

**BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

GEORGINA JARRAH,

Respondent.

OAH Case No. L2009060818

**DECISION**

The hearing in the above-captioned matter was held on January 12, 2010, at Bellflower, California, before the Commission on Professional Competence. The Commission consisted of Tim Delia, Anthony Zegarra, and Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH).

Complainant was represented by Eric Bathen. Respondent appeared and was represented by Carlos R. Perez and Ken Morizawa, Reich, Adell & Cvitan.

Evidence was received, the case was argued, and the matter was submitted for decision on the hearing date.

The Commission hereafter makes its Factual Findings, Legal Conclusions, and Orders, as follows:

**INTRODUCTION AND STATEMENT OF THE CASE**

The Bellflower Unified School District (District) brought this proceeding to terminate one of its permanent certificated employees, Respondent Georgina Jarrah (Respondent). Respondent is a special education teacher for the District.

The Accusation, which incorporated a Statement of Charges, originally asserted two bases for termination. It was first alleged that Respondent had failed to maintain the appropriate credentials needed to properly hold and discharge her position, in that she had failed to obtain a CLAD (Crosscultural Language and Academic Development) certificate, despite efforts by the District to make sure she obtained that certificate. The second claim originally alleged that Respondent had failed to provide satisfactory performance in the classroom.

Just prior to the hearing, the District elected not to proceed on the claim of unsatisfactory performance in the classroom. The parties therefore tried the claim that Respondent had not obtained the CLAD certificate, and whether such a failure would support Respondent's termination as a teacher in the District.

### **FACTUAL FINDINGS**

#### *A. The Parties, Jurisdiction, and Procedural Background:*

1. Respondent<sup>1</sup> is a permanent certificated employee of the District. During the relevant time period, the 2008-2009 school year, she was assigned as a special education teacher at Mayfair High School.

2. The Accusation and Statement of Charges (Accusation), is the combined document that asserts the grounds for termination. The Statement of Charges was executed by Rick Kemppainen, Superintendent of the District, on May 28, 2009. On that same date, he executed a Notice of Intention to Dismiss and Notice of Intention to Suspend which was based on the Statement of Charges. On June 3, 2009, Respondent executed a Notice of Defense, requesting a hearing on the matter of her dismissal. Thereafter, Mr. Kemppainen executed the Accusation, on June 15, 2009, and caused it to be served on Respondent.

3. On June 20, 2009, Respondent and her attorney executed a stipulation with the District, whereby the parties deemed the hearing in this matter to have been commenced within the 60-day deadline set out in Education Code section 44944, subdivision (a)(1),<sup>2</sup> and agreed to extend the time period for completion of discovery. All jurisdictional requirements have been met.

4. Thereafter, Respondent was suspended without pay, effective August 31, 2009.

#### *B. Findings Pertaining to the Charges Against Respondent:*

5. State law requires that teachers who work with children who are English-language learners must hold a CLAD certificate.

6. (A) Respondent was a teacher who was working with English language learners, but she did not hold a CLAD. In August 2008, the District gave Respondent written notice that she needed to have such a certificate, or that she must enroll in courses so that she could obtain such a certificate.

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<sup>1</sup> Respondent's teaching credential, Exhibit 18, indicates that she has also been known as Georgina Whyte.

<sup>2</sup> All statutory citations are to the Education Code, unless otherwise noted.

(B) Specifically, on August 25, 2008, Lisa Azevedo, Assistant Superintendent for Instructional Personnel and Programs, wrote to Respondent regarding CLAD certification. Ms. Azevedo's letter informed Respondent of her need to have a CLAD, and of the District's "expectation" that Respondent would enroll in an approved program so that she could earn that certificate. Respondent was told that she could obtain an emergency certificate for the 2008-2009 school year, and the letter further informed her that if she held such an emergency credential, was enrolled in appropriate courses, and held six units of coursework, an emergency CLAD could be renewed.

(C) The last paragraph of Ms. Azevedo's letter stated:

Please be advised that if you do not apply for the emergency credential, enroll in a program, and complete a minimum of six units, you may be reassigned and or relocated based on the needs of the students at your site. *Failure to comply may lead to termination. . . .*

(Ex. 1, p. 23. Emphasis added.)

