

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
JURUPA UNIFIED SCHOOL DISTRICT  
RIVERSIDE COUNTY, CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Dismissal of

LENORE BOYKIN,

A Permanent Certificated Employee,

Respondent.

OAH No. 2010041362

**DECISION OF THE  
COMMISSION ON PROFESSIONAL COMPETENCE**

On June 21-25, 2010, a Commission on Professional Competence heard this matter in Riverside, California. The Commission included James Ahler, Matt Johnson and Amar Samet.

Kerrie E. Taylor, Attorney at Law, and Kelley A. O'Connell, Attorney at Law, represented complainant Tamara Elzig, Assistant Superintendent, Personnel Services, Jurupa Unified School District.

Marianne Reinhold, Attorney at Law, represented respondent Lenore Boykin, a permanent certificated employee of the Jurupa Unified School District, who was present throughout the administrative hearing.

On June 25, 2010, the matter was submitted.

**ISSUES**

Did respondent Lenore Boykin engage in unsatisfactory performance in the management of her classroom and students at the Learning Center?

Did respondent Lenore Boykin engage in unprofessional conduct in her interactions with students at the Learning Center?

Did respondent Lenore Boykin demonstrate an evident unfitness to serve as a teacher as a result of her conduct at the Learning Center?

Did respondent Lenore Boykin engage in dishonesty in the reporting of an incident that occurred on May 6, 2009, at the Learning Center?

If grounds for discipline exist, is Lenore Boykin's dismissal from employment an appropriate disciplinary outcome under all of the circumstances?

## FACTUAL FINDINGS

### *Respondent's Educational and Professional Background*

1. Respondent Lenore Boykin (Ms. Boykin or respondent) graduated from the University of California, Riverside (UCR) with a bachelor's degree in Psychology in 1979. Ms. Boykin received a Ryan life single subject teaching credential in mathematics from UCR in 1982.<sup>1</sup> Ms. Boykin's credential authorizes her to teach to teach mathematics in grades 12 and below, including preschool, and in classes organized primarily for adults. Ms. Boykin does not hold a multiple subject teaching credential. In 1984, Ms. Boykin received a master's degree in Educational Psychology from UCR, with an emphasis in cognitive development, mental retardation and the education of persons with developmental disabilities.

2. Ms. Boykin began her teaching career in 1979 at St. Edwards School, a private school serving students from kindergarten through 9<sup>th</sup> grade, where Ms. Boykin did not need to possess a teaching credential. Ms. Boykin taught math, religion, art, Spanish, English, social studies, and other subjects at St. Edwards. Ms. Boykin very much enjoyed her early teaching experience.

After receiving her teaching credential, Ms. Boykin began teaching math at Moreno Valley High School. She continued her employment at Moreno Valley High School through 1985. In 1985, Ms. Boykin began employment with the Jurupa Unified School District (the District) as a mathematics teacher.

3. Ms. Boykin testified that she likes to teach, that she enjoys interacting with students, and that she particularly enjoys seeing students "get it, when the light bulb goes on." Ms. Boykin was employed at comprehensive high schools within the Jurupa Unified School District from 1985 through 2004. In summer 2004, before the commencement of the 2004-2005 school year, Ms. Boykin had the opportunity to teach summer school at the Learning Center, an alternative educational facility within the district. Ms. Boykin liked the setting after working the summer session.

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<sup>1</sup> Notice is taken that the California Commission on Teacher Credentialing website states that the Commission on Teacher Credentialing issued a Life Single Subject Teaching Credential (Document Number TC405966) to Lenore A. Boykin on July 29, 1985, and not in 1982 as Ms. Boykin testified. This factual inconsistency is irrelevant to the ultimate disposition of this matter.

4. Ms. Boykin's full-time teaching position at the Learning Center commenced the 2004-2005 school year. Ms. Boykin maintained employment at the Learning Center through the filing of the notice of intent to dismiss.

### *The Learning Center*

5. The Learning Center is home to several alternative educational programs including an adult education program, an independent studies program, and the Steps to Educational and Personal Success Community Day School (STEPS).

STEPS provides educational services to 40 to 50 middle school and high school students who attend the Learning Center daily. Most STEPS students have been expelled from school. Students from 7<sup>th</sup> to 12<sup>th</sup> grades may be present in the same classroom at the same time at STEPS.

Students enter STEPS under specific agreements with the Board of Education. The program's goal is the student's readmission to a traditional campus following a showing of rehabilitation. Students must obtain at least a 2.0 GPA while attending STEPS, must be present at least 90 percent of the time, and must make restitution or provide community service if that is a part of the agreement with the board. Before a student can be readmitted to a traditional campus, the STEPS student must provide the board with a letter requesting readmission.

The Learning Center campus consists of administrative offices, nine classrooms, storage facilities, restrooms, a teacher's lounge, and a parking lot. Staffing at the Learning Center includes a principal, an assistant principal, nine full-time certificated teachers, many classroom aides, several campus supervisors, and other administrative staff. The student to teacher ratio is about eight to 12 students per teacher per class period, with a teacher's aide also present in the classroom.

The STEPS school year lasts 11 months. STEPS teachers are paid on an 11-month contract, not a ten-month contract as is the case for teachers providing service in more traditional settings. Classes start at 7:30 a.m. and each class lasts approximately one hour. The school day ends at 2:20 p.m. There is a 15-minute break in the morning and there is an approximate 45-minute lunch break around noon. There are six academic periods each day.

The students who attend STEPS are challenging. While most students have not been expelled for a "big five" violation (possession of a firearm, possession of an explosive device, brandishing a weapon, possession of drugs for sale, and/or sexual assault), most engaged in sufficiently inappropriate behavior to warrant expulsion. As was evident in this matter, student misconduct does not stop when a student arrives at the STEPS campus. Common misbehavior includes failing to work in class, coming to class unprepared, refusing to work in the classroom, throwing objects in the classroom, talking and shouting in the classroom, refusing to sit in assigned seats, disrupting the classroom, tardiness, truancy, lying, failing to serve detention, demonstrating defiance towards teachers and other school

officials, using profanity and directing profanity towards other students, teachers and staff, possessing objects and paraphernalia related to gang activity or graffiti, and vandalism.

To cope with this difficult student body, teachers must control the classroom as best they can by directing and redirecting students who are disruptive or off task, by using various classroom management strategies including the imposition of progressive discipline and parent contact, and by referring students to administration. STEPS teachers can “rapid exit” students from the classroom when a student’s behavior is dangerous, disruptive or directly disrespectful to the teacher or continuously interrupts the educational process. A “rapid exit” must be followed by a student referral.

Classroom management is essential to effective teaching at STEPS, and teachers must possess and employ a great deal of patience, tolerance, discretion, judgment, and diplomacy. The assignment is very difficult.

The student referral system enables a teacher to notify school administrators of a student’s misbehavior, to document the nature of that misbehavior, and to request that administrators take further formal disciplinary action. Most student referrals must be investigated by STEPS administrators. Based upon the results of an investigation into a referral, administrators may impose such sanctions as break detention, lunch detention, on-campus detention, on-campus suspension, off-campus suspension, and expulsion. In an effort to maintain positive teacher-student relationships, classroom teachers are not authorized to impose detention or to suspend or expel a Learning Center student. Only Learning Center administrators can impose formal disciplinary action.

#### *Ms. Boykin’s History of Student Referrals*

6. When Ms. Boykin arrived at the Learning Center in the 2004-2005 school year, George Monge was the principal. Ms. Boykin wrote numerous student referrals in the 2004-2005, 2005-2006, 2006-2007 and 2007-2008 school years when Principal Monge was the site administrator.

7. On June 4, 2008, Principal Monge sent an email to Ms. Boykin regarding her classroom referrals. That email stated in part:

“Lenore, I need to communicate with you regarding an issue that has reached a critical mass that must be corrected as soon as possible. I am speaking about the high number of referrals that you send to the office, often for minor ‘offenses’ that clearly should have been handled within the classroom.

I won’t speculate on how much class time is being lost in order for you to write the number of student referrals you submit on a daily basis. I will state that each referral requires the office staff and me to spend a significant amount of time to merely process these documents. Each referral requires review, a meeting & discussion with the student, possible parental contact – either by phone or scheduled meeting, entering the referral into the Zangle system, mailing the referral home, distributing a copy

back to you and placing a copy in the student file. Each referral increases the workload for an already very busy office staff.

A high number of student referrals are not an indicator of positive classroom management or of teacher control and efficacy. The extraordinarily high number of referrals that you have consistently continued to send to the office over the past several years has impacted the overall office operation and I believe has diminished the effectiveness of the STEPS program. . . .”

Principal Monge’s email mentioned a recent research study that found that rigidly enforced classroom discipline programs resulted in increased behavioral problems and decreased student achievement, and that an effective classroom learning environment usually possessed four crucial classroom components: Positive teacher-student relationships; clearly stated expectations of acceptable behaviors; monitoring skills; and consequences.

The email continued:

“An emphasis on consequences or of sending students of class increases the likelihood of more negative behaviors, avoidance of school work and infers that instruction and learning are actually not very important . . .

I am not particularly concerned in continually finding fault with our students. I already know that most of our students have had a history of disciplinary problems. My goal for STEPS is not to model a more draconian version of a regular school’s disciplinary program. I wonder if you have considered the fact that in spite of having written so many referrals: has the need to write more referrals diminished (improved behavior)? Are more students being successful in math? Is your goal to teach math or to act as the school disciplinarian/campus supervisor?

I want you to strongly reconsider your classroom management plan. Your teaching colleagues have been able to effectively administer their classes without inundating the office with referrals. To this point in the school year, you have submitted more referrals than the rest of the teaching staff combined. Today, I attempted to handle 12 of your referrals. When I was an administrator at the comprehensive high school, with more than 2,000 students, I rarely dealt with more than six referrals a day.

I am more than willing to assist you in making the proper adjustments in this area. I am certain that training in this area can be provided, if that proves to be necessary. For now, you need to know that this is a major concern of mine, and that I want you to emphasize instruction and learning in the classroom, and building trust, respect and relationships on campus.”

Ms. Boykin was “shocked by the tone” of this “scathing email.” She told Principal Monge that she “felt like I had been raped and violated” when she met with him on June 18, 2008. At that meeting Principal Monge provided Ms. Boykin with charts that showed that Ms. Boykin had written 215 of the 590 referrals issued in the 2005-2006 school year, 106 of

the 321 referrals issued in the 2006-2007 school year, and 155 of the 346 referrals issued in the 2007-2008 school year. Ms. Boykin dismissed the relevance of the data by asserting that statistics could be manipulated to indicate just about anything. Ms. Boykin wanted to discuss each referral and to explain the specific problem underlying the referral instead of looking into ways to reduce the number of referrals.

In her written statement to the board regarding the June 18 meeting,<sup>2</sup> Ms. Boykin asserted, “Statistically, the pie charts were meaningless.” Ms. Boykin stated that she had requested that Principal Monge provide her with specific examples of alleged unnecessary referrals so she could be guided and supported. Ms. Boykin asserted that Principal Monge refused her request and that he became very angry when she asked him again to provide her with specific examples of unnecessary referrals.

The June 18, 2008, meeting concluded in an unsatisfactory manner. Ms. Boykin lodged a complaint against Principal Monge and his secretary with Assistant Superintendent Tamara Elzig.<sup>3</sup>

8. Interim Principal Dennis Kroeger was assigned to the Learning Center shortly after the 2008-2009 academic year began. In January 2009, Trenton Hansen was assigned to serve as Principal. Ms. Boykin issued approximately 70 student referrals under Principal Monge and Interim Principal Kroeger’s stewardship before Principal Hansen arrived.

9. Principal Hansen taught Spanish for five years and was an Assistant Principal at a comprehensive high school for one and a half years before his appointment to the Learning Center. Like most educators, Principal Hansen believed that students become disruptive and interrupt the learning process when a teacher lacks effective classroom management skills. Principal Hansen believed that excessive student referrals might indicate a deficiency in a teacher’s classroom management skill which might compromise classroom instruction.

When Principal Hansen arrived at the Learning Center campus in January 2009, Ms. Boykin was on administrative leave as a result of an incident occurring on December 9, 2008.<sup>4</sup> Ms. Boykin did not return to teach at the Learning Center until mid-March 2009.

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<sup>2</sup> On January 26, 2010, Ms. Boykin sent a detailed eight page email to the board which responded to various allegations, most of which formed the basis of this dismissal action. Ms. Boykin’s email began: “The District claims numerous allegations of wrongdoing on my part. I have done nothing wrong.”

<sup>3</sup> In her January 26, 2010, email, Ms. Boykin advised the board that she believed that Principal Monge’s recommendation violated Education Code section 44805, which provides: “Every teacher in the public schools shall enforce the course of study, the use of legally authorized textbooks, and the rules and regulations prescribed for schools.” Ms. Boykin justified her student referral practice on this basis.

<sup>4</sup> An incident involving student SV gave rise to Ms. Boykin being placed on administrative leave and to the issuance of a Notice of Unprofessional Conduct, which included a plan of assistance. The incident involving SV is discussed in detail in Factual Findings 23-26.

10. Principal Hansen met with Ms. Boykin on March 16, 2008, before she returned to the classroom.<sup>5</sup> At that meeting, Principal Hansen reviewed the Notice of Unprofessional Conduct and the plan of assistance with Ms. Boykin. The plan directed Ms. Boykin to “never place your hands on a student out of anger,” “conduct yourself in a manner that is professional,” and “complete an anger management program.”<sup>6</sup> Principal Hansen spoke with Ms. Boykin about his personal expectations, which included Ms. Boykin handling petty and minor classroom offenses through a progressive discipline plan. Principal Hansen suggested that disciplinary interactions be conducted on a 1:1 basis with students, and not in front of other students in the classroom. He told Ms. Boykin that misbehavior warranting a rapid exit should be followed by a written referral to the office.

11. Principal Hansen visited Ms. Boykin’s classroom (as well as the classrooms of other teachers at the Learning Center) on an informal basis at least once a week. He received and reviewed the numerous student referrals Ms. Boykin issued after her return. Based on his observations, his contact with students and parents, and several events occurring over the next few months, Principal Hansen concluded that Ms. Boykin possessed a weak classroom management style, that the number of student referrals written by Ms. Boykin was excessive, and that many of the student referrals involved relatively minor offenses that could and should have been handled within the classroom.

12. Ms. Boykin wrote more than 50 student referrals from March 18 through May 13, 2009. The vast majority of the referrals required administrative review and action.

Complainant established that many of the student referrals that Ms. Boykin issued during this period involved relatively minor offenses that could have been resolved within the classroom and without the need for a referral. Ms. Boykin wrote referrals for students being defiant and argumentative after she asked them to move, for arguing in class, for not bringing assigned materials to class, for using profanity not directed at other students or Ms. Boykin, for sticking a gum wrapper to a desk, for possessing straightened paper clips (described as “carving tools” and “potential weapons”), for submitting random answers to test questions, for not working in class, for the poor use of class time, for drawing and using graffiti style writing, for copying other students’ work, for refusing to turn over cell phones (the school policy precluded the use of cell phones and other electronic devices during class, but not the possession of them), and for walking out of class at the end of the period without first being dismissed.

Most of the student misconduct was totally inappropriate; it should not have been overlooked, much less condoned. However, in response to initial instances of misbehavior,

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<sup>5</sup> Ms. Boykin claimed she was responsible for initiating this contact.

<sup>6</sup> In her January 26, 2010, email to the board, Ms. Boykin represented that most of the “directives were a direct result of my complaint to Mrs. Elzig in September 2008 regarding Mr. Monge’s behavior, including but not limited to creating divisiveness among staff and creating a hostile work environment at the Learning Center. I also reported a number of illegal activities such as double and triple dipping, using categorical funds illegally, lack of mainstreaming and outright exclusion of the special education students on our campus, and obvious gender discrimination illustrated by decisions regarding assignment of extra compensation duties among other things.”

Ms. Boykin often overreacted, confronting and alienating the students whose conduct she sought to remediate, thereby compounding a disturbance rather than improving or resolving the underlying misbehavior. Ms. Boykin's pattern of overreacting and escalating student misconduct was quite common despite its ineffectiveness.

At Principal Hansen's suggestion, Ms. Boykin began sending emails directly to document instances of misbehavior that did not necessarily result in a student's rapid exit from the classroom and a formal referral. Between March 18 and May 18, 2009, Ms. Boykin sent more than 40 pages of emails. On April 21, 2009, Ms. Boykin sent emails to Principal Hansen concerning various students at 10:44 a.m., at 11:36 a.m. and at 2:46 p.m., each of which were written during a class period, as well as issuing a referral during the third period. On April 22, 2009, Ms. Boykin sent emails to Mr. Hansen and other staff members concerning various students at 10:10 a.m., at 11:08 a.m., at 11:32 a.m., at 11:39 a.m., at 12:45 p.m., at 1:05 p.m., at 1:20 p.m. and at 7:02 p.m. While the volume of emails Ms. Boykin generated on the other days was not as great as on April 21 and 22, the review of the emails required the expenditure of a great deal of Principal Hansen's time and attention. Nevertheless, Ms. Boykin continued writing formal referrals for misbehavior that did not result in a rapid exit.

13. Principal Hansen credibly testified that he met with Ms. Boykin to discuss possible solutions to the classroom management problems he observed, including his recommendation that Ms. Boykin institute a seating arrangement in which students would not be seated directly next to one another,<sup>7</sup> that she avoid writing referrals for minor offenses in an effort to develop a more positive relationship with students, that she afford students a greater measure of privacy with regard to their personal property, and that she attempt to avoid embarrassing students in front of their peers. Principal Hansen testified the goal of discipline was to enhance learning and "keep kids in class." Principal Hansen maintained a running log in his office computer that related to his important contacts and discussions with Ms. Boykin (as well as others at the Learning Center). Principal Hansen met with Ms. Boykin to discuss these matters on several occasions including March 16, April 20 and 21, May 14 and 18, 2009, and he documented each interaction.

Principal Hansen did not exhibit any bias against Ms. Boykin during his testimony, he directly answered questions asked of him on both direct and cross-examination, and he did not exaggerate or embellish his responses. Principal Hansen testified that in addition to attempting to assist Ms. Boykin in developing enhanced teacher-student relationships, Ms. Boykin's implementation of his suggestions would have reduced the need for administrators to have direct contact with students for minor matters, which took up an enormous amount of time of Learning Center administrators and required students to be out of the classroom.

14. In her January 2010 email to the board, Ms. Boykin specifically denied having any interaction with Principal Hansen on March 16, 2008, in which he discussed her need to

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<sup>7</sup> Ms. Boykin testified that she already had this "checkerboard" seating arrangement in place in her classroom and that Principal Hansen's recommendation was unnecessary.



develop an effective classroom management system and her student referral practice. But, Mr. Hansen's contemporaneous notes established that those issues were discussed at that meeting. Ms. Boykin specifically admitted in this disciplinary proceeding that she should have paid more attention to Principal Monge's and Principal Hansen's concerns that she wrote too many referrals for minor offenses, conceding that her failure to heed their suggestions was "a mistake." Ms. Boykin's testimony on the issue of student referrals and what she had been told by her site supervisors raised questions about her willingness and capacity to change her behavior.

15. Josh Lewis became the Principal of the Learning Center in August 2009, after Principal Hansen was assigned to Rubidoux High School.

Principal Lewis conducted a PowerPoint presentation at a STEPS staff meeting on September 9, 2009. That presentation focused on material set forth in a handbook that Principal Lewis produced. The handbook stated that the degree of modeling and observation that takes place between student and teachers is extensive and that students look to teachers as examples of proper adult behavior. The handbook expressed the view that almost any trained teacher can teach intelligent, motivated and well-behaved students, but the excellent teacher finds a way to teach the other students. The handbook stated that discipline was the responsibility of all Learning Center staff and that inappropriate language and behavior should be corrected and reported. The handbook directed Learning Center staff to not ignore behavior that disrupted the learning environment.

The handbook contained a format for establishing an assertive discipline plan that each teacher was directed to complete and return to Principal Lewis. The assertive discipline format required the teacher to list classroom rules (the four to six things most important in the classroom), to list consequences for breaking rules (a hierarchy of consequences ranging from a simple acknowledgement to punishment that included specific preliminary steps before making a referral), the need for a conversation with parents before referring the student to guidance coordinator, and providing rewards for good behavior. The handbook contained a sample letter teachers should present to parents that outlined the teacher's assertive discipline plan.

The handbook contained a section related to the referral of students for disciplinary purposes. The handbook stated that the classroom teacher was required to contact parents before a student was sent to the office with a referral for chronic minor offenses. With regard to students referrals, the handbook required a teacher to describe "major or serious events carefully" including details of the event, to fill out referral forms completely and legibly, to set forth specific details and not opinions or suppositions, and to indicate exactly what actions were taken to correct persistent minor offense including documented parent contacts. Teachers were directed to avoid suggesting or requesting specific disciplinary consequences in their referrals; administrators would notify the parents of the disciplinary action undertaken. The handbook specifically stated that only a guidance coordinator or an administrator could assign a student to on-campus suspension.

Teachers were directed to call the front office immediately in the event of a fight, a dress code violation, or suspicion of drug possession or use.

16. Ms. Boykin never provided Principal Lewis with an assertive discipline plan as directed, but she provided him with a form letter entitled “Classroom Expectations of Ms. Boykin, Mathematics Instructor.” That letter closely followed the example letter set forth in the handbook. Ms. Boykin’s letter included classroom rules (treat everyone with respect, follow directions the first time, come to class prepared, raise your hand to speak and to leave your assigned seat, do not do anything which stops any student from learning or the teacher from teaching), mentioned rewards for good behavior (a positive note home, pizza for lunch), and set forth various consequences for the refusal to obey the rules (a verbal warning, a written essay signed by the parents, a phone call to the parents, a meeting at the Learning Center with the parents, and finally a referral to the principal).

After Ms. Boykin issued her letter, Principal Lewis requested that Ms. Boykin revise her letter and eliminate the consequence that required a student to write an essay about the rule the student violated, which was specifically mentioned in the handbook, because that consequence was problematic and the administration could not support it; more specifically, Principal Lewis believed that the essay requirement set students up for failure and would inevitably result in more contact with administrators than less contact. Ms. Boykin submitted a revised letter that eliminated the essay consequence.<sup>8</sup>

Between September 11 and November 4, 2009, Ms. Boykin issued 29 referrals, which Principal Lewis described as “an extraordinary amount of referrals from one teacher in that short time period.” Ms. Boykin wrote referrals for students not working in the classroom, throwing a pencil, possessing a “carving tool” (a paperclip), having a cell phone in the classroom, using an electronic device in the classroom, swearing and becoming hostile when asked to sit down, playing on the computer, and refusing to wait to be dismissed at the end of a class period. Contrary to Mr. Lewis’ direction and the instructions in the handbook, most student referrals written by Ms. Boykin during this period did not contain any indication that Ms. Boykin had initiated parent contact. This omission was not excused by the fact that the administration ultimately took formal disciplinary action against a student following many of the referrals that were issued during this period.

Principal Lewis spoke with Ms. Boykin many times about her classroom management techniques after informally observing her in the classroom. For example, after one informal observation, Principal Lewis suggested that Ms. Boykin not accuse a student of wrongdoing in front of his peers, especially if she did not personally witness the wrongdoing. This advice was identical to that previously given Ms. Boykin by Principal Hansen on more than one occasion.

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<sup>8</sup> Ms. Boykin claimed that she, and not Principal Lewis, had concluded that the essay consequence that she imposed was ineffective and that she was the person responsible for recommending the changes in her letter to parents.

17. Ms. Boykin's last formal evaluation was in May 2004, before Ms. Boykin arrived at the Learning Center. Principal Monge and Principal Hansen did not formally evaluate Ms. Boykin during their tenure at the Learning Center, although each observed her in the classroom informally many times and each met with her frequently to discuss their concerns about the number of student referrals she issued.

Principal Lewis scheduled a formal evaluation that was to commence with a classroom observation on November 6, 2009. During the November 6 observation, Principal Lewis saw Ms. Boykin conduct a raffle to reward good behavior. Principal Lewis' formal evaluation was not completed because Ms. Boykin was placed on administrative leave on November 9, 2009, before the conclusion of the formal evaluation.<sup>9</sup>

18. In Ms. Boykin's January 2010 email response to the board, Ms. Boykin stated that neither Principal Monge nor Principal Hansen discussed an effective classroom management system with her. In that email, Ms. Boykin represented that she utilized instructional time properly and that she employed an effective classroom management system. In that email, Ms. Boykin responded to criticism of her referral writing practice by asserting that she had not been provided with copies of all the referrals she had written and that she was unable to comment on the allegations for that reason. In that email, Ms. Boykin justified the student referrals she issued on the basis that the student referrals were required under the school rules and code of conduct, were required in order for her to comply with Principal Hansen's specific directives, or were required to assure compliance with various provisions of the Education Code.

19. Ms. Boykin testified that she attended a five-week anger management class that lasted one hour each week after she received the first notice of unprofessional conduct. She stated that as a result of that class, she learned alternate methods of handling problems and troubleshooting. With regard to the 25 student referrals alleged to be examples of her failure to effectively manage her classroom, Ms. Boykin testified that she had cause to issue a student referral in every instance and that the issuance of these referrals did not interfere with classroom instruction. Ms. Boykin observed that formal discipline – including detention or suspension – was often imposed by administrators as the result of her referrals. With regard to the referrals written between September 11 and November 4, 2009, when Principal Lewis was the site administrator, Ms. Boykin observed that more than ten referrals documented her contact with parents or her attempt to make parent contact. Ms. Boykin testified that she attempted to comply with Principal Lewis' directives. She testified that she instituted a reward system that provided students with raffle tickets for good behavior, that she held a raffle once a week, and that students used the raffle tickets they earned to obtain small prizes. She testified that on two occasions she arranged a pizza luncheon for students who were passing her class.

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<sup>9</sup> An incident involving three students – JG, BA, and JH – on November 6, 2009, gave rise to Ms. Boykin being placed on administrative leave and ultimately the issuance of a Notice of Unsatisfactory Performance and Unprofessional Conduct. The incident is discussed in detail in Factual Findings 49-52.

### *Classroom Management – Unsatisfactory Performance*

20. Classroom management and effective student discipline involve skills that are acquired and honed over time. Effective classroom management is central to teaching, and it requires the exercise of common sense, consistency, a sense of fairness, and knowing what is important and what is not. Management skills are acquired with practice, feedback, and a teacher's willingness to admit and learn from mistakes. Effective classroom managers practice skills that minimize student misbehavior. A component of an effective discipline plan requires that students be told what to expect and commended for good behavior and genuine accomplishments. Praise should provide information to students concerning their competence and the value of their accomplishments.

An effective discipline plan requires that students should be carefully and frequently observed so that misbehavior can be detected before it involves too many students or spirals into serious disruption. A teacher should attempt to halt inappropriate behavior without significantly interrupting instructional activities or calling excessive attention to disobedient students. A teacher can move close to an offending student or make eye contact and give nonverbal prompts to the student in an effort to curtail the offensive behavior. A teacher can call the student's name and attempt to redirect the student towards more appropriate behavior by stating exactly what is expected in the classroom. Misbehavior is less likely to recur if a teacher obtains a pledge from the student to avoid problematic conduct and engage in more desirable alternative behavior in the future.

Milder forms of punishments are often as effective in obtaining good classroom behavior as more intense forms of punishment, and they do not arouse as much negative emotion. A teacher should refrain from using sarcasm, which is often misunderstood, or belittling a student. To the extent possible, a potentially disruptive situation should not be escalated by making an example of the student. Negative consequences or punishment should relate to specific acts of misbehavior. Serious disruptive behaviors such as fighting, continuous interruption of lessons, possession of drugs, stealing or frank vandalism require direct action, rapid exit, and student referral.

Without doubt, effective classroom management is more difficult to achieve in a setting such as STEPS, where most students have been expelled from school. Nevertheless, STEPS students can hear and understand what a teacher says, and they are well aware that serious disruptive behavior may result in their suspension or expulsion from STEPS, which prevents them from returning to a traditional campus, from being with their friends and from continuing their education, which is, after all, what most STEPS students seek. There are natural adverse consequences for serious continuing misbehavior and STEPS students are well aware of that.

21. The commission finds that Ms. Boykin engaged in unsatisfactory performance with regard to her failure to effectively manage her classroom and to discipline students in an appropriate manner from at least the 2007-2008 school year through the date she was most recently placed on administrative leave. Ms. Boykin's classroom was beset with tardiness, inattention, talking in class, disdain for discipline, disrespect, and a general unruliness.

Despite the repeated attempts by several site administrators to bring her unsatisfactory performance to her attention, Ms. Boykin failed to establish and maintain an effective program of student discipline in her classroom, and that failure interfered with the educational process. Ms. Boykin's continuous writing of student referrals and her issuing emails for relatively minor infractions did not constitute an effective classroom management strategy and, in fact, it disrupted the Learning Center's operation.

Ms. Boykin's history of unsatisfactory performance in the area of classroom management adversely affected students, significantly impaired the educational process, required the constant attention and response of site administrators at the Learning Center from June 2008 through November 2009, and often featured Ms. Boykin escalating a relatively minor situation in the classroom to the point that a student's rapid exit from the classroom was required. Ms. Boykin obviously lacked the skills to handle difficult middle and high school students and she failed to provide them with the meaningful instruction that was authorized under her credential. If history provides any lesson, it is that Ms. Boykin's unsatisfactory performance will continue if she were to remain employed by the District.

The district's attempts to provide Ms. Boykin with opportunities to remediate her unsatisfactory classroom management skills were met with denial, accusations against others, an unwillingness or inability to attend relevant trainings, and no more than token efforts to comply with clear directives. Ms. Boykin's dismissal from employment on the grounds of unsatisfactory performance will not violate her constitutional rights or have a chilling effect on the constitutional rights of other teachers.

### *Unprofessional Conduct*

22. Charges related to Ms. Boykin's unprofessional conduct involved: An incident allegedly occurring on December 9, 2008 (the choking allegation); an incident allegedly occurring on April 16, 2009 (the search of a backpack allegation); an incident allegedly occurring on May, 6, 2009 (the "stupid is as stupid does" allegation); an incident allegedly occurring on May 13, 2009, when Ms. Boykin told an assistant principal she could not stand a student (the B [REDACTED] allegation); an incident allegedly occurring on May 18, 2009, when Ms. Boykin became very upset and left her classroom (the leaving the classroom allegation); an incident allegedly occurring on October 27, 2009, in which Ms. Boykin became very upset and violated a student's personal space (the "gleeking" allegation); an incident allegedly occurring in October 2009 in which Ms. Boykin refused to help a student (the "stop your bitching" allegation); an incident occurring on November 2, 2009, when Ms. Boykin threatened to staple a student's mouth shut if he did not stop talking (the stapler allegation); an incident occurring on November 5, 2009, in which Ms. Boykin threatened to throw rocks at students who were not working in class (the rock allegation); and Ms. Boykin's alleged use of profanity during the 2009-2010 school year (the profanity allegation).

23. The choking allegation: On December 9, 2008, Ms. Boykin attempted to gain the attention of a campus supervisor who was outside of her classroom before releasing her class for lunch. Numerous students were in close proximity to Ms. Boykin. A female

student, SV, who was standing next to Ms. Boykin, attempted to get the campus supervisor's attention by placing her fingers in her mouth and whistling. SV's whistle was quite loud, it surprised Ms. Boykin, and it made her angry. In response to SV's whistle, Ms. Boykin immediately put her hand in the area of SV's neck, above the collarbone and below the Adam's Apple, and forcefully pushed SV backward, telling SV, "God damn it. Don't do that again." Ms. Boykin's reaction frightened SV. Many students witnessed the incident, and some of them were frightened by it. Knowledge of the incident became known at the Learning Center campus, with some students asserting that Ms. Boykin intentionally choked SV even though that was not the case.

Ms. Boykin apologized to SV and to the class shortly after the incident. Ms. Boykin acknowledged that it was wrong for her to place her hand on SV. After the incident, SV was taken from the classroom and was escorted to the office where she spoke with Tamara Elzig, Assistant Superintendent of Personnel Services. SV provided Assistant Superintendent Elzig with a written statement.

Ms. Boykin met with Theresa Roush, Director of Classified Personal, and with Assistant Superintendent Elzig after the incident. Assistant Superintendent Elzig served Ms. Boykin with a notice that stated that Ms. Boykin may have violated school regulations and which placed Ms. Boykin on administrative leave with full pay and benefits pending further investigation. Assistant Superintendent Elzig told Ms. Boykin that she was required to cooperate in the investigation and that she was entitled to representation. Ms. Boykin spontaneously admitted that she had placed a hand on SV during the incident and that she had cursed. Ms. Boykin was quite upset when she made this admission.<sup>10</sup>

24. On December 15, 2008, Ms. Boykin reported that she had suffered an industrial injury as a result of the December 9, 2008, incident. In the form that she filed with the district, Ms. Boykin stated that a student "whistled loudly in my ear" and that caused "intense pain for at least 2 days constantly, intermittent stabbing pain continues, difficult to hear, the sound also triggered a migraine headache." Ms. Boykin advised that she had been sent home from the district office without the appropriate report of injury form even though she had requested that it be provided to her, that she was scheduled for a hearing test, and that she had "a subsequent appointment with an ENT surgeon."

Ms. Boykin later withdrew her workers' compensation claim.

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<sup>10</sup> During her conversation with Assistant Superintendent Elzig, Ms. Boykin mentioned several emotional problems she had been having. Assistant Superintendent Elzig suggested that Ms. Boykin seek assistance through the district's employee assistance program (EAP), to which Ms. Boykin replied, "It would be easier to slit my wrists than go back there." Ms. Boykin then asked Assistant Superintendent Elzig, "Are you going to 5150 me?", after which Assistant Superintendent Elzig asked if she should be concerned about Ms. Boykin's welfare. Ms. Boykin then discussed driving off bridges on the way home, said she had insurance, and stated she just wanted to go home. Assistant Superintendent Elzig contacted a counselor to determine if Ms. Boykin needed assistance. The counselor later permitted Ms. Boykin to drive home.

25. Ms. Boykin was on paid administrative leave from December 9, 2008, through March 12, 2009. The incident involving SV resulted in Ms. Boykin being served with a notice of unprofessional conduct that was dated March 12, 2009.<sup>11</sup>

Assistant Superintendent Elzig served the notice of unprofessional conduct. Before she served Ms. Boykin with that notice, Assistant Superintendent Elzig gave Ms. Boykin the option of resigning her position at the Learning Center and accepting a letter of reprimand in lieu of the notice of unprofessional conduct. Assistant Elzig told Ms. Boykin about several opportunities for employment within the district over the summer which would supplement her income. Ms. Boykin declined the offer because accepting it would have resulted in her working under a ten-month employment contract rather than the 11-month employment contract.

26. In her testimony in this matter, Ms. Boykin admitted “It is not appropriate to push a kid like that.” She denied attempting to choke SV. Ms. Boykin testified that she was shocked and upset when she was placed on administrative leave.

Ms. Boykin’s touching of SV was a reaction that involved a small measure of unprofessional conduct, but standing by itself that conduct would not provide grounds for dismissal from employment.

27. The Search of the Backpack Allegation: On April 16, 2009, about a month after Ms. Boykin returned from administrative leave, SC, a male student in Ms. Boykin’s 5<sup>th</sup> period class, asked Ms. Boykin if he could go to the office to get an ice pack for an injury to his finger. Ms. Boykin gave SC a hall pass. SC went to the office and left his backpack and folder in the classroom. Shortly after SC left, Ms. Boykin went through SC’s folder without SC’s consent. Ms. Boykin found another student’s work in SC’s folder, concluded that SC was going to copy the other student’s homework, confiscated the other student’s homework and then ripped it up. Ms. Boykin’s behavior was observed by students in the classroom. When SC returned to the classroom, the other students told SC what had happened when he was at the office. One of the students told Ms. Boykin that she had no right to search SC’s folder. SC became very upset and left the classroom without permission.

SC went to the office and gave a statement to Assistant Principal Ruano. Assistant Principal Ruano thereafter obtained statements from other students in the classroom and advised Principal Hansen of the incident.

28. On April 16, 2009, at 1:10 p.m., Ms. Boykin sent the following email to Principal Hansen and to SC’s advisor re “Cheating:

“SC had JC’s Algebra work to copy. This is the second time this week that I have caught him copying. He was also copying DV’s Social Studies and I gave it to Pat. I tore up JC’s work, and SC did not appear to have copied it yet. I doubt all of his work at this point. Let’s see how he does on the tests.”

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<sup>11</sup> This notice contained the plan of assistance referred to previously in Factual Finding 10.

The email did not mention that Ms. Boykin “caught him copying” by searching SC’s folder when SC was out of the classroom.

Later that day, Ms. Boykin issued a student referral to SC for “cheating, swearing, defiance.” In the body of that student referral Ms. Boykin wrote:

“SC had [ ]’s math work to copy. I took it away and tore it up. SC said I had no right to get in his ‘shit.’ He left class without permission.”

The referral did not mention that Ms. Boykin concluded that SC had another student’s work by searching SC’s folder, that she searched the folder without SC’s permission when he was out of the classroom, or that her encounter with SC and his use of profanity occurred after SC returned to the classroom and SC was told by students in the classroom about what had happened in his absence.

On April 16, 2009, Ms. Boykin issued a student referral to JG for “instigating, arguing.” That referral related to JG telling SC about Ms. Boykin’s search of SC’s folder. According to the referral, Ms. Boykin told JG to mind her own business, after which JG told Ms. Boykin “she could say what the fuck she wanted.”

29. In her January 2010 email to the board, Ms. Boykin denied going through SC’s backpack or folder. She claimed that when SC was out of the classroom, she walked by his desk and “noticed that SC had the math work of another student in preparation to copy it. I took the work away and tore it up.” Ms. Boykin asserted that she was not aware that SC had a backpack at the time. Ms. Boykin acknowledged that she was “well aware that an administrator must be present in order to do a search.” Ms. Boykin claimed that SC became upset when he was told by another student about what Ms. Boykin had done and that SC “chose to leave the class without permission.” The email stated that when Ms. Boykin met with Principal Hansen and Assistant Principal Ruano on April 21, 2009, she was told “that the meeting was not disciplinary” and that Principal Hansen simply suggested in that meeting that she not confiscate items in plain view when a student was out of the classroom because it impaired student-teacher relations.

Ms. Boykin’s representation to the board that she did not look into SC’s folder while he was out of the classroom was not truthful. That is precisely what occurred. Ms. Boykin’s unauthorized search of SC’s folder was witnessed by several students, each of whom provided written witness statements the day the incident occurred.

30. Principal Hansen’s testimony established that a teacher had no right to search a student’s personal property, that only an administrator could do so, and only then when there was reasonable suspicion to conduct a search. Ms. Boykin agreed with this testimony.

Ms. Boykin’s search of SC’s folder involved unprofessional conduct, but standing by itself, that unauthorized search would not provide grounds for dismissal from employment.



31. The “Stupid Is As Stupid Does” Allegation: AS was a 9<sup>th</sup> grade special education student in Ms. Boykin’s third period math class on May 6, 2009. A test was being given and AS was being disruptive. After Ms. Boykin asked AS to change seats, AS replied, “This is stupid.” In response to that comment, Ms. Boykin said in a voice loud enough for all the other students to hear, “Stupid is as stupid does.” AS reacted to that comment by saying, in essence, “Are you calling me stupid? Don’t call me stupid.” Ms. Boykin then contacted a campus supervisor who escorted AS from the classroom to the office.

32. At 10:23 a.m. Ms. Boykin sent Principal Hansen the following email:

“[AS] would not stop talking during the test today. When I moved her seat, she said, ‘This is stupid!’ She then insisted that I called her stupid and that she was going to tell the principal. [AS] kept talking and turning around. She talked the entire period. I asked her to please be quite so she would not disrupt the other students. She said, ‘I don’t care about other students. You already know that.’”

The email did not mention Ms. Boykin’s “stupid is as stupid does” comment. Ms. Boykin testified that she did not have sufficient time when she wrote the email to include the fact that she had made the “stupid is as stupid does” comment. Ms. Boykin testified that she has since concluded that it was inappropriate and unprofessional for her to have made the “stupid is as stupid does” comment and that she reached this conclusion independently and before she met with Principal Hansen.

33. On May 14, 2009, Ms. Boykin met with Principal Hansen to discuss the incident. In that meeting, Ms. Boykin admitted that she said “Stupid is as stupid does,” claiming that she often used sayings from Forrest Gump. Ms. Boykin did not deny making the comment. Principal Hansen pointed out that students often misinterpret what a teacher says and that teachers should refrain from comments that can be misinterpreted. Principal Hansen acknowledged that even though AS’s behavior was absolutely unacceptable (in fact he suspended AS for the incident), Ms. Boykin should avoid provoking students and should attempt to discipline them in private. Ms. Boykin said she would not make similar types of statements in the future.

34. The content of Principal Hansen’s meeting with Ms. Boykin, which was not disciplinary in nature, was confirmed in a (revised) memo to Ms. Boykin dated May 14, 2009. Principal Hansen specifically advised Ms. Boykin that the memo would be included in her site file. Ms. Boykin was given the opportunity to respond to Principal Hansen’s memo in writing, but declined to do so.<sup>12</sup>

35. Ms. Boykin’s “stupid is as stupid does” singled out AS, implied that AS was not intelligent, and was inappropriate and generally unprofessional.

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<sup>12</sup> Principal Hansen hand delivered a memo summarizing the May 14, 2009, conference to Ms. Boykin. Ms. Boykin objected to some of the language in the memo, claiming it was “litigious.” Principal Hansen redrafted the memo with Ms. Boykin’s comments in mind. Principal Hansen drafted a revised memo which he emailed to Ms. Boykin on May 18, 2009.

Standing by itself, the “stupid is as stupid does comment” would not provide grounds for Ms. Boykin’s dismissal from employment. While this comment, by itself, would not result in Ms. Boykin’s dismissal, it provides grounds for dismissal when viewed in context with other, similar and disturbing statements made at the same period of time.

36. The B [REDACTED] Allegation: In May 2009, B [REDACTED] J (BJ) was a middle school student enrolled at the Learning Center. BJ was a student in Ms. Boykin’s third period math class. On May 11, 2009, BJ offered to help a male student with an assignment after BJ finished her assignment. Ms. Boykin told the male student, “I wouldn’t let [BJ] help you because her grades are not good enough” or words to that effect. BJ asked if Ms. Boykin if Ms. Boykin was calling BJ “dumb.” Ms. Boykin responded to this question by telling BJ in front of other students that BJ was not doing well in the class. Ms. Boykin’s comments hurt BJ’s feelings and she swore at Ms. Boykin. Ms. Boykin later had a parent conference with BJ’s mother.

37. On May 13, 2009, Assistant Principal Ruano conducted a classroom observation of Ms. Boykin’s third period class. Most students were off task. After the class ended, and out of the presence of others, Ms. Boykin opened a binder with a chart filled with names, pointed at BJ’s name, and told Assistant Principal Ruano she could not stand BJ, that she felt like throwing up when she looked at BJ, and that she could not stand BJ because BJ was a horrible student. Assistant Principal Ruano documented what she had been told and sent a memo to Principal Hansen, but she did not counsel Ms. Boykin as others may have done under the circumstances.

38. Ms. Boykin testified that she never said the things about BJ that Assistant Principal Ruano claimed she said, that she simply told Assistant Superintendent Ruano that she was frustrated with BJ’s continuing misbehavior and was uncertain what step to take next. Ms. Boykin’s denial was not credible. In her email to the board, Ms. Boykin said that another teacher in the classroom made statements on May 11, 2009, concerning BJ.

39. Ms. Boykin’s comments to BJ in the classroom were offensive and degrading, and they were motivated by her dislike of BJ. Ms. Boykin’s conduct was unprofessional, but standing alone it would not justify her dismissal.

40. The Leaving the Classroom Allegation: On May 18, 2009, Mr. Hansen provided Ms. Boykin with a revised summary of the May 14, 2009 meeting by email. Ms. Boykin became extremely upset after reading that email and she began sobbing in the classroom. She called the office and asked for assistance.

Assistant Principal Ruano became aware of Ms. Boykin’s distress, she made certain there was classroom supervision, and then she escorted Ms. Boykin to a vacant classroom. Principal Hansen joined Ms. Boykin and Assistant Principal Ruano. Principal Hansen provided some guidance regarding classroom management.

Ms. Boykin, who was very upset, believed the revised memo constituted formal disciplinary action even though the memo indicated it did not document formal discipline. Nevertheless, Ms. Boykin's distress and inability to continue teaching was predictable given the fact that an email that was critical of her interaction with a student was sent to her during the regular school day. The email could have been sent when school was not in session and it would have been just as effective. It cannot be concluded that Ms. Boykin's emotional reaction to the email involved unprofessional conduct.

41. The Gleeing Allegation: The Urban Dictionary defines the term "gleek" as "building up saliva in the salivary glands using some stimulus, like sour food or yawning, and then pressing the tongue upon the glands, causing the saliva to shoot out, usually at an impressive distance."

On October 27, 2009, students MH, DR, and JL were standing outside Room 2 before fifth period began. Other students were in the area. Ms. Boykin passed MH, felt something on the side of her face, turned, walked back to MH, put her face within six inches of MH's face and said quite loudly, "Don't you ever do that again." MH asserted that he had not done anything wrong and asked, "What are you talking about?" Ms. Boykin replied, "You know what you did." Ms. Boykin then left the area and walked to her classroom.

42. Statements were taken from MH, DR, and JL concerning the incident. DR and JL accused Ms. Boykin of "mad dogging" MH. MH denied "gleeking" Ms. Boykin.

43. A campus supervisor, Pablo G., was standing in a hallway about 60 feet away when he noticed Ms. Boykin "was very close to his [MH's] face." Pablo G. was too far away to hear the words that were exchanged. Several minutes later, Ms. Boykin approached Pablo G. and asked him if he witnessed what MH had done. Pablo G. told Ms. Boykin that he did not observe MH doing anything, but mentioned that he had observed Ms. Boykin "up close to [MH]'s face."

44. Principal Lewis spoke with Ms. Boykin about the incident. Ms. Boykin admitted that she was upset and she admitted that she may have used offensive language. In a memo she authored (Exh. 58), Ms. Boykin represented that MH "spit on my face" and claimed that "most people would believe that being spit upon is provocation." She asserted that Pablo G. witnessed the incident "but did nothing to intervene" which presented "a serious safety issue for all staff at The Learning Center . . ."

45. In her testimony, Ms. Boykin stated that she "felt moisture on her face" when she passed MH and that she assumed that MH had spit on her. In her testimony Ms. Boykin added, for the first time, that she had observed "a smirk on his face." Ms. Boykin claimed that she was more than six inches from MH's face when she told MH to "never to do that again. Ms. Boykin denied screaming at MH.

Ms. Boykin testified that Laurel Fretz, the Learning Center's Principal of Adult Education, witnessed the incident. Ms. Boykin stated that she did not issue a student referral because she spoke with Principal Fretz about the matter and was told, in essence, "not to

worry about it.” Principal Fretz was not called as a witness to corroborate this testimony. Ms. Boykin admitted that she was uncertain if she told Principal Fretz that MH spit on her.

46. MH may have “gleeked” Ms. Boykin. Even if he had done so, Ms. Boykin’s reaction – closing to within a foot of MH’s face and telling him in a very loud voice not to do that again – was physically intimidating, was disturbing to many students who witnessed the incident, and constituted unprofessional conduct. The incident involving MH was one of several incidents in which Ms. Boykin overstepped her authority and caused students and administrators at the Learning Center to be concerned about her emotional stability.

47. The “Stop Your Bitching” Allegation: A preponderance of the evidence did not establish that in October 2009, student JG requested Ms. Boykin to help him with a quiz and that Ms. Boykin said, “Stop your bitching.” A preponderance of the evidence did not establish that Ms. Boykin failed to investigate JG’s concerns or that she dismissed any request in an inappropriate manner.

48. The Stapler Allegation: In the fall 2009 semester, Ms. Boykin stood over JG’s desk with a stapler and told JG that if he did not stop talking she would staple his mouth shut. Ms. Boykin denied making that comment, and she asserted that JG made it up in retaliation for some discipline she imposed. Ms. Boykin’s denial was not credible.

The “I’ll staple your mouth shut” comment was made and it certainly was made in jest. It was not established that JG, a relatively mature 9<sup>th</sup> grade student, was frightened by the statement, but others in the classroom may have misunderstood Ms. Boykin’s comment. The comment constituted a threat, and even if it was made in jest, it was unprofessional.

Standing alone, the stapler comment would not support dismissal; however, the comment must be viewed in the context of Ms. Boykin’s other inappropriate statements and improper conduct.

49. The Rock Allegation: On November 5, 2009, Ms. Boykin told students JG, JH and BA that she would throw three rocks at them if they did not do their work. Students in the classroom knew that Ms. Boykin had a number of rocks in her classroom, one of which was a gift from a student (the smooth happy face rock), and at least two others that she kept inside her desk and sometimes used for educational purposes. One of those rocks was jagged and the other was shaped like an axe blade. Ms. Boykin warned the three students that the smooth rock would be used to get their attention and that the other two rocks would be used if they did not complete their work. These comments may have been made in jest.

JG, JH and BA had a history of misbehaving in Ms. Boykin’s class. They were older students and it is more likely than not that they were not concerned that Ms. Boykin would actually throw the rocks at them. However, other students in class who heard the comment may have believed that Ms. Boykin would throw rocks if they misbehaved. Rosa S., who worked as a teacher’s aide in the classroom, may have been out of the classroom when these comments were made.

Ms. Boykin denied making the comments. Ms. Boykin's denial was not believable. Ms. Boykin's version of the incident was not as plausible as the students' testimony. Much of what the students reported was corroborated when three rocks substantially matching their description of the rocks were found on and in Ms. Boykin's desk.

50. Ms. Boykin sent JG, JH and BA to the office. When JG, JH and BA were waiting in the office to meet with Principal Lewis, office staff overheard them talking about Ms. Boykin threatening to throw rocks. By then the Learning Center's administration and staff were quite concerned with Ms. Boykin's classroom management techniques and the student reports of her behavior. The three students were immediately interviewed by Principal Lewis. Each of them provided a written statement. Principal Lewis contacted Assistant Superintendent Elzig, who came to the Learning Center campus to conduct an investigation.

51. Assistant Superintendent Elzig spoke with Principal Lewis and reviewed the witness statements. She prepared a letter dated November 9, 2009, which advised Ms. Boykin that she was being placed on paid administrative leave immediately. Ms. Boykin was directed to cooperate in the district's investigation.

52. Ms. Boykin's threat to throw rocks at students was supported by a preponderance of the evidence, evinced a repeating pattern of ineffective and inappropriate classroom management techniques, and constituted unprofessional conduct.

53. The Profanity Allegation: Several students testified that Ms. Boykin used the words "fuck" and "shit" on occasion. One student never heard Ms. Boykin swear in class. No adult or aide recalled Ms. Boykin using profanity in the presence of students.

A preponderance of the evidence did not support a finding that Ms. Boykin used profanity in classroom.

#### *Dishonesty*

54. The dishonesty allegations related to Ms. Boykin's failure to include in the email to Principal Hansen that was dated May 6, 2009, that Ms. Boykin made the comment "stupid is as stupid does." Ms. Boykin never denied making that comment, and while the email may not have been as complete as it should have been, it cannot be concluded that the sending of the email involved dishonesty.

#### *Attempts at Remediation/Progressive Discipline*

55. On June 4 and June 16, 2008, Principal Monge attempted to counsel Ms. Boykin regarding her failure to effectively manage her classroom when he directed her to build positive relationships with students, to focus on teaching, to use instructional time appropriately, and to maintain a strong classroom management system. (Factual Findings 6 and 7.)

On March 12, 2009, the District issued a Notice of Unprofessional Conduct related to the touching incident involving SV that occurred on December 9, 2008 (the first notice). The first notice contained a plan of assistance that included directives that Ms. Boykin “never place your hands on a student out of anger,” “conduct yourself in a manner that is professional,” and “complete an anger management program.” (Factual Findings 10, 23, 25 and 26.) Ms. Boykin’s unauthorized search of SC’s folder, her demeaning comments about B [REDACTED], and her “stupid is as stupid does” comment to AS occurred within three months of the issuance of the first notice.

On March 16, April 20, April 21 and May 14, 2009, Principal Hansen met with Ms. Boykin to discuss her ongoing failure to effectively manage her classroom. Principal Hansen told Ms. Boykin about the need to establish an effective classroom management system that would ensure learning and limit the number of student referrals. On May 14, Principal Hansen counseled Ms. Boykin regarding appropriate classroom behavior and directed her to refrain from displays of anger, from interacting with students in a confrontational manner, and to avoid using language and phrases that could send a wrong message to students. Principal Hansen informed Ms. Boykin that sarcasm is often misinterpreted and could cause students to feel singled out, embarrassed or humiliated, and that it adversely affected learning. On May 18, 2009, Principal Hansen met again with Ms. Boykin to discuss her classroom management system and interactions with students. (Factual Findings 9-11, 13, 30, and 33-34.)

On August 6, 2009, the District issued a Notice of Unsatisfactory Performance and Unprofessional Conduct (the second notice). The second notice advised Ms. Boykin that she had issued an excessive number of student referrals, that she had failed to implement an effective classroom management system, that she had engaged in inappropriate searches of student belongings, and that she held strong negative feelings towards at least one student, permitted disruptive classroom behavior, and failed to develop appropriate student relationships at the Learning Center. The notice specifically directed Ms. Boykin: (1) To use instructional time efficiently; (2) to maintain a strong classroom management system; (3) to develop a positive relationship of trust and respect with students; (4) to treat students with respect; (5) to build student relationships; (6) to review the Learning Center’s discipline policy; (7) to limit the number of student referrals; (8) to write referrals for situations that necessitated rapid exit; and (9) to comply with past and future directives. The notice advised Ms. Boykin that she had 90 days to correct her unsatisfactory performance and 45 days to correct her unprofessional conduct. Ms. Boykin was advised of her right to respond to the notice. (Exh. 60.) The gleeking incident, the stapler threat, and the rock throwing threat occurred within 90 days of the second notice.

### *Evident Unfitness for Service*

56. Ms. Boykin’s protracted inability and/or unwillingness to respond in more positive fashion to the valid suggestions of her supervisors that she improve her classroom management style, that she cease writing so many student referrals, and that she focus on developing better teacher-student relationship and in the delivery of quality instruction established that Ms. Boykin is not fit, adapted to or suitable for teaching at the Learning

Center. Ms. Boykin was impatient with and intolerant of demanding students. She resisted reasonable suggestions, turning meetings with supervisors into confrontations. Until the final moments of her testimony, Ms. Boykin steadfastly maintained that she acted reasonably and that others were to blame for her classroom failures. This lack of insight established her evident unfitness of service at the Learning Center and within the district.

### *Respondent's Evidence*

57. Respondent's evidence consisted of favorable evidence obtained from complainant's witnesses on cross-examination, respondent's own testimony, and the testimony of Monica Werwee-Ritter (a fellow teacher who was asked by the district to mentor Ms. Boykin), JJP (a student at the Learning Center), Diane Peterson (a fellow teacher and respondent's tenant), and Jaclyn Stone (an instructional aide). Rosa S., who was called by complainant, also provided favorable testimony on cross-examination.

58. Cross-examination of the administrators and students who were called by the district established that Learning Center students had a history of disciplinary problems and were quite challenging. Cross-examination also established that some mistakes were made in the preparation and dating of witness statements.

59. Monica Werwee-Ritter, who has been employed by the district for 23 years as a mathematics instructor, often assists interns and teachers who are new to the district. In the 2009-2010 academic year, the district asked Ms. Werwee-Ritter to contact Ms. Boykin and to treat her like an intern. She was told it was a confidential relationship in which Ms. Werwee-Ritter was to provide support. Ms. Werwee-Ritter already knew Ms. Boykin as a result of her employment with the district, but she was unfamiliar with the Learning Center operation. Ms. Werwee-Ritter spoke with Ms. Boykin for an hour and a half on October 2, 2009, and she was permitted to visit Ms. Boykin's classroom on October 23, 2010.

When Ms. Werwee-Ritter arrived at the Learning Center, she helped Ms. Boykin black out pornography on computer screens. She was shocked, but Ms. Boykin addressed the problem as if it were a common occurrence. Ms. Boykin said the reason she needed assistance was because she had been asked to stop writing so many referrals. There was also some discussion about classroom management.

Ms. Werwee-Ritter observed Ms. Boykin provide direct instruction during two class periods, observing five or six students in the classroom. One student arrived late and made a rude comment. Ms. Werwee-Ritter was shocked by the profanity she heard in class. Ms. Werwee-Ritter believed that Ms. Boykin kept the students on task, although a great deal of prompting was required in at least one class. Ms. Werwee-Ritter left the campus a little early to run some errands. She did not see Ms. Boykin engage in any problematic behavior in the two periods of direct instruction that she observed. Ms. Werwee-Ritter did not observe what was occurring in any other classroom at the Learning Center.

Ms. Werwee-Ritter and Ms. Boykin spoke several days later and then exchanged a few emails. Ms. Werwee-Ritter suggested that Ms. Boykin visit her in her classroom with the hope that seeing instruction in a different setting might be instructive.

Ms. Boykin did not get in touch with Ms. Werwee-Ritter to advise her that she had been placed on administrative leave on November 9, 2009. On January 11, 2010, Ms. Werwee-Ritter was surprised to find out from Principal Lewis that Ms. Boykin had been placed on administrative leave.

60. JJP is a 17-year-old Learning Center student who has attended the Learning Center since 9<sup>th</sup> grade. Ms. Boykin had been JJP's mathematics instructor and contract instructor for several periods a day for at least two academic years. JJP said he was "very close" to Ms. Boykin.

JJP believed Ms. Boykin was a "good teacher" who always helped him when he asked. He never heard Ms. Boykin swear. Ms. Boykin sometimes raised her voice but she did not lose her temper. He knew about Ms. Boykin's collection of rocks. He did not know students JG, BA or JH.

61. Diane Pearson has been with the district since 1989 and has been a special education teacher for the past ten years. Ms. Pearson was a resource specialist at the Learning Center from February 2003 through October 2009.

The Learning Center had "all kinds of students," some permanent and some transient, and several different site administrators. Principal Hansen wanted Ms. Pearson to be a collaborative teacher and as a result of that plan she taught two periods each day in Ms. Boykin's classroom from March 2009 through June 2009. The addition of Ms. Pearson's students to the classroom increased the size of Ms. Boykin's class, but there was also an additional instructor to help manage the classroom as a result of the consolidation.

Ms. Pearson never heard Ms. Boykin swear in the presence of any student. Ms. Pearson was aware that Ms. Boykin kept a happy face rock in her classroom, which Ms. Boykin said was a gift from a student. Ms. Pearson never heard Ms. Boykin threaten any student with a rock or a stapler or any other object or device. Ms. Pearson never saw Ms. Boykin refuse to help any student individually when she was asked for help except when the circumstances required that Ms. Boykin provide instruction to the entire class or when there was testing. She believed Ms. Boykin encouraged her students to learn and disciplined them in an appropriate fashion.

Ms. Pearson left the Learning Center at her own request at the end of the 2008-2009 academic year. When Ms. Pearson separated from her husband, she began living in Ms. Boykin's home, an arrangement that continued through the date of the hearing in this matter.

62. Jaclyn Stone has been employed by the district since 2004. She served as an instructional aide in Ms. Boykin's classroom for eight or nine weeks in spring 2009, and then on occasion in Ms. Boykin's classroom in fall 2009. Ms. Stone never heard Ms. Boykin



swear in the presence of students, never heard Ms. Boykin threaten any student, and never saw Ms. Boykin refuse a student's request for help. Ms. Boykin tried to keep it light and funny. Ms. Stone never observed any rocks in Ms. Boykin's classroom.

Students who misbehaved in Ms. Boykin's classroom were given verbal warnings. Ms. Boykin often contacted parents where there was a disciplinary problem.

### *Ms. Boykin's Testimony*

63. Ms. Boykin provided the background information set forth in Factual Findings 1-4. She testified to those matters that are attributed to her in the other factual findings.

Ms. Boykin explained in detail why she felt justified in issuing the many student referrals mentioned in the accusation, usually doing so on the basis that the students involved refused to listen to her, continued to be disruptive, and were unconcerned with learning. Ms. Boykin disputed that she failed to contact parents before issuing student referrals by pointing out that she made and tried to make contact in some cases when Principal Lewis was in charge. Ms. Boykin testified that she made an effort to counsel students privately regarding disciplinary matters as soon as that tactic was brought to her attention.

Ms. Boykin denied intentionally touching student SV, admitted she made the "stupid is as stupid does" allegation, denied searching student SC's folder, denied telling Assistant Principal Ruano that she could not stand student BJ, explained why she became emotionally upset and asked to leave the classroom on May 18, 2009, justified her violation of student MH's personal space in the gleeking incident, and denied she threatened to throw rocks at students JG, JH and BA.

Ms. Boykin testified she could not attend a classroom management workshop on October 17, 2009, in Anaheim because the workshop was held on a Saturday and conflicted with her weekend visits to San Diego where she went to church with her adult children. An October 2009 Survive and Thrive program offered through the California Teachers Association was cancelled so Ms. Boykin was unable to attend, and she did not reschedule because the president of her teachers association told her that he thought it would not be wise for her to attend a Survive and Thrive program scheduled later that year because she was on administrative leave.

Ms. Boykin testified that she felt very misunderstood. She testified that she cared about the students in her classroom and that she very much enjoyed teaching. Ms. Boykin testified that she may have made a few mistakes, but she wanted an opportunity to further educate herself, and to gain additional classroom management techniques and strategies with the hope of returning to employment with the district as early as possible.

### *The Contentions*

64. Complainant argued that the evidence established that over the past four years Ms. Boykin engaged in unprofessional conduct, failed to control her students, and failed to

control herself. It was no defense that STEPS students sometimes behaved very badly. Ms. Boykin was an adult and a professional. Ms. Boykin chose to teach at the Learning Center. She was given the option of leaving that difficult employment, but she elected to stay for purely financial reasons. Her decision to continue her employment at the Learning Center required her to be in control of her students, her classroom, and herself. Ms. Boykin was ultimately a very poor role model for students.

Complainant argued that a preponderance of the evidence supported findings of unsatisfactory performance, unprofessional conduct, evident unfitness for service, and dishonesty. Complainant argued that the testimony of the adult witnesses was truthful and that while some of the students' testimonies was not as credible, most of that testimony was supported by the circumstantial evidence.

Complainant observed that Ms. Boykin was counseled many times before the rock throwing threat which resulted in her most recent administrative leave, that she was given reasonable opportunities to improve her performance, and that Ms. Boykin either was unwilling or unable to do so. Complainant argued that Ms. Boykin's insight into her professional mistakes and her admitted need for further training could only have arisen sometime after January 26, 2010, the date of her email to the board in which she admitted absolutely no wrongdoing. Since that date, Ms. Boykin has had no further training and she has not had contact with anyone from the district. These circumstances strongly suggest that Ms. Boykin's recent willingness to remediate herself was insincere and was simply a belated attempt to retain her employment.

65. Respondent argued that she was not afforded the statutory time following the issuance of the notice of unprofessional conduct and unsatisfactory performance to rehabilitate herself and her opportunity to do so was short-circuited by the district having precipitously placed her on administrative leave. Respondent claimed that many of the student witnesses who testified the matter, including students JG and MH, were simply not telling the truth. Respondent did not comment on the credibility of Principal Hansen, Principal Lewis or Assistant Principal Ruano, except to suggest that they might have been mistaken. Respondent argued that complainant overstated many factual matters and then failed to prove those allegations, for example the dishonesty and profanity charges. Respondent claimed that she made sincere efforts to remediate herself and that she did, in fact, make many important changes, including the issuance of more detailed student referrals, notification of parents, holding conferences with parents, disciplining students in person rather than in front of the class, and attempting to attend the Survive and Thrive program that was cancelled. Respondent argued that no formal evaluation had been performed during the period in question, that formal evaluations are the most reliable guides to professional competence, and that gathering student statements regarding what occurred in the classroom was not a reliable index to classroom performance. Respondent argued that the minor transgressions that may have been established by a preponderance of the evidence did not support her dismissal from employment.

### *Factual Conclusions*

66. The Panel acknowledges that there are always two sides to every story. It takes its responsibilities in this matter very seriously, particularly because Ms. Boykin's 25 year career with the District is at stake and in these uncertain times, Ms. Boykin's retention of her employment is a critical matter to her personally, professionally and financially.

Without doubt, the District made some mistakes which contributed to the current situation. Ms. Boykin's teaching style, as reflected in the formal evaluation completed at the conclusion of the 2003-2004 school year, demonstrated that she was something less than an ideal candidate for employment at STEPS. STEPS' students were sufficiently challenging that additional targeted staff development in the area of classroom management should have been given. The number of site administrators at the Learning Center after Principal Monge's tenure involved a lack of continuity and raised questions about each administrator's expectations. And, the District should not have given Ms. Boykin the option of remaining at the Learning Center when she returned from administrative leave in March 2009, even though its assignment of Ms. Boykin to another campus would likely have resulted in the filing of a grievance. Ms. Boykin simply did not fit in at the Learning Center.

Notwithstanding these factors, Ms. Boykin initially sought employment at the Learning Center; she was not assigned there on an involuntary or punitive basis. Every permanent site administrator at the Learning Center expressed concern to Ms. Boykin about the number of student referrals she wrote and asked her to reduce the number of referrals; there was no question about their expectations in that regard, nor was there a doubt about her failure to meet them. Ms. Boykin demanded that she remain at the Learning Center when she was given the opportunity to transfer elsewhere, and she did so solely for financial reasons. Ms. Boykin did not avail herself actively of the mentorship that the District made available to her, nor did she take advantage of the training opportunities available to her through other organizations. As a professional educator Ms. Boykin knew, or should have known, that she was required to maintain order in the classroom and that she was obligated to refrain from engaging in provocative and demeaning interactions with students.

Ms. Boykin lacked the skills necessary to provide instruction to challenging students and she demonstrated a fundamental inability to control students in her classroom. Ms. Boykin's temperament was such that she was unwilling or unable to change her classroom management style and she proved herself to be unwilling or unable to interact with students in an appropriate, positive, nonthreatening fashion. Ms. Boykin's escalated relatively minor incidents into rapid exits, and her intimidating and demeaning comments and actions affected students, impaired the educational process, and required constant attention and response by administrators.

The panel reluctantly concludes that Ms. Boykin's dismissal from employment on the grounds of unsatisfactory performance, unprofessional conduct and evident unfitness for service is appropriate, and that her dismissal will not violate her constitutional rights or have a chilling effect on the constitutional rights of other teachers.

### *Jurisdictional Matters*

67. On February 19, 2010, the District served a notice of Intent to Dismiss and Statement of Charges on Ms. Boykin.

On March 1, 2010, the superintendent received Ms. Boykin's timely demand for a hearing.

On March 5, 2010, the District served an accusation, blank notices of defense, and other required jurisdictional documents on Ms. Boykin.

On March 19, 2010, Ms. Boykin filed her notice of defense with the District.

On April 16, 2010, Ms. Boykin signed a stipulation and order to commence the dismissal hearing, which was thereafter signed by Ms. Reinhold on April 22, 2010, and by Ms. Taylor on April 23, 2010. The matter was thereafter set for a hearing.

On June 10, 2010, Ms. Boykin nominated Amar Samet to serve as a panel member. On June 11, 2010, the District nominated Matt Johnson to serve as a panel member. Neither nominee was related to Ms. Boykin, neither was employed by the district, each held a valid single subject teaching credential in Mathematics and each had served at least five of the past ten years as a Mathematics teacher. Each nominee was qualified to serve on the Commission on Professional Competence under Education Code section 44944, subdivision (b).

On June 21, 2010, the record in the administrative proceeding was opened. Opening statements were given. Sworn testimony and documentary evidence were received on June 21, 22, 23, 24 and 25, 2010. On June 25, 2010, closing arguments were given, the record was closed, the matter was submitted, and the Commission on Professional Competence met in closed session to determine the matter.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) A party required to prove something by a preponderance of the evidence need prove only that it is more likely to be true than not true. A preponderance of the evidence means that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed. In other words, the term refers to "evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### *Due Process under the Education Code*

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.)

Hearings to determine if permanent public school teachers should be dismissed are held before a Commission on Professional Competence (Commission) – a three-member administrative tribunal consisting of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge of the Office of Administrative Hearings who serves as chairperson and a voting member of the commission and who is responsible for assuring that the legal rights of the parties are protected at the hearing under Education Code section 44944, subdivision (b). The Commission’s decision is deemed to be the final decision of the district’s governing board under Education Code section 44944, subdivision (c). (*California Teachers Ass’n v. State of California* (1999) 20 Cal.4th 327, 331.) The Commission has broad discretion to determine the issues before it, and whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

When a school board recommends dismissal for cause, the Commission may only vote for or against it. The Commission may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subs. (c)(1)-(3).)

### *The Notice and Opportunity to Correct Objectionable Behavior Issues*

3. Education Code section 44938 provides in its entirety:

“(a) The governing board of any school district shall not act upon any charges of unprofessional conduct unless at least 45 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unprofessional conduct, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(b) The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall

include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(2) The governing board may act during the time period composed of the last one-fourth of the schooldays it has scheduled for purposes of computing apportionments in any fiscal year if, prior to the beginning of that time period, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

(c) ‘Unsatisfactory performance’ as used in this section means, and refers only to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932.

‘Unprofessional conduct’ as used in this section means, and refers to, the unprofessional conduct particularly specified as a cause for dismissal or suspension in Sections 44932 and 44933 and does not include any other cause for dismissal specified in Section 44932.”

4. The purpose of the Education Code section 44938 notice requirements in suspension and dismissal proceedings is to give a teacher the opportunity to correct his or her conduct and thereby prevent discipline. (*Crowl v. Commission On Professional Competence* (1990) 225 Cal.App.3d 334, 350.) The rule for computing the time excludes the first day and includes the last. (*Rapp v. Los Angeles City School Dist.* (1935) 5 Cal.App.2d 342, 343-344.)

5. Ms. Boykin argued that as a result of being placed on administrative leave on November 9, 2009, the District effectively denied her the opportunity to correct her conduct and thereby to prevent her dismissal from employment.

The District took the position that it provided Ms. Boykin with an opportunity to demonstrate she was capable of correcting her conduct, that it was not required to provide her with additional opportunities to establish rehabilitation after she threatened to throw rocks at students, and that it filed the notice of intent to dismiss after the jurisdictional period had elapsed; in other words, Ms. Boykin should not be permitted to assert that she was being treated unfairly on the basis of her own wrongdoing.

6. The decision in *Blake v. Commission on Professional Competence* (1989) 212 Cal.App.3d 513, in which a teacher was unable to demonstrate remediation due to an absence

from employment related to injury, is instructive on this issue.<sup>13</sup> In that matter, the appellate court concluded at p. 517:

“Viewed in this context, we conclude that in contrast with the notice requirement, the portion of section 44938 which pertains to the opportunity to correct behavior is not jurisdictional but merely an evidentiary consideration. There is no express language which states that the governing board must, in addition to providing notice of specific charges, provide the teacher with more than an opportunity to remedy objectionable conduct before it proceeds to act upon that conduct. In the context of this carefully drafted and heavily lobbied legislation, we must assume that had the Legislature intended the ‘opportunity to overcome his or her faults and overcome the grounds for such charge’ to be jurisdictional, it would have said so.”

7. It was not unreasonable for the district to place Ms. Boykin on immediate administrative leave upon being advised that Ms. Boykin had threatened to throw rocks at students. Ms. Boykin’s history included placing a hand on a student who whistled loudly, making rude and demeaning remarks about a student in the classroom, admitting that she so disliked a student that she wanted to throw up, ripping up a student’s homework in class after conducting an illegal search, and getting into a student’s face when she suspected he spit on her. There was ample cause for the district to be extremely concerned about the student welfare and safety in Ms. Boykin’s classroom by November 9, 2009, and the District was justified in placing Ms. Boykin on administrative leave following its investigation.

#### *Statutory Grounds for Dismissal*

8. Education Code section 44932 provides in part:

“(a) No permanent employee shall be dismissed except for one or more of the following causes:

(1) Immoral or unprofessional conduct.

. . .

(3) Dishonesty.

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<sup>13</sup> Blake was employed as an English and drama teacher from September 1972 until her dismissal in 1987. She injured her back in October 1984. As a result of the injury Blake did not work from February 1, 1985, through the remainder of the 1984-1985 school year. She returned to work with the district in September 1985.

On February 10, 1985, Blake received a section 44938 notice of unprofessional conduct which cited 44 instances of unacceptable behavior and failure to follow administrative directives. The notice described Blake’s chronic tardiness, use of rude and abusive language with students and colleagues, and failure to maintain appropriate attendance and academic records. On May 20, 1985, the district served Blake with a notice of intent to dismiss. Blake returned to work with the district in September 1985.

Blake argued that she was unable to correct the alleged faults following her receipt of the notice of unprofessional conduct because of her extended absence from the classroom due to the back injury and illness.

- (4) Unsatisfactory performance.
- (5) Evident unfitness for service. . . .”

*Relevant Legal Authority*

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

*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, held that where charges of unprofessional conduct are raised in teacher discharge cases, the applicable standard is whether the person is fit to teach. The term “unprofessional conduct” has been held to be too vague, standing alone, and must be applied to a specific occupation and given context by reference to fitness for the performance of the occupation. The California Supreme Court delineated the following factors that should be considered in determining fitness: (1) Likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teacher-student relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Bassett Unified School Dist. v. Commission On Professional Competence* (1988) 201 Cal.App.3d 1444, 1453.)

The *Morrison* factors must be applied in cases involving allegations of evident unfitness to teach (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445), and in cases involving allegations of dishonesty. (*Bassett Unified School Dist. v. Commission On Professional Competence* (1988) 201 Cal.App.3d 1444, 1453.)

10. Unprofessional Conduct: The phrase “unprofessional conduct” as used in Education Code section 44932, subdivision (a) is conduct such as to indicate unfitness to teach. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.)

11. Dishonesty: “Dishonesty” may very well be something less than criminality. The term dishonesty seems to be incapable of exact definition or precise limitation because among other things of the infinite variety of circumstances which affect the relations and affairs of mankind in our society. (*Wayne v. Bureau of Private Investigators and Adjusters* (1962) 201 Cal.App.2d 427, 436.)

Within the teacher dismissal context, the California Supreme Court observed that “Dishonest conduct may range from the smallest fib to the most flagrant lie. Not every impropriety will constitute immoral or unprofessional conduct, and not every falsehood will constitute ‘dishonesty’ as a ground for discipline.” (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 220, at footnote 12.)



12. Unsatisfactory Performance: Maintenance of appropriate classroom behavior is extremely difficult to quantify; one can imagine (with horror) uniform guidelines framed in terms of permissible decibel levels or schedules of acceptable incidents of misbehavior per unit of time or student population. The lack of empirical standards applicable to this area of teacher competence mandates that evaluation of teacher performance be left to those with the professional experience and skill to meaningfully assess classroom order — fellow educators assisted by a judicial officer, as is contemplated by section 44944. (*California Teachers Assn. v. Governing Board* (1983) 144 Cal.App.3d 27, 34.) Proof of classroom discipline problems that included students fighting, playing soccer in the classroom, yelling over the school intercom and the back door, throwing pencils, using vulgar language, disregard of instructions, requests for transfer and general disorder was found to support a teacher's dismissal for incompetency. Application of the Morrison factors was not required for this ground of dismissal. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1175.)

The 1995 amendment to Education Code section 44932, subdivision (a)(4), substituted the term "Unsatisfactory performance" for the word "Incompetency." (Stats. 1995, c. 392, A.B. 29.) In an article entitled "Education; Grounds for Dismissal of a Permanent Employee" appearing in the Winter, 1966 *Pacific Law Journal*, Laura J. Roopenian concluded:

"Chapter 392 was enacted in order to enable school district governing boards to dismiss teachers based on a determination of unsatisfactory performance. As noted by the author of Chapter 392, the incompetence standard has been problematic for school districts, their employees, and the courts. The enactment of Chapter 392 simply changes the law to what it was meant to be originally. Although evaluating a teacher's performance involves the issue of competency, performance is intended to be a broader term and whether a teacher is competent or not is to be considered a small subsection of satisfactory performance."

13. Unfitness for Service: *Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444, held that "evident unfitness for service" as a ground for the dismissal of a teacher means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. The phrase connotes a fixed character trait that is presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. The definition of "evident unfitness for service" does not include the terms "incompetent" and "physically or mentally unsound" since those characteristics are specified as separate causes for dismissal in the statute.

*Cause Exists to Dismiss Ms. Boykin*

14. A preponderance of the evidence established cause exists under Education Code section 44932, subdivision (a)(1) to dismiss Lenore Boykin from her employment with the Jurupa Unified School District on the grounds of unprofessional conduct. This

unprofessional conduct included the angry touching of SV, the unauthorized search of SC's folder, the insensitive and demeaning comments made to B [REDACTED] in the classroom in front of other students, the "stupid is as stupid does" comment made to student AS in the classroom in front of other students, the intrusion into MH's personal space, the threat in the classroom to staple a student's mouth shut, and the treat made in the classroom to throw rocks at students who were not working. In light of Ms. Boykin's inability to control herself in the classroom despite two notices of unprofessional conduct, it is concluded that there is a likelihood that similar misconduct will reoccur, there were extenuating circumstances which did not justify or excuse such unprofessional conduct, Ms. Boykin's misbehavior was well known to students within the Learning Center, Ms. Boykin's unprofessional conduct impaired student-teacher relationships and disrupted the educational process, Ms. Boykin was often angry when she engaged in the unprofessional conduct, and the misconduct in issue was continuing with the last misconduct occurring shortly before Ms. Boykin was placed on administrative leave.

This conclusion is based on the factual findings and legal conclusions herein.

15. A preponderance of the evidence did not establish cause under Education Code section 44932, subdivision (a)(3) to dismiss Lenore Boykin from her employment with the Jurupa Unified School District on the grounds of dishonesty. While Ms. Boykin may have been less than complete in her initial description of the circumstances surrounding the "stupid is as stupid does" incident, she was not actually dishonest. She admitted to the administrators that she made the comment when asked. A preponderance of the evidence did not establish dishonesty in the instance that was alleged.

This conclusion is based on the factual findings and legal conclusions herein.

16. A preponderance of the evidence established cause exists under Education Code section 44932, subdivisions (a)(4) to dismiss Lenore Boykin from her employment with the Jurupa Unified School District on the grounds of unsatisfactory performance. Ms. Boykin engaged in unsatisfactory performance with regard to her failure to effectively manage her classroom and her failure to discipline students in an appropriate manner from the 2007-2008 school year through the date she was most recently placed on administrative leave. Ms. Boykin's classroom was beset with tardiness, inattention, talking in class, disdain for discipline, disrespect, and a general unruliness. Despite the repeated attempts by several site administrators to bring these deficiencies to her attention, Ms. Boykin failed to establish an effective program of student discipline in her classroom which interfered with the educational process. Ms. Boykin's continuous writing of student referrals and her issuing emails for relatively minor infractions did not constitute an effective classroom management strategy and, in fact, it disrupted the Learning Center's operation. Ms. Boykin lacked the skills to handle difficult middle and high school students and she failed to provide them with the meaningful instruction that was authorized under her credential.

This conclusion is based on the factual findings and legal conclusions herein.

17. A preponderance of the evidence established cause exists under Education Code section 44932, subdivision (a)(5) to dismiss Lenore Boykin from her employment with the Jurupa Unified School District on the grounds of evident unfitness to teach. Ms. Boykin was unwilling or unable to respond to valid suggestions that she improve her classroom management style, that she cease writing so many student referrals, and that she focus on developing better teacher-student relationships. Ms. Boykin's prolonged incapacity to control the classroom and interact with students in a professional manner was a result of Ms. Boykin not being fit, adapted to or suitable for teaching at the Learning Center. Ms. Boykin was impatient with and intolerant of demanding students. She resisted reasonable suggestions, turning meetings into confrontations. Ms. Boykin steadfastly maintained throughout her employment that she acted reasonably and that others were to blame for her classroom failures. This profound lack of insight established her evident unfitness of service at the Learning Center and within the district.

This conclusion is based on the factual findings and legal conclusions herein.

#### DISPOSITION

The Accusation and Statement of Charges are sustained as reflected in the factual findings and legal conclusions set forth herein. Ms. Boykin is dismissed from her employment with the Jurupa Unified School District.

DATED: \_\_\_\_\_

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JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings  
for all Commission Members