3, 2013.

#### *Charge 21 – Student BW*

143. Student BW's annual IEP meeting was due to be held by March 7, 2013 (i.e., within one year of the prior year's IEP). (Exh. 51, p. 3701.) The confidential file for student BW contained an IEP for a meeting date of March 27, 2013. The purpose of the meeting was to exit student BW from special education. (Exh. 1, p. 650.) The IEP meeting notes indicate that student BW's mother attended the meeting by telephone conference. (Exh. 1, p. 657.) The Participants and Consent page contains signatures by Respondent and student BW's parent dated April 2, 2013, and a signature by administrative designee Susan Overstreet dated April 12, 2013. (Exh. 1, p. 659.) There are no signatures indicating participation at a meeting on March 27, 2013. Respondent admitted to Heidi McDowell, at their conference on March 22, 2013, that she was not in compliance with IEP timelines for student BW's IEP.

144. The Workflow record indicates that the student's parents responded to an IEP meeting notice on February 18, 2013, and agreed to a meeting date, and that an IEP meeting was convened on February 18, 2013, which the parents attended. (Exh. 1, p. 649.) The District contends that the February 18, 2013 meeting date in Workflow gives the impression that the IEP was timely held, given that the due date for the IEP was March 7, 2013.

145. The Workflow data and the IEP are inconsistent. The Workflow record indicates that full consent was received on February 18, 2013, which was not possible if the IEP meeting was not actually held until March 27, 2013, or the IEP was signed by the parent on April 2, 2013. Further, the IEP indicates that the meeting notice was sent on March 14, 2013. (Exh. 1, p. 659.) Such a meeting notice, however, could not have been sent for a February 18, 2013 meeting.

146. Respondent testified that she scheduled an IEP meeting for March 27, 2013. She used Workflow informally and considered dates entered in Workflow "did not matter" because they were not reported to the State. Respondent admitted that the March 27, 2013 meeting date shown on the IEP cover page [Exh. 1, p. 650] was not accurate and needed to be updated, given that the meeting participants signed the IEP on April 2, 2013 [Exh. 1, p. 659].

147. It was established, as alleged in Charge 21, that Respondent failed to properly notice, obtain consent, and accurately complete documentation regarding an IEP for student BW. The IEP documentation prepared by student BW was not accurate, as evidenced by the date discrepancies in the IEP itself and the Workflow record. Respondent admitted that the dates shown in the IEP were not accurate and needed to be updated.

148. It was established, as alleged in Charge 21, that Respondent negligently recorded data in Workflow, but it was not established that Respondent falsified data in Workflow. The Commission finds that Respondent's informal use of Workflow as her own personal calendar constitutes negligent recording of data. The Commission is not persuaded that Respondent falsified data in Workflow to hide her noncompliance with IEP timelines, given that she admitted to Heidi McDowell that she was late in completing student BW's IEP. (Exh. 1, p. 712.)

#### *Charge 22 – Student MM*

149. Claudell Gapultos is employed by the District as a lead occupational therapist. He has been assigned to Mariners for the past seven years. Tiffany Lang has been a teacher for 11 years. She is presently assigned to Mariners as a second grade teacher. On April 29, 2013, Gapultos and Lang arrived at Respondent's speech office at 3:15 p.m. for an IEP meeting for student MM. They had each received an email invitation from Respondent for an IEP meeting at that date and time. Student MM's parent was not present, which Lang thought was unusual because she knew that both of the student's parents were very involved with their child. Respondent, as case carrier, conducted a meeting with Gapultos and Lang, who each gave their input about student MM. During the meeting, neither Lang nor Gapultos asked Respondent about student MM's parents not being present. At the end of the meeting, Respondent had Gapultos and Lang sign and date an IEP Participants and Consent page for the April 29, 2013 meeting, which they did. Gapultos and Lang left Respondent's office. They checked their email and noted that Respondent had sent them a cancellation notice at 3:07 p.m. for the meeting they had just attended. Lang sent an email to student MM's mother asking if she knew that Respondent held an IEP meeting that day for MM.