7. Ms. Azevedo's letter also stated that Respondent would need to complete an updated Memorandum of Understanding (MOU) pertaining to the needed CLAD certificate. On October 10, 2008, Respondent executed an MOU. That document states that teachers working with English learners are required to hold a CLAD or similar credential, or be in training to obtain one, and it further stated that "to be counted as 'in training' you must be **currently** enrolled in coursework to obtain a certificate or the paperwork to apply for a certificate must be in process." (Ex. 1, p. 24. Emphasis in original.)

8. (A) In executing the MOU, Respondent stated that she was "currently enrolled in coursework that will lead to obtaining a certificate authorizing the provision of instructional services to English learners" and that she was working to obtain a CLAD. She stated, in her own hand, an anticipated completion date of June 2009, and stated that she was attending Azusa Pacific for the coursework.

(B) However, Respondent's statements were not true, because she was not then enrolled to take the courses needed for a CLAD at any college or university. She had not been enrolled in classes at Azusa Pacific for several years. It should be noted that the MOU form had a provision where a teacher such as Respondent could state that she was not currently enrolled in the necessary coursework, and she could then state a plan of action. Rather than choose that option, Respondent misled the District.

9. On March 12, 2009, Ms. Azevedo, in her capacity as Assistant Superintendent, again wrote to Respondent regarding a CLAD certificate. The letter was similar to the one she wrote in August 2008, in that it called attention to the legal requirement for certification of those teaching English learners. This second letter referenced the August 2008 letter, and stated that the District was requesting proof of enrollment or completion of a program by

May 8, 2009. The letter specifically stated that failure to provide proof of “enrollment/completion will lead to a recommendation for termination.” (Ex. 1, p. 8.) However, the letter advised that if the program had not been completed, then-current enrollment would allow Respondent to apply for an emergency credential. The letter concluded with the admonition that if Respondent did not apply for the emergency certificate, enroll in a program, and complete six units, she would be terminated.

10. Respondent has never obtained a CLAD certificate, and she has never enrolled in a program to obtain a CLAD certificate, through the date of the hearing. Respondent’s failure to provide proof of certification, or enrollment in appropriate coursework, led to a recommendation that she be terminated, and this proceeding ensued.

11. The District is not able to re-assign Respondent to a special education classroom where she would not need a CLAD. A substantial percentage of the District’s students are English learners, and every special education class contains such students, and did during the 2008-2009 school year.

12. Respondent stopped teaching in March 2009, taking a leave because of stress. She attested that she had been harassed by the District regarding her teaching methods; she further testified that others were teaching her classes (while ostensibly trying to help her improve her techniques), which created a chaotic situation. During the hearing, Respondent could not recall the exact date she went on leave, but did recall that it was after she received Ms. Azevedo’s March 12, 2009 letter, described in Factual Finding 9.

13. Respondent attested that she had plans to take the necessary courses for a CLAD certificate, but family issues interfered with her intentions. Three of her grandparents died during a two year period. Her mother required heart surgery, and so Respondent moved in with her mother to take care of her. However, the surgery occurred in 2003, and Respondent stayed with her mother for approximately one year. Furthermore, her grandparents died well before the 2008 school year. There were financial issues with taking the courses, in that Azusa Pacific, where she had obtained the education to become a teacher, charged approximately \$1,500 for each of the two courses necessary to obtain the CLAD, and Respondent asserted that she did not have the necessary funds to take the classes.

14. Respondent admitted that she never took steps to enroll in the necessary classes at a public university, although she was aware that both the University of California and the California State University systems had the courses, and that they would be less costly than at a private school such as Azusa Pacific. There are schools that allow a teacher to take such courses on line as well. The District provides information to its teachers regarding the availability of required courses such as those needed to earn a CLAD certificate.

15. Testimony by Ms. Azevedo established that the requirement to hold a CLAD if teaching English learners has been in place since at least 1994. It is fairly inferred by the Commission that Respondent knew of this requirement well before August 2008, given that she has been credentialed for several years.

*Findings Regarding the Morrison Factors:*

16. Where there is conduct that might justify termination of a teacher, an examination must be made of whether or not that conduct indicates that the teacher in question is unfit to teach. This requirement was first set forth in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229. There, the Supreme Court held that factors that may be examined to determine fitness include the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; and, the proximity or remoteness in time of the conduct. Other factors may include the type of certificate held by the teacher; extenuating or aggravating circumstances; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood that the conduct in question will recur; and, the extent that discipline will cause an adverse or chilling impact on the constitutional rights of the teacher involved, or other teachers.