Student MM's mother responded that she was not aware of an IEP meeting scheduled for April 29, 2013. Respondent denied that she attempted to hold an IEP for student MM without the parents' presence or consent.

150. Respondent's IEP documentation and related Workflow records for student MM contain discrepancies. On March 14, 2013, Respondent sent an IEP meeting notice to student MM's parents which proposed meeting dates of March 22, April 12, or April 26, 2013. (Exh. 1, p. 661.) The parent response section of the IEP meeting notice contains no signature by the parents to confirm their attendance at a meeting or to indicate their agreement that the meeting could proceed without them. (Exh. 1, p. 663.) The Workflow record for student MM indicates that the parents responded to an IEP meeting notice on February 27, 2013, and agreed to a meeting date; Respondent convened an IEP meeting on March 13, 2013, which the parents did not attend; Respondent contacted the parents on March 14, 2013; and the IEP meeting could proceed in the parents' absence on April 29, 2013. (Exh. 1, p. 664.) It is noted that the April 29, 2013 meeting date in Workflow is not one of the proposed meeting dates in the March 14, 2013 IEP meeting notice. The IEP for student MM shows a meeting date of March 13, 2013. (Exh. 1, p. 666.) However, the IEP meeting notes indicate the meeting was held on March 12, 2013. (Exh. 1, p. 673.) The IEP indicates that the IEP meeting notice was sent to the parents on March 14, 2013 [Exh. 1, p. 675], which does not match the Workflow record indicating that the parents responded to an IEP meeting notice on February 27, 2013. Logically, the parents could not have responded on February 27, 2013, to an IEP meeting notice sent on March 14, 2013.

151. It was not established, as alleged in Charge 22, that Respondent failed to properly notice, obtain consent, and/or complete documentation regarding an IEP for student MM or to exit student MM from speech-related services. The Commission finds that the meeting on April 29, 2013, was not an IEP meeting because essential members of an IEP team were missing, namely, the student's parent and an administrative designee. The Commission finds that it would not be reasonable for Gapultos and Lang to conclude the meeting they attended on April 29, 2013, was an IEP meeting. In any event, student MM could not be exited from speech-related services at the conclusion of the April 29, 2013 meeting because it was not an IEP meeting and there was no consent for exit given by the student's parent. The Commission finds that the April 29, 2013 meeting was nothing more than a staffing meeting.

#### *Charge 23 – Student KB*

152. It was established, as alleged in Charge 23, that Respondent failed to conduct a timely IEP meeting for student KB. The student's IEP meeting was due to be held prior to March 6, 2013. At her conference with Heidi McDowell on March 22, 2013, Respondent admitted that she was not in compliance with IEP timelines for student KB's IEP. However, the Commission finds that the evidence was insufficient to establish that Respondent manually falsified data and/or negligently altered data in CASEMIS to reflect an effective date of March 5, 2013, so as to avoid audit for failure to timely conduct an IEP meeting for this student. There was no reason for Respondent to hide that student KB's IEP was late, as

she admitted the IEP was late to Heidi McDowell. There was evidence that Respondent had delegated to Lindsey Murphy the responsibility for completing student KB's IEP, although Respondent was still listed in the Synergy as the case carrier for student KB. Lindsey Murphy testified that student KB's IEP was unremarkable and she did not recall creating the IEP or entering dates in CASEMIS. The Commission cannot determine from the evidence presented whether Respondent or Lindsey Murphy entered the March 5, 2013 effective date in the CASEMIS record for student KB.

#### *Charge 24 – Student ZP*

153. Student ZP was a student who came to the District with an IEP from his prior school district in Alaska. In January 2013, the District approved an interim placement request for student ZP. During the 30-day period after approval of the interim placement, the District was required to provide services comparable to the services provided under student ZP's last agreed upon IEP from Alaska, review the student's IEP needs and goals, and hold an IEP meeting for development of a new IEP by the District. Student ZP's IEP from Alaska was based on his disability of speech/language impairment.

154. The 30-day interim placement period for student ZP had a projected start date of January 10, 2013, and an end date of February 8, 2013. (Exh. 1, p. 689.) Respondent was required to complete her review of the student's IEP needs, goals, and services, and hold the 30-day IEP for student ZP, in or about February 2013. The exact date in February cannot be determined by the evidence because the interim placement request was not signed by student ZP's parent, although the space for the parent's signature shows a typewritten date of January 17, 2013. (Exh. 1, p. 689.)

155. The confidential file for student ZP includes an IEP which shows that Respondent convened an IEP meeting on March 15, 2013, to discuss student ZP's interim placement. According to the IEP meeting notes, present for this meeting were Respondent, administrative designee Susan Overstreet, and general education teacher Brenda Khoury. Student ZP's parent was not present. The Participants and Consent page for the IEP was not signed by any of the participants identified in the meeting notes. A box on the Participants and Consent page is checked to indicate that the meeting was not completed and a follow up meeting would be scheduled to finalize the IEP. The IEP indicates that an IEP meeting notice was sent to student ZP's parent on March 5, 2013. (Exh. 1, p. 695.)

156. The Workflow record for student ZP indicates that student ZP's parent responded on January 17, 2013, to the IEP meeting notice and agreed to a meeting date; an IEP meeting was convened on January 18, 2013, which the parent attended; partial consent was received on February 15, 2013 ; and the IEP was finalized on March 15, 2013. (Exh. 1, p. 690.)

157. It was established that Respondent failed to obtain consent and complete accurate documentation regarding an IEP for student ZP. The IEP for the March 15, 2013 meeting is not consistent with the data entered by Respondent in the Workflow record for

student ZP. Respondent admitted to Heidi McDowell, at their conference on March 22, 2013, that she was not in compliance with IEP timelines for student ZP's IEP. (Exh. 1, p. 712.)

*Charge 25 – Student JI*

158. Respondent was the case carrier for student JI. The annual IEP meeting for student JI was due to be held by no later than March 6, 2013 (i.e., within one year of the prior year's IEP which was dated March 7, 2012). (Exh. 55, p. 3748.)

159. Heidi McDowell reviewed the confidential file for student JI on or about May 9, 2013. The brown file contained an IEP meeting notice dated March 11, 2013, which proposed an IEP meeting date of March 19, 2013. (Exh. 1, pp. 698-699.) In the parent response section of the IEP meeting notice, a box is checked off indicating that the parent will attend the scheduled meeting on March 19, 2013. The space provided for the parent's signature is blank. The date of March 18, 2013, is typewritten in the space for indicating "Date Signed" and in the space for indicating the date the parent response was received. Heidi McDowell did not find a version of the IEP meeting notice actually signed by student JI's parent in the brown file. The absence of a signed IEP meeting notice, however, is mitigated by evidence that the parent gave verbal consent on March 12, 2013, to have the meeting held the following week (i.e., March 19, 2013). (Exh. 1485.) The parent also signed, but did not date, the Participants and Consent form for the IEP. (Exh. 1, p. 701.)

160. The confidential file contained an IEP for student JI which indicated an IEP meeting was held on March 19, 2013. (Exh. 1, pp. 700-701.) This IEP was not timely, as the deadline for student JI's annual IEP meeting was March 6, 2013. Respondent did not sign the Participants and Consent form, and she failed to have the parent and general education teacher date the form next to their signatures. (Exh. 1, p. 701.) However, the administrative designee, Susan Overstreet, signed and dated the IEP on March 19, 2013. The Commission finds that an IEP meeting for student JI was held on March 19, 2013.

161. The Workflow record for student JI indicates that Respondent convened an IEP meeting on March 13, 2013, the parent attended, full consent was received from the parent, and the IEP was finalized. (Exh. 1, p. 699). The Workflow record is not accurate, as the IEP meeting was actually held on March 19, 2013.

162. It was established that Respondent failed to conduct a timely annual IEP for student JI; failed to sign the Participants and Consent form; and failed to have the parent and general education teacher date the form. Although it was established that Respondent failed to obtain a signed response from student JI's parent to the IEP meeting notice for a March 19, 2013 meeting, the failure to obtain the parent's signature is mitigated by evidence that the parent consented to the meeting and signed the Participants and Consent section of the IEP document.

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### *Charge 26 – Student SD*

163. Student SD's mother wrote a letter dated March 24, 2013, addressed to Heidi McDowell, in which she requested SD's removal from speech therapy. (Exh. 1, p. 710.) In the letter, the mother explained that SD attended speech therapy during his classroom's math time and she felt it was more important for SD to be in the classroom during that learning time. Heidi McDowell received the letter by SD's mother on April 4, 2013.

164. On April 9, 2013, Heidi McDowell reviewed the brown confidential file and the CASEMIS and Workflow records for student SD. The CASEMIS record indicated that student SD's IEP had an effective date of April 2, 2013, and his special education exit date was April 2, 2013. However, the confidential file did not contain an IEP for student SD for an exit date of April 2, 2013. The only IEP document in the confidential file was a "draft" IEP that did not indicate a meeting date on the cover page or in the meeting notes section. For the 2012-2013 school year, the annual IEP meeting for SD was due to be held by no later than February 27, 2013. The Workflow record included an entry for March 13, 2013, that SD's parent had responded to an IEP meeting notice and agreed to a meeting date. However, there was no entry in the Workflow record indicating that an IEP meeting was actually held for student SD. During her March 22, 2013 conference with Heidi McDowell, Respondent identified student SD's IEP as one of the IEPs for which she was not in compliance with IEP timelines.

165. It was established that Respondent failed to timely complete student SD's annual evaluation by February 27, 2013, and failed to complete an IEP and obtain signatures on the IEP Participants and Consent page by that date. As of April 9, 2013, there was no documentation in the confidential file and no entries in the CASEMIS and Workflow records establishing that an IEP meeting was actually held by the February 27, 2013 deadline. Respondent herself admitted she was not in compliance with the IEP timelines for student SD's IEP during her March 22, 2013 conference with Heidi McDowell.

166. It was established that Respondent failed to accurately document and report student SD's exit from speech-related services.

### *Other Findings*

167. Respondent testified that she will change and modify her practices in using and maintaining assessment protocols, managing student confidential files, and using Synergy, CASEMIS, and Workflow. She appears to have learned her lesson from the documentation and recordkeeping deficiencies that were the basis of the District's charges in this case. She appeared sincere in expressing that she will be diligent in performing her duties related to recordkeeping and documentation in accordance with the District's policies and procedures.

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## LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1-3.<sup>8</sup>

2. The District has the burden of proof in this matter and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. Pursuant to section 44932, the grounds for dismissal alleged by the District against Respondent are for immoral conduct [subdivision (a)(1)], dishonesty [subdivision (a)(4)], evident unfitness for service [subdivision (a)(6)], and persistent violation of or refusal to obey school laws or reasonable regulations [subdivision (a)(8)]. The District also alleges the ground for immediate suspension in section 44939, subdivision (b), of willful refusal to perform regular assignment without reasonable cause.

### *Immoral Conduct*

4. Grounds do not exist for Respondent's dismissal, pursuant to section 44932, subdivision (a)(1), for immoral conduct. (Factual Findings 1-167.)

5. The term "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.) The Commission finds that Respondent's conduct established by the evidence in this case did not rise to the level of immoral conduct, e.g., it was not established that Respondent willfully entered false data into IEPs or computer programs or attempted to mislead any parent or school staff.

### *Dishonesty*

6. Grounds do not exist for Respondent's dismissal, pursuant to section 44932, subdivision (a)(4), for dishonesty. (Factual Findings 1-167.)

7. Dishonesty "connotes a disposition to deceive" and "necessarily includes the element of bad faith." It means "fraud, deception, betrayal, faithlessness," and "denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Midway School District v. Griffith* (1946) 29 Cal.2d 13.)

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<sup>8</sup> All further statutory references are to the Education Code unless otherwise indicated.

8. In this case, Respondent's deficient compliance with special education laws and the Handbook did not constitute dishonesty, because her conduct did not result from a purpose or intention to deceive or defraud the District, Mariners staff, or any students and their parents. The Commission is not persuaded by the District's contention that Respondent was dishonest by entering false information in Synergy to disguise and hide her non-compliance with IEP timelines and requirements. Respondent admitted to Heidi McDowell that she was not in compliance with IEP timelines and was late in completing IEPs for her students. The discrepancies in Respondent's documentation and computer records were due to many factors, such as her use of Workflow as her own personal calendar, her failure to update records and documents to account for changes in meeting dates and failure to include explanations in the IEP meeting notes, her practice of writing assessment data on notepads and then later having to take time to transfer the information to the protocols, and her feeling overwhelmed by the Mariners workload and stress from her difficult relationship with the principal and Mariners staff. The totality of the circumstances led to Respondent's sloppy, inaccurate, and incomplete documentation. The Commission does not find Respondent engaged in conduct with a dishonest purpose or intent.

#### *Evident Unfitness for Service*

9. Grounds do not exist for Respondent's dismissal, pursuant to section 44932, subdivision (a)(6), for evident unfitness for service. (Factual Findings 1-167.)

10. 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.*)

11. To determine evident unfitness for service, "the criteria [for unfitness set out in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214] must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. If the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence, supra*, 2 Cal.App.4th at 1445.)

12. The *Morrison* case sets forth the following factors for determining a teacher's fitness to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of certificate held by the teacher; (5) extenuating or aggravating circumstances surrounding the conduct; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood that the conduct in question will recur; and (8) the extent that discipline will cause an adverse chilling impact

on the constitutional rights of the teacher involved or other teachers. (*Morrison v. State Board of Education*, *supra*, 1 Cal.3d at 229.)

13. (A) In applying the *Morrison* factors, it appears the likelihood that Respondent's conduct adversely affected students was minimal. The District contends that Respondent's conduct adversely affected special education students in that they were left with files and records that were incomplete and inaccurate. There is no evidence that special education students were deprived of services or unable to pursue their due process rights because of incomplete or inaccurate records. However, Respondent's conduct did adversely affect the SLPs and other Mariners staff in that they were given additional work to bring Respondent's files and records into compliance with special education laws and the Handbook. Respondent's conduct was recent, having occurred during the 2012-2013 school year. Respondent, as case carrier, was responsible for the files and records of her students, and any failures in the completeness and accuracy of those files and records were properly attributed to her.

(B) The Commission finds, however, that Respondent's workload issues at Mariners created extenuating or mitigating circumstances for her conduct. Respondent's case carrying duties created a heavy workload, especially since SLP Lindsey Murphy was at Mariners only one day per week and spent that day primarily providing therapy. Respondent had case carrying duties related to IEPs which were very labor intensive and involved, among other things, contacting all IEP team members (including parents) to schedule a mutually agreeable meeting day, preparing IEP meeting notices and other required IEP documents; convening the meeting, and updating the Synergy, Workflow, and CASEMIS records. In addition, Respondent, as SLP, was providing therapy to students, conducting assessments, completing Medi-Cal billing, and handling inquiries and other matters for the SLP team. The Commission is not suggesting that Respondent's busy case load and workload excused her documentation and recordkeeping deficiencies and non-compliance with IEP requirements; it does not. However, the labor intensive nature of Respondent's SLP duties and workload at Mariners helps to explain why some of Respondent's deficient and non-compliant conduct occurred, and also refutes the District's characterization of Respondent's conduct as motivated by dishonesty or deceit. The Commission believes that Respondent's deficient and non-compliant conduct is fixable, in part, by adjusting her workload to a reasonable level. Based on the foregoing, the Commission concludes that Respondent's conduct at issue in this case does not indicate she is unfit for service.

14. Even assuming, *arguendo*, that Respondent was found to be unfit for service under the *Morrison* factors, the Commission finds that any unfitness is not due to any defect in temperament. The Commission finds that the deficient and non-compliant conduct is remediable and fixable. Respondent's incomplete files were due in large part to her practice of recording data and scores on a separate note pad instead of using the protocols provided with assessments. Respondent's practice created more work for herself, as she needed additional time to transfer information from her notes to the protocols. The discrepancies in Respondent's Synergy, CASEMIS, and Workflow records were due, in part, by her use of Workflow as her own personal calendar and not as the District intended it to be used. The

Commission believes that Respondent's conduct is not due to a defect in temperament. Respondent has expressed during her testimony that she will correct and modify her practices so that these issues will not recur in the future.

### *Persistent Violation of School Laws and Regulations*

15. Grounds exist for Respondent's dismissal, pursuant to section 44932, subdivision (a)(8), for persistent violation of school laws and regulations, in that Respondent engaged in persistent violation of special education laws and the Handbook in performing her SLP duties at Mariners for the 2012-2013 school year. (Factual Findings 1-167.)

16. (A) In *Governing Board of Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82, the court stated: "The word 'persistent' is defined by lexicographers as 'refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.' (Webster's New World Dict. (College ed.); see Webster's Third New Internat. Dict.) And in the judicial decisions of this, as well as other states, the word has been interpreted to mean 'continuing or constant.' [citations omitted]."

(B) The court in *Seaman* further explained that "a single violation of a school board's rules is not of itself cause for the dismissal of a permanent teacher under subdivision (g) of section 13403 [now section 44932, subdivision (a)(8)]. The subdivision pertains to unintentional as well as intentional transgressions, and hence the Legislature, apparently to allow opportunity for a correction, has decreed that a single violation is not sufficient to warrant dismissal; 'it is the persistent disregard' of school rules that the subdivision is designed to regulate." (28 Cal.App.3d at 84 [citation omitted].)

17. Education Code section 56320, subdivision (b)(3), provides, in part, that tests and other assessment materials must be "administered in accordance with any instructions provided by the producer of the assessments." (Exh. 1, p. 56.) Section 56320, subdivision (f), provides that assessments shall be conducted in accordance with 34 Code of Federal Regulations (CFR) sections 300.304 and 300.305. (Exh. 1, p. 57.) 34 CFR 300.304, subdivision (c)(1)(v), requires that assessments and other evaluation materials used to assess a child "[a]re administered in accordance with any instructions provided by the producer of the assessments." (Exh. 1, p. 153-154.) Title 20 United States Code section 1414, subdivision (b)(3), provides that assessments "are administered in accordance with any instructions provided by the producer of such assessments." (Exh. 1, p. 123.)

18. School districts are required to retain special education assessment protocols containing student information as mandatory interim student records. (Cal. Code Regs., tit. 5, § 432 [Exh. 1, pp. 132-133].) Mandatory interim student records include records of "[p]articipation in special education programs including required tests, case studies, authorizations, and actions necessary to establish eligibility for admission or discharge." (*Ibid.*) Parents and guardians of students have a legal right to inspect such records upon request. (Exh. 1, pp. 134-147.)



19. During the 2012-2013 school year at Mariners, Respondent engaged in persistent violations of special education laws and the District's policies and procedures set forth in the Handbook by failing to utilize and retain protocols, failing to administer assessments according to instructions, failing to complete IEP documentation, failing to comply with IEP timelines, entering incomplete and/or inaccurate data in Workflow and CASEMIS, and failing to organize and maintain confidential files according to the procedures set forth in the Handbook. These violations were not one-time, isolated occurrences but, rather, involved multiple student files over the course of the school year. Similar violations were discovered from a review of a sample of Respondent's student files at her prior school site, Corona Del Mar High School. The violations can be construed as "persistent," in light of Respondent's knowledge of IEP requirements from her 29 years' experience working as an SLP in public schools and her knowledge of the District's policies and procedures from having worked as an SLP for the District since 2006.

#### *Willful Refusal to Perform Regular Assignments*

20. Grounds do not exist for Respondent's suspension, pursuant to section 44939, subdivision (b), for willful refusal to perform regular assignments without reasonable cause. No evidence was presented of Respondent willfully refusing to perform her assignment as an SLP at Mariners or Corona Del Mar High School. She did perform her SLP duties but not to the satisfaction of her employer, the District. (Factual Findings 1-167.)

#### *Morrison Factors*

21. Cause for discipline against a teacher must relate to her fitness to teach within the meaning of the factors enumerated in the case of *Morrison v. State Board of Education*, *supra*, 1 Cal.3d 214. Here, the Commission has found cause exists to dismiss Respondent pursuant to section 44932, subdivision (a)(8), for persistent violation of school laws and regulations. With regard to that cause for dismissal, the Commission considered all of the factors suggested by the *Morrison* case and compared them 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, 384.) 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 Dist. v. Commission on Professional Competence*, *supra*, 2 Cal.App.4th at 1457.) For the same reasons set forth in Legal Conclusions 12 and 13, above, the Commission finds that, under the *Morrison* factors, Respondent's conduct in this case does not demonstrate unfitness for service as an SLP for the District.

#### *Disposition*

22. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.)

Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 222.)

23. Respondent is an experienced and skilled clinician. She has worked as an SLP in public school settings for 29 years. She is an adjunct professor at Chapman University and supervises master's degree students. She is innovative in her use of technology and other manipulatives as a way to engage students in therapy. She presents a demeanor indicative of a personable and knowledgeable clinician. No evidence was presented in this case that any parent made a complaint about the quality of Respondent's speech therapy services. She has no prior record of discipline with the District.

24. However, the evidence established that during her assignment at Mariners for the 2012-2013 school year, Respondent had serious deficiencies in her documentation and recordkeeping and her compliance with IEP timelines. The Commission recognizes that documentation and recordkeeping are an important part of an SLP's duties in a public school setting. The Commission believes that Respondent's documentation and recordkeeping deficiencies are remediable. For instance, Respondent can make sure she enters accurate dates in Workflow and ceases using it as her own personal calendar for assessments. She can also record assessment data in protocols instead of her time-consuming practice of transferring data from her notepad to the protocols, which itself creates additional work on Respondent's already busy workload. She can also change her practices with regard to maintaining original documents in the confidential file in accordance with the Handbook. The Commission finds the District removed Respondent from her position as SLP without giving her the time and assistance to correct her deficient files and records. Respondent's requests for help during the first half of the school year were not adequately addressed by administrators. Respondent was ultimately given three weeks to bring her late IEPs into compliance, but she was not given assistance to do that until the week before she was placed on administrative leave, when Patti White was allowed to help for two days at the end of April. Assistance was finally brought in to remedy Respondent's files and records, but only after she was already removed and placed on administrative leave. Respondent testified that she will change her practices that resulted in the charges that are the basis of this disciplinary action. The Commission believes her.

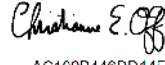
25. Based on the foregoing, the decision of the Commission in this case is that Respondent shall not be dismissed from employment with the District.

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ORDER

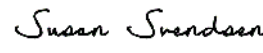
Respondent Lianne Pfister shall not be dismissed and shall remain employed with the Newport-Mesa Unified School District.

DATED: January 6, 2017 \_\_\_\_\_

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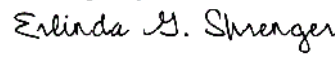
CHRISTIANNE OFF, M.A., CCC-SLP  
Commissioner  
Commission on Professional Competence

DATED: January 7, 2017 \_\_\_\_\_

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SUSAN SVENDSEN, M.S., CCC-SLP  
Commissioner  
Commission on Professional Competence

DATED: January 7, 2017 \_\_\_\_\_

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ERLINDA G. SHRENGER  
Administrative Law Judge, Commissioner  
Commission on Professional Competence