17. (A) *Adverse consequences on students and teachers, and the degree thereof:* There is little evidence of directly adverse consequences for students or other teachers, though some may be inferred. First, it is inferred that if Respondent can not teach the classes she normally would teach, because she lacks a necessary credential, then other teachers would have to assume that responsibility. Second, it is inferred that if she lacks a credential required by the state, then her students are not receiving instruction from a qualified teacher, which threatens to leave them behind students who do receive such qualified instruction.

(B) *Proximity in time:* This conduct occurred in the period 2008 to 2009. Thus, the events described herein must be deemed recent.

(C) *Type of certificate held by Respondent:* Respondent holds a special education credential.

(D) *Likelihood of recurrence:* The conduct in question has been ongoing, and therefore is recurring conduct. The record establishes that despite warnings that failure to obtain the CLAD would lead to termination, Respondent failed and refused to even enroll in classes. Further, she made a misleading statement about compliance, covering up her failure to enroll in coursework. The fact that she would mislead rather than comply indicates that the misconduct would recur in the future.

(E) *Implication of constitutional rights:* No constitutional rights, of either the Respondent or other teachers, are implicated if Respondent is terminated for her conduct described in this decision.

(F) *Extenuating or aggravating circumstances:*

(i) In aggravation, Respondent's failure to comply with her obligations continued over many months, despite notice of the consequences of non-compliance. The requirement to hold a CLAD certificate if teaching English learners has been in existence for

many years, and thus Respondent has had ample notice of her obligations and ample opportunity to complete six units of education. Respondent's failure to obtain the CLAD while teaching exposed the District to sanctions by the State. Further aggravating the matter is the manner in which she misled her employer in executing the October 2008 MOU.

(ii) Respondent offered, in extenuation, testimony that various family problems had impinged upon her ability to complete the necessary classes, but those problems arose months, and even years, before August 2008, when the District wrote to her about the CLAD. She also offered as extenuation her poor financial condition, but, when placed on notice in August 2008, she was then employed full-time, and in a position to find classes at a lower cost than the private university which she favored. Thus, there is little extenuation in the record.

18. Under all the circumstances, Respondent's ongoing conduct renders her unfit to teach, and she should be terminated as a teacher for the District.

### **LEGAL CONCLUSIONS**

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944, and Factual Findings 1 through 4.

2. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), requires that the unfitness for service be attributable to a defect or inadequacy in temperament, presumably not remediable merely on receipt of notice that the teacher's conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School District v. Commission on Professional Competence (Zuber)* (1992) 4 Cal. App.4th 1429, 1444-1445.)

3. Pursuant to section 44939, a teacher may be terminated for refusal to obey regular assignments without reasonable cause, as prescribed by the rules and regulations of the employing district.

4. Even where grounds for termination under the statutes are established, it must also be established that such conduct renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230; *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208; *Woodland Joint Unified School District v. Commission on Professional Competence (Zuber)* (1992) 4 Cal. App.4th 1429, 1444-1445.)

5. Cause has been established to terminate Respondent due to evident unfitness for service, pursuant to Education Code section 44932, subdivision (a)(5). This Conclusion is based on Factual Findings 1 through 15, and Legal Conclusions 1, 2, and 4. Respondent suffers from a defect in temperament if she can not bring herself to even enroll in necessary courses when threatened with termination.

6. Cause has been established to terminate Respondent pursuant to section 44939, for her refusal to obey the assignment of enrolling in and completing courses needed to obtain a state-mandated credential. This Conclusion is based on Factual Findings 1 through 15, and Legal Conclusions 1, 3, and 4.

7. Based on *Morison v. State Board of Education* (1969) 1 Cal.3d 214, it has been demonstrated that Respondent is unfit to teach. This Conclusion is based on Factual Findings 1 through 18.

8. Respondent should be terminated from her position as a certificated teacher with the District, based on Legal Conclusions 1 through 7, and their factual predicates.

### **ORDER**

Respondent Georgina Jarrah shall be terminated as a permanent certificated teacher in the Bellflower Unified School District.

Dated:

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Tim Delia

Dated:

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Anthony Zegarra

Dated:

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Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings