

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

In the Matter of:

CAMILLE PIPER,

A Permanent Certificated Employee,

Respondent

OAH No. 2019080824

DECISION

This matter was heard by the Commission on Professional Competence (Commission) by video conference from Sacramento, California on July 20 through 24 and 28 through 31, 2020, August 18 through 20, 2020, and June 7, 2021. The Commission consisted of Karisa Scott, Fynn Carroll, and Ed Washington, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, who presided and served as Commission Chair.

Attorneys Steve Ngo, Alyse Pacheco Nichols, and Brenda E. Arzate of the law firm Lozano Smith, represented the Elk Grove Unified School District (District).

Camille Piper (respondent) was present and represented herself.

Oral and documentary evidence was received. The hearing concluded and the record remained open through November 20, 2020, to allow the parties to submit written closing briefs and to allow time for the Commission to deliberate. The parties timely submitted written closing briefs and the record closed on November 20, 2020. On December 18, 2020, the record was reopened for the submission and consideration of additional evidence. An additional day of hearing was held June 7, 2021. Deliberations concluded on September 10, 2021. The record closed and the matter was submitted for decision on September 10, 2021.

FACTUAL FINDINGS

Parties, Jurisdiction, and Background

1. Respondent is a permanent certificated employee of the District. She holds a multiple subject teaching credential she earned at California State University San Marcos and a single subject teaching credential in English she earned at National University. Respondent holds a bachelor's degree in economics and a Master's of Arts in English, which she received from National University in 2011. She has worked for the District since September 22, 2014, and taught at Edward J. Harris Middle School (Harris) from the 2014-15 school year through the 2016-17 school year, and at Cosumnes Oaks High School (Cosumnes Oaks) from August 2017 until June 2019. The charges relate to respondent's conduct at both schools.

2. On July 23, 2019, David Reilly, Associate Superintendent for Human Resources for the District, signed and authorized the filing with the Governing Board (Board), a Notice of Intent to Dismiss and Statement of Charges; Imposition of Suspension Without Pay (Statement of Charges) based on allegations that respondent

repeatedly refused to (1) perform functions of a teacher, (2) treat parents and students with dignity and respect, (3) communicate with colleagues in a professional manner, and (4) follow District policies. The Statement of Charges informed respondent that she had been placed on unpaid suspension for immoral conduct and willful refusal to perform regular assignments (Ed. Code, § 44939). The Statement of Charges also specifies the following grounds for dismissal: (1) immoral conduct (Ed. Code, §§ 44932, subd. (a)(1)); (2) unprofessional conduct (Ed. Code, § 44932, subd. (a)(2)); (3) unsatisfactory performance (Ed. Code, §§ 44932, subd. (a)(5)); (4) evident unfitness for service (Ed. Code, §§ 44932, subd. (a)(6)); and (5) persistent violations or refusal to obey laws or regulations governing public schools or the school district employing her (Ed. Code, §§ 44932, subd. (a)(8)).

3. The Governing Board approved the Statement of Charges. On or about July 25, 2019, the District served respondent with the approved Statement of Charges, which notified her of the District's intent to dismiss her within 30 days unless she made a written request for a hearing, and notified respondent of her immediate suspension without pay.

4. On or about July 25, 2019, respondent served the District with a Demand for Hearing, in which she denied all charges in the Statement of Charges and requested a hearing pursuant to Education Code section 44941. All jurisdictional requirements have been met.

5. On September 12, 2019, Administrative Law Judge Juliet E. Cox issued an order reversing respondent's suspension without pay, because the Statement of Charges failed to allege facts that could establish immoral conduct or willful refusal to perform regular assignments without reasonable cause. Respondent remains on a paid leave of absence.

Harris Middle School

TESTIMONY OF CHARLES AMEY

6. Charles Amey is the principal at Harris and has held this position since July 2016. He oversees staff, student instruction, and daily activities including maintenance. He supervises all 105 employees at Harris. Respondent was an English teacher at Harris during Principal Amey's first year as principal. He initially viewed respondent as a good teacher. Shortly after becoming principal he noticed respondent being involved in disputes with colleagues and administrators, including himself, that seemed to escalate for reasons he could not understand. He also found respondent's communication style to be unnecessarily confrontational and accusatory.

7. One of Principal Amey's initial interactions with respondent involved a malfunctioning classroom door. The door to respondent's classroom would periodically fail to completely close on its own. This resulted in the door being insecure, which is a safety issue. He noted that respondent's complaint was valid, as the school had experienced "a couple of lockdowns," and the door not closing and locking automatically was a valid safety concern. However, he disagreed with how respondent complained about her malfunctioning door.

8. The process to report malfunctioning equipment at Harris is to notify a vice principal, who will alert maintenance to make repairs. However, Principal Amey first learned of the defective door when District Superintendent Christopher Hoffman contacted him to discuss the door. Principal Amey was unfamiliar with the issue the superintendent described, but learned that respondent had contacted the District superintendent about the problem before bringing the issue to his attention. Principal Amey was frustrated that respondent contacted the District superintendent before

contacting him. He discussed his concerns with respondent, who informed him that she assumed he knew about the situation because she had notified one of the vice principals. Respondent agreed to communicate with Principal Amey directly about issues in the future. The malfunctioning door was repaired approximately one day after it was brought to Principal Amey's attention.

Treating Colleagues and Parents with Dignity and Respect

9. In December 2016, Principal Amey was included on an email exchange between respondent, Laniece Henderson, a vice principal at Harris, and several other teachers, which he considered unprofessional. Vice Principal Henderson initiated the exchange to obtain feedback from the English Learner (EL) teachers regarding changes in student placement, and scheduled a group meeting for that purpose. The subsequent exchange between respondent and Ms. Henderson, in pertinent part, was as follows:

[Respondent replied:] I probably won't be at this meeting after all. [W]e were specifically told that students should move from level to level where indicated [and] that the District wanted to see quicker movement from level to level.

Based on my evaluations of the students in my language arts classes, I have made these request, which in my professional opinion, are appropriate. Deny them if you wish or accept them if you wish. Again, it was not my idea for this movement to take place – I was complying.

[Vice Principal Henderson replied:] Thank you for all your time and effort. This is exactly why we want to meet.

Collaboration is crucial for us all to learn from each other in the interests of our students and support our [Professional Learning Community (PLC)] model. Your expertise and input will be valuable in the meeting, especially since you know the students. You can speak to if the current process we have is working well or should be tweaked for next summer.

[Respondent replied:] I have already provided my expertise and input and apparently you feel they are insufficient. Also, I not only know the students, I am the one who teaches them language arts.

Further, I was unaware of your “current process.” ... It does seem that you simply made up this process in response to my request for schedule changes in order to retaliate against me for informing the superintendent of your prior actions. Said process was never communicated prior to my requests – I’ve checked with other PLC members.

Was this “process” in effect last week or this week with any other teachers who put in schedule change requests?

Exactly. With respect to “tweak[ing],” I would suggest leaving the politics out of the “process.”

10. Although Vice Principal Henderson had not approved respondent’s requested student placement changes, respondent informed the parents of those students that their children would be reassigned to different classes. Respondent

declined requests from school administration that she inform those parents that her proposed changes were pending review and approval.

11. It was important to discuss the proposed changes, considering the number of requested changes and effect those changes would have on enrollment in other classes. Additionally, the District is very reluctant to move students into lower level classes. The goal is to move students up and make them proficient and fluent in English. If a student struggles, the preference is to “meet [the student] where they’re at and provide proper instruction” to address deficiencies, rather than move the student down a level.

12. Principal Amey considered respondent’s refusal to meet and collaborate with her colleagues to be inappropriate and contrary to student success, as they had difficulty assessing whether certain proposed changes were appropriate without additional input from respondent. He also considered respondent’s email exchange with Vice Principal Henderson inappropriate because there was no basis for respondent’s accusations and because it was insulting to respondent’s colleagues and supervisor.

13. Principal Amey continued to receive emails from respondent he considered unprofessional, accusatory, and inflammatory. On January 23, 2017, respondent sent an email to Principal Amey and Superintendent Hoffman regarding her requested changes in placement for her EL students. In that email, respondent asked Principal Amey and Superintendent Hoffman to “do the right thing” and move one of her EL students to a higher level class the following day, because the student never should have been placed in the Level 1 class to begin with. She objected to that Principal Amey wanted to meet and discuss the requested change. She informed them she would be filing a complaint with the Office for Civil Rights the following day for

their failure to immediately implement her requested changes and described their inaction as “unconscionable” and not representative of the school or District.

14. The EL team met and discussed EL student placement, with input from respondent. On January 30, 2017, at 1:18 p.m. Principal Amey sent an email to the team thanking them for their hard work and noting that the group’s decision during a meeting at the beginning of the semester to review certain students’ cases permitted them to make informed decisions about the placement. Respondent’s unsolicited replies to the team, included the following:

[At 1:53 p.m.:] To clarify for the record, the meeting at which you agreed to look into the cases of [certain students], occurred January 19th and at that meeting you and [Vice Principal Henderson] declined to look at any of the data that Mr. Kenny and I had brought to the meeting.

[At 2:01 p.m.:] Correction ... The meeting occurred January 18th.

[On February 1, 2017, at 12:56 p.m.:] Here is another correction to your statement below as it is not true that with respect to [the student] “the team has agreed to her being moved during re-designation time.” This is the opposite of what happened.

The three teachers present at the meeting agreed that [the student] should move to level C rather than to regular ELA and that this move ... should occur not during re-designation, since a later move would lead to [the student]

missing more of [the student's] new class. This is not in [the students] best interest.

15. Principal Amey found these emails to be inappropriate communications with him as a colleague and disrespectful and insubordinate to him as a supervisor. He also considered respondent's messages to be unnecessary and needlessly corrective of her supervisor.

16. In fall 2016, respondent served as the EL Coordinator for Harris's English Department. The EL Coordinator provides oversight for the EL program to ensure it operates in a manner that establishes program goals. On or about September 1, 2016, respondent resigned as EL Coordinator. However, as an EL teacher, respondent was still required to serve EL students and support related committees.

17. Respondent claimed the EL related duties she performed after her resignation from the coordinator position were duties that should have been performed by her replacement. She insisted that Principal Amey approve her request to be paid for performing EL Coordinator duties after she resigned from the position. He testified that the tone of respondent's emails demanding EL Coordinator pay was rude, inappropriate and in violation of the professional standards required of District employees. Principal Amey also concluded that the duties respondent performed, as described in her request for pay, were duties she was already required to perform as an EL teacher. Her request included duties such as looking up student test scores, evaluating students, completing forms, contacting parents, and sending internal emails.

18. Principal Amey provides oversight for the employee performance evaluation process. Teacher evaluations are completed by school vice principals who

will inform Principal Amey of any significant performance issues. In March 2017, Vice Principal Henderson issued respondent a biannual performance evaluation, which contained six performance standards, respondent received mainly positive feedback in all standards except Standard Six "Developing as a Professional Educator," wherein Ms. Henderson noted that respondent did not demonstrate professional responsibility, integrity, and ethical conduct, based on respondent's actions regarding her requested EL student placement changes, her communication with parents about those potential changes, and inappropriate communications related to her request for EL Coordinator pay.

19. Principal Amey's interactions with respondent did not improve. Respondent accused Principal Amey and other District staff of treating her differently than other employees to retaliate against her for reporting to the District superintendent that her classroom door was malfunctioning, for withdrawing from the EL Coordinator position, and for requesting pay for what she claimed were EL Coordinator duties. Respondent transferred from Harris to Cosumnes Oaks at the beginning of the 2017-18 school year.

Compliance with School Policies: OCI

20. Principal Amey testified that respondent used on campus intervention (OCI), sometimes called on-campus suspension (OCS), excessively. OCI is a student discipline that removes a student from the classroom while allowing the student to remain on campus in a separate but supervised learning environment. District policy provides that OCI should not be the primary method to address misconduct and that no student should be sent to OCI for more than two consecutive days. When utilized, the student's parents should be notified and the student should be provided with classwork to complete while in OCI.

21. Respondent sent students to OCI up to four or five consecutive days without classwork. Principal Amey testified that respondent also sent students to OCI for reasons that were not warranted. He noted this happened with several students, but specifically recalled that two students who were siblings were sent to OCI with great frequency because respondent claimed they had an “attitude” or were “not listening.” He recalled that for one student respondent suggested to school administration that they look into alternative solutions to address the student’s reported misbehavior, otherwise respondent “[could] continue to suspend [the student] from class on a regular basis.” These statements concerned Principal Amey because it appeared unwillingness to work with some students interfered with those students’ opportunities to learn.

Cosumnes Oaks High School

TESTIMONY OF MARIA OSBORNE

22. Maria Osborne works as an administrator for the El Dorado County Office of Education. She holds an English credential, a teaching credential, and a master’s degree in Educational Leadership, Policies, and Administration. Ms. Osborne was formerly the principal at Cosumnes Oaks, and left during the 2018-19 school year after taking leave from November 1, 2018 through May 5, 2019. As the principal at Cosumnes Oaks, Ms. Osborne was responsible for all aspects of school operations, including teachers, staff, safety, and student performance. She also evaluated teacher performance and would generally provide teachers with two weeks advanced notice prior to engaging in a planned classroom evaluation.

23. Cosumnes Oaks issued a staff handbook to employees which specified that working hours for teachers during the 2017-18 and 2018-19 school years was

from 7:50 a.m. to 3:20 p.m. Monday through Friday. They established an automated system to allow teachers to call in when they were unavailable to work. The system is designed to ensure sufficient staffing while minimizing costs. The system requires the teacher to indicate why they cannot report to work and whether their absence would be for a full or partial day.

24. Each teacher at Cosumnes Oaks is allotted one preparation period, also known as a prep period, each day, during which the teacher may prepare for classes during school hours. Principal Osborne testified that teachers “needed to” be on campus during their prep periods as a safety factor for the school. She noted that up to 25 percent of the teaching staff could share the same prep period and that if 25 percent of the adults left campus at one time it would jeopardize student safety.

Compliance with School Policies: Requesting Substitutes & Work Hours

25. Principal Osborne had a dispute with respondent regarding respondent’s method for requesting substitute teachers. The expectation was that if the teacher would be out for the entire day they would call in one substitute to teach all of their classes. However, respondent would call in one substitute to teach her morning classes, then she would work her prep periods off-site in the middle of the day, and then call in a second substitute to teach her afternoon class. It was extremely uncommon for a teacher to request multiple substitute teachers in a single day. A substitute who teaches 90 minutes or less is paid for a half day of work, while a substitute who teaches longer than 90 minutes receives pay for a full day. Respondent’s practice of calling in multiple substitutes to teach her classes on the same day increased the cost associated with her absence by 50 percent because

substitutes teaching her afternoon class received pay for a half day, in addition to the full day of pay for substitutes teaching her morning classes.

26. Principal Osborne discussed her concerns with respondent and explained that her actions were negatively affecting the school's finances. Respondent replied by claiming that "the substitute was there to teach [her] classes but was not there to prep for [her]," or words to that effect. Principal Osborne directed respondent on multiple occasions, both verbally and in writing, to stop requesting multiple substitutes for a single day of instruction and also advised respondent that her prep period must be completed on campus.

27. Despite Principal Osborne's direction, respondent continued to call in multiple substitutes for a single day and disputed that she had to complete her prep period on campus. The conduct continued at least until Principal Osborne stopped working at Cosumnes Oaks. Principal Osborne found respondent's conduct unprofessional because it placed an undue financial burden on the District and because she had received multiple written and verbal directives to stop calling in multiple substitutes for a single day of instruction and refused to comply.

Claims of Retaliation

28. Principal Osborne was aware that respondent had claimed she had to teach multiple different courses in multiple classrooms, as a form of retaliation by the District due to respondent's communications with the Superintendent Hoffman about her classroom door or engaging in other protected activity, such as filing grievances or requesting workplace accommodations. She testified that respondent's classroom assignments were given to her in an equitable fashion. She recalled that respondent was interviewed and selected to teach two levels of English, English 9 and 10, on a

part-time 0.67 contract. During the interview and hiring process, respondent learned that the school also had an opening to teach a Business Finance class and expressed interest in teaching the course to have a full-time 1.0 teaching load. Respondent disclosed that she had a finance degree or experience working in the financial industry that qualified her for the position. The school approved respondent's request and respondent agreed to increase her contract to a full-time contract by adding the Business Finance course. As a result of respondent's request to teach Business Finance, she ended up with three separate classes to prepare for during her prep period.

TESTIMONY OF ARYANA GOOLEY-CARSON

29. Aryana Gooley-Carson is an Inclusive Paraeducator for the District who has worked for the District since August 2009. She provides support for students in special education classes and students in general education classes subject to an Individualized Education Plan (IEP). An IEP is a written plan to address specific needs of a public-school student eligible for special education, developed collaboratively by a team that usually includes educators, education specialists, parents, and the student. Ms. Gooley-Carson's duties also include assisting the teachers of the students she supports and assisting with behavioral strategies for disruptive students.

30. Ms. Gooley-Carson supported students in respondent's first period Business Finance class during the 2017-18 school year. She previously provided support in another Business Finance class taught by another teacher. Ms. Gooley-Carson was excited to work with respondent because she was one of the few African-American female teachers at the school.

Performing Essential Job Functions: Class Preparation

31. Ms. Gooley-Carson testified that respondent initially seemed overwhelmed, because she was teaching two different English classes in addition to the Business Finance. She offered to assist respondent with grading and answering student questions. Although respondent had all of the teaching materials for the class, she frequently seemed “flustered” and unprepared for class, as if she had not reviewed the materials in advance. Ms. Gooley-Carson noticed respondent would sometimes teach the materials incorrectly, which appeared to confuse the students. To assist, Ms. Gooley-Carson would interject when necessary and sometimes got up in front of the class and walked the students through the exercises. She did not object to assisting respondent with the course materials. However, as the class progressed, both the students and respondent came to rely on Ms. Gooley-Carson more and more. She felt compelled to assist because it was a senior math class, which students needed to graduate.

32. On another occasion, respondent had Ms. Gooley-Carson review a PowerPoint presentation with the class that respondent was supposed to present, because respondent needed to leave class and make copies of materials she planned to distribute to the students that day. After respondent returned to class, she directed Ms. Gooley Carson to continue to teach the class. It appeared to Ms. Gooley-Carson that respondent did not review the materials in advance or sufficiently prepare to teach the Business Finance class.

33. As the term progressed, respondent began having Ms. Gooley-Carson grade all of the students’ homework. As a result, Ms. Gooley-Carson spent the majority of class time grading homework, rather than checking in on students with IEPs to make sure they were on task and understood the course content. She felt she was

performing respondent's duties, as she was frequently utilized as a primary teaching source rather than support for specific students she was there to assist. She discussed her concerns with Vice Principal Jesse Champion and confirmed that teaching the Business Finance class and grading all classwork was beyond the scope of her duties.

Treating Students with Dignity and Respect

34. She observed respondent teaching the students and perceived respondent as "not relational with students ... standoffish ... and [not] interested in cultivating relationships ... with [the students]." She "felt there were a lot of walls that were built, like [respondent] was being very defensive with students." She noticed that respondent would become easily frustrated with students when they would ask questions about their grades or coursework.

35. Ms. Gooley-Carson testified that respondent would also fail to provide timely academic feedback to students. When students asked respondent about grades they had not timely received, respondent would reply by stating "if [the students] needed their grades sooner, school administration should have given [her] a teacher's assistant to help with the grading," or words to that effect. She described respondent's relationship with her students as "abrupt" and that respondent seemed "bothered to be there or at least [bothered] to be teaching the class."

Compliance with School Policies: Work Hours

36. Ms. Gooley-Carson testified that respondent was frequently late to class. Students had to wait outside for her arrival, unless Vice Principal Champion or another school administrator let them into the classroom.

TESTIMONY OF STUDENT 20

37. Student 20 was 17 years old when she testified at hearing. She attended Cosumnes Oaks from Fall 2016 through October 2019 and was subject to an IEP. During the 2016-17 school year, Student 20's IEP team approved her to use her class notes when taking exams.

Treating Students with Dignity and Respect

38. Student 20 was in respondent's fifth period English class during the fall of the 2017-18 school year. The course required that students take only one test during the entire term, which was given early in the term and weighted heavily into the students' final grade. Early in the fall 2017 semester, Student 20 informed respondent multiple times that she had an IEP that permitted to use her notes while taking exams. According to Student 20, respondent replied by stating it was "fine" for her to use her notes during the class exam.

39. Based on communication with her parents, her IEP team, and respondent, Student 20 understood that she could use her class notes during the examination. In September 2017, while Student 20 was taking an exam utilizing her class notes, respondent stopped her from completing the exam. She accused Student 20 of cheating in front of her classmates. She called Student 20 to the back of the class and told her she did not have "paperwork" authorizing Student 20 to use notes during the exam. Student 20 explained to respondent that she had been approved to use her notes during the test and that she had already discussed it with respondent. But, respondent reiterated that she could not find any paperwork approving the student's use of notes during examinations. Respondent did not conduct the conversation quietly to maintain the confidentiality of Student 20's IEP and was loud enough for

other students in class to hear. Student 20 felt embarrassed and believed her classmates thought she was dishonest and trying to cheat on the exam. Respondent allowed Student 20 to complete the exam without her notes, and told her she could retake the test with notes if documentation supporting her use of notes during exams was located and verified.

40. Approximately two days later, Student 20 learned she received no score for her work on the exam. Student 20 decided to speak with respondent after class about her examination results. She tried but was unable to get another student to join her because she feared respondent, and because respondent "had a temper." When Student 20 met with respondent after class, respondent refused to allow her to retake the test because her IEP did not specify that she could use her notes during exams. Student 20 disagreed and felt respondent had not reviewed her IEP before she took the test. Respondent called Student 20 "a liar" and accused her of trying to cheat on the exam. Student 20 denied that she was trying to cheat and her conversation with respondent "went south from there." Respondent's tone during the conversation "was not civil and there was yelling back and forth." After the discussion, Student 20 walked to her mother's car in tears and explained to her mother that respondent had yelled at her about her IEP and accused her of cheating and lying. Student 20's mother reported respondent's conduct to Vice Principal Champion.

41. After Student 20's mother reported respondent to Vice Principal Champion, Student 20's relationship with respondent deteriorated. She felt singled-out, harassed, and demeaned by respondent. She testified that when speaking with other students in class respondent would accuse her of excessive talking and tell her to move her seat to another area in class, even if she had been talking about classwork. When Student 20 would get into trouble in class, respondent would say

belittling things to her in front of the class like, "and don't go home and tell your mother it was all my fault," or words to that effect. Demeaning interactions of this nature would occur between her and respondent two to three times a week.

42. Respondent's conduct made Student 20 feel scared and threatened. She did not want to go to respondent's class. Since respondent's class was Student 20's last class of the day, she frequently called her mother and asked to be picked up early to avoid being mistreated by respondent. She stated "there was never a positive day in the classroom" and that it "just wasn't a positive place for [her]." Due to respondent's treatment, Student 20 requested and was permitted to transfer to a different English class.

43. Student 20 later learned confirmed that she had been approved to use her class notes during exams. However, her IEP team, which did not include respondent, failed to timely update her IEP to reflect that approval.

44. Student 20 also observed respondent treat other students harshly. She testified that respondent yelled at her and other students regularly, and that she had never been treated that way by any other teacher.

Compliance with School Policies: OCI and Work Hours

45. Once, Student 20 observed respondent send five to seven students to OCI within a five to ten-minute period "for talking about the [class] material ... with no warning." Respondent then sent several additional students to OCI for "reacting" to seeing so many other students sent to OCI. She stated that respondent sent so many students to OCI that day that by the end of class "half the class was gone."

46. Student 20 felt that respondent sent students to OCI as a "first option." She acknowledged that sometimes students were sent to OCI for valid reasons, but added that respondent "did not seem to care" about how sending students out of class affected their education. She stated that respondent simply sent students to OCI without warning or any opportunity to correct their behavior.

47. Student 20 observed respondent frequently arriving to class "at least 10 minutes late every time." She felt respondent did not want to teach her or her classmates and saw them as "a problem class."

TESTIMONY OF THE FATHER OF STUDENT 37

48. The father of Student 37 testified at hearing. Student 37 was in respondent's English 10 class during in 2017-18. Student 37 told his father respondent would punish him for engaging in the same conduct as other students, who were not punished. Student 37 told his father respondent counseled him or sent him to OCI for speaking out of turn, wearing the hood from his sweatshirt on his head while in class, and for wearing earphones in class. Parent 37 testified that his son felt picked on and singled out in respondent's class. He testified that respondent's treatment of his son became so bad that on at least one occasion, Student 37 wanted to seek out his vice principal, Cheryl Cain, "to provide some defense for him" against respondent's treatment.

49. In October and November 2017, Parent 37 communicated with respondent by email about the difficulties his son was experiencing. He requested clarity on respondent's grading policy and his son's behavior in class, so he could help his son improve. He also requested that his son be given credit for a homework

assignment that he completed, but was unable to turn in because respondent sent him to OCI.

50. Respondent's November 8, 2017 reply to Parent 37's inquiries, in pertinent part, included the following:

[Student 37] consistently chooses to misbehave/be defiant in class.... What insight do you have as to why [Student 37] behaves the way he does? Has he received any counseling, at all?

[Student 37] was cussing in class ... refused to work ... repeatedly had his hood on his head despite being told to remove it. [He] was repeatedly out of his seat ... repeatedly playing with dice ... refused to go to OCI ... [and] security came and removed the student.

We can meet at some point after Thanksgiving break. Are you disciplining [Student 37] for his behavior? If so, what disciplinary actions are you taking?

51. Student 37 and both of his parents met with respondent shortly after this email exchange. Parent 37 described the meeting as "awful." He testified that they met with respondent to find a way to help their son get through the class. However, respondent was rude to all of them during the meeting and only seemed to want to complain about Student 37's behavior. Respondent informed them that she had "suspended him" or sent him to OCI earlier that day. This surprised the student's parents, as they had not been informed that their son had been removed from class that day.

52. Student 37 suffers from Attention-Deficit Hyperactivity Disorder and is eligible for a Section 504 accommodation plan.¹ A Section 504 accommodation plan is an accommodation plan that requires teachers and other school staff to provide accommodations or services necessary for Section 504 eligible students to participate in and benefit from public education programs and activities. Respondent did not comply with Student 37's Section 504 accommodation plan. According to his father, Student 37 was to receive preferred class seating and extra time on certain assignments. Parent 37 requested that his son be allowed to sit in the front of the class. He understood that the "preferred seating" referenced in the plan would allow his son to sit in the front of the class to minimize distractions. However, respondent disregarded his wishes and the accommodation plan by unilaterally determining that the best place for Student 37 to sit was in the back of the class to reportedly keep him away from another student.

53. Parent 37 felt respondent was overly-strict and not responsive to the needs of students. They objected to respondent asking them whether they were disciplining Student 37 at home and asking what specific disciplinary actions they were taking.

54. To support her claim that Student 37 was behaving defiantly in class, respondent showed his parents a picture she had previously taken on her phone of Student 37 in class sitting at his desk with his head down. Respondent took the photograph without the knowledge or consent of Student 37 or his parents.

¹ "Section 504," is a shortened reference to Section 504 of the Rehabilitation Act of 1973.

55. Student 37's parents reported their concerns to Vice Principal Champion. They were dissatisfied with the school's response and removed Student 37 from the school. They enrolled their son in a charter school where he performed well. Parent 37 testified that the excellent teachers at the charter school helped his son regain the confidence he lost due to respondent's treatment.

TESTIMONY OF STUDENT 1

Treating of Students with Dignity and Respect

56. Student 1 worked as a teacher's assistant in respondent's second period Business Finance class for approximately one month, during her senior year, in spring 2018. On one occasion respondent asked Student 1 to take a damaged book to the library and have it repaired. The librarian informed Student 1 that the repair would take approximately 20 to 30 minutes. Student 1 testified that she returned to class and informed respondent the time it would take to complete the repair and returned to the library and waited for the repair to be completed. After the repair was completed, she returned to respondent's class. Respondent asked her in a harsh tone "why [she] took so long" to return. Student 1 felt "confused ... panicked ... [and] a little stressed out" by respondent's inquiry because she did not understand why respondent seemed upset with her.

57. Student 1 testified that respondent would occasionally give her assignments toward the end of class that could not be completed during class time, such as traveling to a different building on campus to make 500 double-sided copies of a document with only 10 minutes of class remaining. She stated that respondent would tell her she could not leave until the assignment was completed. As a result, Student 1 would sometimes work after class and into her lunch period to complete

respondent's assignments. When this occurred, she would drop the assignments back in respondent's classroom while respondent was at lunch or away during her free period. These assignments caused Student 1 to miss having lunch with her friends and, depending on how long the lunch line was, sometimes prevented her from eating at school that day.

58. On another occasion, respondent contacted campus security to locate Student 1 for unknown reasons. Student 1 had brought her own lunch from home to make sure she would get to eat, despite sometimes working through the lunch period. She obtained respondent's permission to place her lunch in the refrigerator of her photography teacher, Mr. Lee. While in Mr. Lee's classroom, Student 1 and Mr. Lee discussed her college and career plans for an unspecified period. When Student 1 returned to respondent's classroom, she discovered that respondent had contacted campus security, who were present, to determine where Student 1 had gone. She felt humiliated upon returning to class because respondent knew where she had gone, had given her permission to go there, and had interrupted the class to have campus security look for her for unknown reasons.

59. Once, while in class, respondent noticed Student 1 appeared tearful and asked what was wrong. Student 1 explained that she had been crying because she had just learned that she did not get accepted into one of her preferred colleges and had not yet been accepted to the colleges she wanted to attend. Sometime thereafter, when respondent complained to Student 1 that she was away from class too long while performing teacher's assistant duties, respondent told Student 1 that her performance as a teacher's assistant needed to improve and that she had "failed teacher's assistants in the past." This upset Student 1, as she was afraid respondent

would jeopardize her college opportunities by giving her a failing grade as a teacher's assistant without justification.

60. Respondent's treatment of Student 1 made her feel "defeated, disheartened, and like a bad person, as if [respondent] always believed [she] was doing something wrong." She felt stressed whenever she had to work in respondent's class. Student 1 testified that she never missed a day of school in high school, but wanted to go home after first period to avoid going to respondent's class. She requested and was ultimately granted an opportunity to work as an office teaching assistant rather than work in respondent's class.

Compliance with School Policies: OCI and Work Hours

61. Student 1 also observed respondent send students to OCI on multiple occasions without warning for talking in class. She testified that there was one student that respondent would send to OCI approximately two to three times a week. Because of this, the student was frequently behind in his work.

62. Student 1 testified that respondent arrived late for class on approximately six occasions during the time she worked in respondent's class. She waited with other students outside of class, sometimes in the rain, pending respondent's arrival.

TESTIMONY OF RACHEL BAIRD

63. Rachel Baird is an English teacher at Cosumnes Oaks. She has held this position for 11 years and has served as the English Department Chair since 2015.

Treating Colleagues with Dignity and Respect

64. On April 20, 2018, at 12:41 p.m., Ms. Baird sent an email to the English Department teachers regarding scheduling challenges and requested their flexibility due to extremely unbalanced grade level populations. Following this communication, Ms. Baird had an extended email exchange with respondent regarding teaching assignments, preparation periods, and respondent's desire to teach only English Honors classes. The exchange between respondent and Ms. Baird, also included several of their English Department colleagues. During this exchange, respondent questioned whether Ms. Baird was following her own rules and accused her of making false statements. She accused Ms. Baird of "involving bias" in determining teaching assignments. She also accused Ms. Baird of "openly" stating that a person who stands up for herself should expect to be subject to retaliation and also accused Ms. Baird of having a third-party prepare her responses to respondent's emails.

65. She found respondent's emails to be unprofessional and "shocking" because they accused her of supporting retaliating against people who stood up for what was right and because respondent accused her of performing her professional responsibilities with bias. She also felt it was unreasonable for respondent to request to teach only honors courses and then get upset when she learned the teachers would all share the burden of teaching multiple classes at different levels. Ms. Baird reported respondent's conduct to Vice Principal Champion.

66. In August of 2018, during an English Department meeting that included both teachers and students, respondent again accused Ms. Baird and her colleagues of favoritism and engaging in retaliation against her that was orchestrated by the District. Ms. Baird testified that respondent's accusatory and offensive communications caused her colleagues to be "stress[ed]" and "on edge," and reduced interest in collaboration.

To avoid unwarranted conflict and false accusations, Ms. Baird became overly cautious when communicating with respondent and spent excessive time drafting and reviewing emails to minimize the opportunity for them to be misinterpreted.

Claims of Retaliation

67. Ms. Baird is aware that respondent claims her classroom and course assignments were inequitable due to bias or retaliation. She disagreed and explained that there are several factors that determine teaching and classroom assignments. They consider teacher requests for courses and student requests for courses to see if there is correlation. They consider teacher seniority and whether teachers have succeeded in developing a particular program. If so, they try to maintain the teacher in that program to facilitate program growth and prevent teachers from getting new course assignments every year. They also considered any training a teacher has for more advanced classes, so those teachers can preferably be assigned to teach subjects that matched their training. Once the teaching schedules are established, room assignments are made to minimize movement. The Department attempts to balance teacher movement each year, so if a teacher had to move a lot one year they would do their best to make sure that teacher did not have to move a lot the following year.

68. Ms. Baird testified that respondent was treated just like everyone else regarding teaching and classroom assignments. She recalled that initially respondent "had a lot of rooms" and that was "probably not ideal." However, respondent's room assignments were originally based on the understanding that she would be teaching a 0.67 workload, rather than full-time. She acknowledged the challenges with "traveling" between several classrooms with different set ups. A teacher must be organized and improvise to adjust to going back and forth between classrooms. She empathized with respondent and advocated for respondent's room assignments to be lessened.

However, part of the difficulty with respondent's schedule was that she was teaching in two departments. Ms. Baird had no control over the Business Finance course or Business Department classroom assignments. She added that departments are extremely reluctant to change teaching or classroom assignments in the middle of the school year as it would be very disruptive for students, families, and staff.

Compliance with School Policies: Work Hours

69. Ms. Baird also observed respondent arriving late for classes regularly. She noticed respondent's tardiness during respondent's first year at the school and it became progressively worse. In 2017, Ms. Baird had a first period prep for part of the school year and was periodically asked to step in and cover respondent's class when respondent was late.

TESTIMONY OF CATHERINE WEE

70. Catherine Wee has been an English teacher for the District for approximately 25 years. She was assigned to Cosumnes Oaks in 2008 and occasionally interacted with respondent. Ms. Wee testified that some of her interactions with respondent caused her to be concerned for respondent's well-being and the well-being of respondent's students.

Treating Students with Dignity and Respect

71. During a meeting at the beginning of the 2018-19 school year, respondent described her students to Ms. Wee in a derogatory fashion, referring to them as "sick kids." Specifically, she asked Ms. Wee whether she had "a lot of sick kids" in [her] classes, and asked to review Ms. Wee's student seating chart while looking up information about those students on the school's computer system. After reviewing

the information and taking notes, respondent stated "I think the counselors gave me all the sick kids." Ms. Wee did not ask respondent what she meant by "sick kids," but considered the comment to be a negative and offensive reference to special education students, students with IEPs, or students with ADHD or other medical conditions.

TESTIMONY OF STUDENT 25

72. Student 25 was 16 years old when she testified at hearing and had recently completed the tenth grade at Cosumnes Oaks. She was in respondent's English Honors class during the first and third term of the 2018-19 school year.

Performing Essential Job Functions: Class Preparation

73. Student 25 testified that they did the same kind of work every day in class, particularly during the first term. She was frustrated that they were not actually learning anything, and believed her classmates felt the same way. Student 25 testified that she and several of her classmates were concerned with how the class was being graded because they did not understand how to improve their grades. They would ask respondent what they needed to do to study for exams and improve their grade, and respondent would not provide them with any meaningful or helpful guidance.

74. Student 25 testified that in respondent's first term English class it was very easy to get "a hundred percent" in the class because they did not have very many assessments and did the same thing every day in class. During the first term, students would complete dialectical journals every day in class. This involved analyzing a quote from a novel and sharing their analysis with the class. They read a compilation of excerpts from several novels, plays, and short stories, including "To Kill a Mockingbird," "Marigolds," "The Jungle" and also completed vocabulary tests. Student 25 expected term 1 to be much more challenging because it was an honors class. She felt much

more challenged in term 3, but largely because she did not know what to expect on the tests.

75. Student 25 testified that respondent was “cramming” more material into the classwork and homework during the third term. They had significantly more work to complete and the tests were substantive and focused on more than just vocabulary terms from the texts. They wrote essays in term 3 on excerpts from the well-known plays and poems. There were many more tests in term 3 and the final assignment was very difficult. During the third term it was difficult for students to raise their grades if they scored poorly on a test, because the test would be weighted to count for as much as 70 percent of their grade. Student 25 testified that respondent did not disclose to the students what would be covered on the final exam in advance, and that the final exam did not reflect much of the material they had learned during the term. Students did not recall receiving any rubrics that explained how essays would be graded and did not receive study guides for the tests. She felt respondent failed to prepare the class for the final exam, during the third term.

Treating Students with Dignity and Respect

76. On one occasion, Student 25 was disappointed with a grade she received on an assignment. She had a “mental breakdown” in class and started crying, but attempted to conceal her emotions from the class. Respondent noticed that she was upset and walked over to her “kind of laughing a bit” and asked her why she was crying in a manner that was “not confidential” and caused the class to notice she was crying. Student 25 felt panicked and embarrassed by how respondent handled her emotional breakdown.

TESTIMONY OF STUDENT 36

77. Student 36 is a student at Cosumnes Oaks, who was previously in respondent's English 9 Honors class during the 2018-19 school year. She testified that it was "a toxic learning environment" that "kind of restricted [her] learning."

Treating Students with Dignity and Respect

78. On an unspecified date in class, Student 36 was speaking to a friend and respondent told her to "shut up." Student 36 testified no other teacher has ever spoken to her in that fashion. She felt "put down" and that a teacher should not use the phrase "shut up" with students.

79. On another occasion, Student 36 told respondent that she felt respondent had "favorites" in class. Student 36 testified that respondent replied by stating "just like you have a favorite ice cream ... teachers are people too, and can have favorites," or words to that effect. This statement made Student 36 feel that she was disfavored by respondent, based on how she was treated in class. Student 36 requested to be moved from respondent's class multiple times because she felt she could not succeed in the class because respondent disliked her and the "odds were already against [her]."

Compliance with School Policies: Work Hours

80. Student 36 stated that respondent was 10 to 30 minutes late for class approximately one to three times each week. Because the classroom door was locked, she and her classmates regularly waited outside, sometimes in cold weather, for respondent to arrive and open the classroom door.

TESTIMONY OF STUDENT 4

81. Student 4 was 16 years old and about to begin the eleventh grade at Cosumnes Oaks when she testified at hearing. As a freshman, Student 4 was in respondent's English 9 Honors class during the 2018-19 school year.

Performing Essential Job Functions: Class Preparation

82. She testified that the class was "unfulfilling," when compared to how other students described their English Honors classes. She testified that it did not seem like a real honors class because they had a small workload and did not read as many books or do as much work as the other honors classes. However, the weighting of the assignments in class was "really harsh," because of how few assignments were credited in the gradebook. Student 4 performed poorly on one test credited in the gradebook, and due to how that single exam was weighted, could not obtain a score in the class above an 89. Student 4 added that the final exam included material that had not been covered in class.

83. While in respondent's class, the students read three-to-four-page excerpts from texts and then wrote an essay about the excerpts. The students also read portions of several novels or plays through the schools' StudySync system, and engaged in independent reading. She testified that they frequently completed vocabulary tests in class that were not challenging. In Student 4's English 10 Honors class they also used the StudySync curriculum. However, they had to elaborate more on the prompts related to the readings, every prompt was graded by the teacher, and the students received feedback on all of the prompts so they had a much better idea of their understanding of the material and areas for improvement.

Treating Students with Dignity and Respect

84. Student 4 testified that respondent was confrontational with students, especially if they had a different point of view than respondent on a subject or lesson taught in class. She stated that respondent would respond to students who expressed an alternative point of view in a very stern and confrontational manner and would tell them that their opinion or point of view was wrong, if it did not align with hers.

85. The class had a lot of free time after completing assignments, because the assignments were easy. The students would talk during the free time and get scolded or sent to OCI by respondent because they were talking in class.

Compliance with School Policies: Work Hours

86. Student 4 testified that respondent arrived late to class. She could not recall how frequently respondent arrived late but estimated that respondent arrived from 5 to 30 minutes late as much as twice a week, and sometimes she was not late at all during the week.

TESTIMONY OF STUDENT 24

87. Student 24 was 15 years old and entering the eleventh grade when she testified at hearing. She was previously a student in respondent's English 9 class, during the 2018-19 school year.

Compliance with School Policies: OCI

88. Student 24 described the class as "a pretty normal class." However, she testified that on one occasion respondent sent several students to OCI throughout the class period for things like "whispering" to each other. One student was sent to OCI for

picking up a cell phone that had fallen to the floor, and another student was sent for throwing away trash. In total, approximately half of the class was sent to OCI on that day, and were sent back to OCI on the following day. This made Student 24 feel nervous in class and believe that if she made a single movement or noise that respondent did not approve of, she would be sent to OCI.

AFFIDAVIT OF STUDENT 7

89. The District admitted several affidavits into evidence that were written by respondent's students, and their parents, pursuant to Government Code section 11514.² These documents were admitted into evidence as administrative hearsay and have been considered to the extent permitted under Government Code section 11513, subdivision (d).³

² Government Code section 11514, permits an out-of-court declarant's statements be given the same effect as if the declarant testified at hearing, assuming all preliminary requirements are met and the opposing party does not object. If the opposing party objects and is not afforded the opportunity to cross-examine the affiant upon request, the affidavit shall be given only the same effect as other hearsay evidence.

³ Government Code section 11513, subdivision (d), in relevant part, provides:

Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but over timely objection shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.

Treating Students with Dignity and Respect

90. According to Student 7, respondent was her second period English 9 Honors teacher during term one and first period during term three of the 2018-19 school year. On the last day of one term, she was upset in class about her final grade and trying to conceal that she was crying. Respondent noticed Student 7 was upset and told her to "stop crying," in a stern fashion that was loud enough for others to hear. Student 7 felt respondent was purposefully trying to embarrass her in front of her classmates. She also stated respondent regularly argued with students when they asked questions or expressed a point of view on a discussion topic that was different than hers.

AFFIDAVIT OF STUDENT 9

Treating Students with Dignity and Respect and Compliance with School Policies: OCI and Work Hours

91. Student 9 was a student in respondent's second period English 9 class during the second and fourth term of the 2018-19 school year. He stated that respondent punished him for helping his friend find his cell phone. Student 9's friend was searching for his cell phone, which was on the floor. Student 9 pointed to where the phone was located. Respondent saw what occurred asked Student 9 his name and highlighted it on her attendance sheet. She highlighted several other students' names on her attendance sheet shortly thereafter, and then sent everyone she identified on her attendance sheet to OCI for "talking." Respondent sent the same group of students back to OCI at the beginning of the class period for conduct she claimed they engaged in the day before.

TESTIMONY OF JULIE CHASE

92. Julie Chase works as a counselor at Cosumnes Oaks. Prior to joining Cosumnes Oaks she worked as a middle school counselor and was a sixth-grade teacher for several years. She supports students, families, and teachers to assist students navigate through high school. She also provides college and career counseling, social and emotional support for students, and responds to a variety of questions from students and families on a daily basis.

Treating Colleagues with Dignity and Respect

93. In February 2019, at the request of the parents of a student in respondent's English 9 class, Ms. Chase coordinated a meeting between respondent and the parents to help them understand the basis for their child's poor citizenship grade. The parents had previously asked respondent about the circumstances by email, but were not satisfied with respondent's responses. Ms. Chase attended the meeting to act as a liaison.

94. During the meeting, Ms. Chase was surprised to discover that respondent brought her union representative to the parent-teacher conference. Ms. Chase testified that when she attempted to get respondent to explain the student's inappropriate behaviors to the parents and the changes she wanted to see, respondent provided no substantive response and simply repeated that she had already provided the information the parents were seeking by email, as she slid a copy of the email to Ms. Chase. Respondent continued to respond to inquiries about the student's behavior by repeating "it's in the email ... it's in the email," rather than engaging in discussion with Ms. Chase about the student. Respondent eventually told the parents that their child had been too talkative in class, and that she had changed the student's seat to

minimize the talking, however the talking continued. She also told them they should not be overly concerned, as the student's behavior had improved later in the term. Ms. Chase then attempted to provide additional guidance to the participants and respondent told her that it was "a parent-teacher conference, not [a] counselor [conference]." After the parents left from the meeting, Ms. Chase and respondent disagreed as to whether Ms. Chase should have attended the meeting and shared with each other that neither of them appreciated how the other spoke to them in front of the parents. They both subsequently filed complaints against each other regarding what occurred.

TESTIMONY OF JESSE CHAMPION

95. Jesse Champion is a vice principal at Cosumnes Oaks. He initially worked in administration as a Teacher-in-Charge and promoted to vice principal during the 2016-17 school year. He oversees the English Department, Science Department, World Language, and several programs including the English language learners program. He also receives complaints from students and parents. Depending on the level of severity of those complaints, some require formal investigations and others may be resolved by referring the parent or student to the teacher.

96. At the beginning of the 2017-18 school year, shortly after respondent started working at Cosumnes Oaks, Vice Principal Champion began to receive complaints about respondent from staff, parents, and students. Those complaints included that respondent was rude to students, was frequently late to work, and was not adequately prepared to teach her Business Finance class.

Statements to Administration

97. On or about September 20, 2017, Vice Principal Champion met with respondent to discuss the complaints. He informed her that utilizing a paraeducator to grade all classwork and to provide direct instruction was inappropriate and told her that it was important for her to arrive to work on-time and adequately prepared to teach. They also discussed complaints that respondent was unwilling or unable to manage her fifth period English class. He testified that respondent replied by stating that the school needed to provide her with a “competent teacher’s assistant,” if she could not utilize her paraeducator for grading. Respondent asserted her fifth period class had been specifically “crafted” by the District to ensure her class was comprised of students with known behavior issues. Respondent also told Vice Principal Champion that she was not qualified to teach her Business Finance class and often had to rely on the paraeducator to re-explain difficult concepts to the class.

Performing Essential Job Functions: Class Preparation

98. Following Mr. Champion’s directives to respondent to stop having her paraeducator to provide direct class instruction or grade all of the classwork in her Business Finance class, students complained that respondent stopped collecting or grading work assigned in class. On September 26, 2017, Student 17 submitted a written complaint to Vice Principal Champion, which stated that on that date, respondent told the class she would no longer accept homework or late assignments because she “got backed up on grading papers” from the third week of the term. He complained that respondent’s actions punished the students for respondent’s failure to do her job and timely grade assignments. The complaint included the following statements:

During class today [respondent] said that she was not accepting any more homework starting today. [N]ow homework is what's holding up everyone's grades so that we don't fail. [Respondent] said that we can no longer turn in late assignments because she got backed up on grading papers from the 3rd week of the term on. I feel that [we] as students shouldn't get punished for [respondent] not doing her job and grading papers. Over half of our SENIOR class in there has a "C" or below because [respondent] doesn't teach. She just gives us a powerpoint and says to read it and then do the homework and when we ask for help she has to ask the para[educator] in our class because she doesn't understand the assignments she assigns.

(Capitalization in original.)

Treating Students with Dignity and Respect

99. On or about September 26, 2017, a group of four students approached Vice Principal Champion to complain about how they were being treated by respondent. The student's agreed to put their complaints in writing. Those complaints included the following:

[Student 21 wrote:] I was sitting [in class]. I was spaced out. ... I was looking down at my shoelaces when [respondent shouted my name] and said "OCI now! I am sick of this!" I asked "why?" ... and she said I have been talking the whole class and I said that I wasn't talking and she yelled at us to stop making "excuses" and to get out. I am tired of seeing

[respondent] be unjust and unfair to her 5th period class and want to help end it.

[Student 23 wrote:] Me and [Student 21] were sitting in class and we weren't talking or standing up at all! We were literally looking at each other for like a second. Then [respondent] yelled out [at us] "get out go to OCI, I'm tired of this." ... She does this all the time at least every week she sends someone outside or to OCI. She literally yells out (not even kidding) "SHUT YOUR MOUTH" to whoever is "talking" when they're not.

(Capitalization in original.)

October 2017 Written Warning

100. On October 5, 2017, based on the ongoing complaints, Vice Principal Champion issued respondent a Letter of Warning that directed respondent to arrive to work no later than 7:50 a.m. and leave no earlier than 3:20 p.m.; provide students with consistent opportunities to show mastery of course curriculum and to provide graded feedback of those opportunities; arrive to work daily with a pre-determined plan for each class; obey all district policies and procedures; and follow any and all directives issued to her by any District administrator.

Treating Students with Dignity and Respect

101. In late 2017, Vice Principal Champion interviewed several of respondent's students to determine whether those students' experiences in respondent's classes were similar to what had been reported. Between December 4, 2017 and January 18, 2018, he obtained nine more written complaints from students.

102. The students alleged respondent's teaching and grading practices inhibited their opportunity to learn and jeopardized their opportunity to graduate. The students also alleged respondent mistreated them in class by yelling at them, using profanity while speaking to them, speaking to them in a demeaning fashion, or embarrassing them by displaying their grades to the entire class.

103. Student 25 complained that respondent yells at students and becomes angry with them when they ask questions. Student 26 complained that respondent gets frustrated while teaching Business Finance and "shuts down kids" who ask questions because she does not know the answers. Student 32 complained that respondent yells at him or other students for talking when they ask each other for help with classwork. He also complained that respondent replied to the students' request to have their tests returned to them so they could review their mistakes by saying "No, I'm not giving you the damn test."

Performing Essential Job Functions: Class Preparation and Instruction

104. Student 25 complained that respondent puts off grading assignments the students completed at the beginning of the term, that were heavily weighted into their overall grade, until the last week of school, which caused many students grades to drop. Student 32 complained that respondent provided very few graded assignments and that those few assignments were so heavily graded, they drastically affected students' overall grade.

January 2018 Letter of Reprimand

105. Due to the pattern of consistent complaints from students, parents, and staff, and respondent's failure to improve, Vice Principal Champion shared his

investigation findings with Bindy Grewal, Ed.D, Director of Certificated Personnel for the District. On January 19, 2018, Dr. Grewal issued a Letter of Reprimand to respondent, which states that respondent engaged in unprofessional conduct, based upon information described above. The reprimand includes the following directives:

1. Be honest in your communications with your supervisor and/or District administrator.
2. If you are having difficulties with teaching and/or your classes, speak to your supervisor and/or a District administrator in a timely manner.
3. Obey all District policies and procedures.
4. Treat District parents/guardians, students, and employees with the utmost dignity and respect.
5. Exhibit professionalism with all District parents/guardians, students, and employees.
6. Follow any and all directives issued to you by your supervisor and/or any District administrator.
7. Exercise good judgment when performing your duties as a teacher.

106. Vice Principal Champion testified that despite being issued both a Letter of Warning and Letter of Reprimand, respondent continued to behave unprofessionally. He stated that she arrived approximately an hour late to work four times, in April 2018. During that same month, Vice Principal Champion learned that

respondent engaged in an email exchange with Rachel Baird, Chair of the English Department, regarding teaching assignments, in which she made inappropriate and accusatory comments, as described above in Finding 64, above. During that same month, Vice Principal Champion also discovered that respondent had spoken to her student assistant in a rude and condescending tone in front of the class and that respondent often gave her so much work that she regularly missed 15 to 20 minutes of her lunch period finishing her assigned tasks, as described in Findings 56 through 60, above.

107. Vice Principal Champion also testified that respondent continued to violate District policy by sending student's to OCI for more than two consecutive days, for reasons he often found unreasonable. For example, on April 3, 2018, she sent Student 6 to OCI for the remainder of the week, which totaled four days. On or about April 9, 2018, respondent sent Student 2 to OCI for three consecutive days. Respondent initially sent Student 2 to OCI for at least two consecutive days. Student 2 understood that she was to continue to report to OCI following the second day, but went to class prior to reporting to OCI to obtain classwork. Respondent confronted Student 2 when she arrived and told her to return to OCI. Respondent later claimed Student 2's third day at OCI was a new referral for being disruptive when asking for classwork to complete while in OCI. In May 2018, Student 35 complained that respondent sent him to OCI for reading a book in class related to a previous class assignment, rather than working on the current assignment.

July 2018 90-Day Notice of Unprofessional Conduct and Unsatisfactory Performance

108. On July 18, 2018, based on the ongoing complaints and respondent's failure to comply with directives, Dr. Grewal issued respondent a 90-Day Notice of

Unprofessional Conduct and Unsatisfactory Performance on behalf of the District. The notice directed respondent to immediately cease engaging in unprofessional conduct and unsatisfactory performance, and includes the following list of directives:

1. Treat any teacher's assistant assigned to you with fairness and respect; address any issues with the teacher's assistant privately instead of in the presence of other students and do not require any teacher's assistant to perform tasks for you beyond the class period to which they are assigned.
2. Do not send any student to OCI for more than two consecutive days.
3. Arrive to work no later than your scheduled start time and leave no earlier than your scheduled departure time, unless you are using any available leave....
4. Communicate with District employees, students, parents and guardians in a respectful and courteous manner.
5. Demonstrate professionalism with all District employees, students, and parents/guardians.
6. Obey all District policies and procedures.
7. Follow any and all directives issued to you by your supervisor and/or any District administrator.

The 90-Day Notice concluded by informing respondent that she must immediately follow the specified directives and that her failure to do so may result in further disciplinary action up to and including a recommendation for dismissal.

Compliance with School Policies: OCI and Work Hours

109. Vice Principal Champion continued to receive complaints about respondent. In February 2019, Student 36 wrote him a letter to “voice [her] concerns” about respondent arriving late to class. She stated respondent arrived late to class several times and the students had to be let into the classroom by campus security or a vice principal. She stated that students should not have to wait outside in 36-degree temperature because respondent cannot manage her time. She concluded her letter by writing “if we can wake up and get ready and arrive on time to our first period then [respondent] should too.”

110. On the morning of March 20, 2019, which was the second day of class for that term, Vice Principal Champion received an email from respondent asking “where should I send students from second period English 9 who will be assigned to another teacher today?” Approximately two hours later, Mr. Champion received a second email from respondent, which stated that since she did not hear back from him, she had designated 10 students for assignment to another English 9 class, and had sent nine of those students to OCI that day and planned to send the tenth designated student to OCI the following day. Vice Principal Champion did not understand respondent’s emails. Later, he learned respondent claimed she had been given permission by the District to reassign 10 students from her English 9 class as some form of reasonable accommodation.

111. Vice Principal Champion responded by email, and informed respondent that sending nine students out of class to OCI at the same time was “highly unusual,” and that he was not aware of any arrangement or accommodation that authorized to do so. He requested that respondent meet with him to discuss her email and stated: “I am informing you unequivocally that there is no such arrangement or accommodation.” Despite Mr. Champion’s response, respondent sent the students she identified in her email from her class to OCI approximately two days later.

Claims of Retaliation

112. Vice Principal Champion was aware that respondent claimed her teaching load, classrooms and prep periods were assigned in a manner that would make performing her duties more difficult, as means to retaliate against her for engaging in lawful activity. He acknowledged that respondent’s teaching schedule and classroom assignments may have been challenging for her. He testified that teaching both English 9 and English 10 during the 2017-18 school year required respondent to use two different English StudySync curricula, which required more preparation than teaching from a single English curriculum. This was a component of the teaching load respondent agreed to accept. Her classroom assignments, teaching assignments, and prep assignments, were fair considering the circumstances. It was also typical for teachers who had not been at Cosumnes Oaks for very long to be assigned, as teachers with more seniority were given assignments with less travel. Respondent had more preps than most other teachers primarily due to her choice to add a Business Finance class to her teaching load to become full time.

Support, Guidance or Other Forms of Assistance

113. The District had recently implemented a Positive Behavior Interventions and Supports (PBIS) system when respondent was hired at Cosumnes Oaks. PBIS is designed to assist schools with responding to the unique needs of their students and involves students, parents, and staff working collaboratively to make targeted student behaviors less effective and desired behaviors more functional. Cosumnes Oaks had a designated PBIS coach during the time Vice Principal Champion received complaints about respondent's teaching methods, punctuality and classroom management. Vice Principal Champion did not recall referring respondent to the PBIS coach for assistance with any issues identified in the complaints he received.

114. In term 3 of the 2018-19 school year, Vice Principal Champion received two parent complaints that respondent's English 9 Honors course lacked sufficient rigor and that respondent was repeatedly late for class. As the vice principal who supervised the Business Finance Department, Vice Principal Champion required the teachers to submit their syllabus to him in advance of the term for review. He did not recall whether he reviewed respondent's syllabus to determine whether the course had sufficient rigor for an honors course.

115. Vice Principal Champion never performed a classroom observation for respondent. He conducted at least two walkthroughs during the 2017-18 school year, and then Ms. Osborne assumed responsibility for the formal observation. He was scheduled to perform a formal observation toward the end of the 2018-19 school year, but respondent was placed on leave before the observation occurred.

116. Vice Principal Champion vaguely recalled that during one of the walkthroughs he asked respondent if she needed additional support or assistance.

However, respondent declined. He acknowledged that some students in respondent's classes had known behavioral issues and one paraeducator, Ms. Laney, felt respondent's treatment of her student's was appropriate, considering how disruptive those were. Vice Principal Champion testified that despite how challenging some students may be, sending students to OCI is only one of several classroom management strategies, and not a preferred one. He emphasized that the expectation is that a teacher dealing with challenging students will engage in appropriate classroom management techniques to address the issues rather than simply use their authority to control students in a manner that inhibits learning.

TESTIMONY OF SHELLY CLARK

117. Shelly Clark is the Director of Personnel Development for the District and has held this title for approximately six years. She oversees recruitment and retention, and serves as a personnel development liaison for several departments. Prior to January 2020, she was also responsible for all employee leave and represented the District in the reasonable accommodation interactive process for certificated employees.

118. Ms. Clark was involved in at least three interactive process meetings involving respondent. Their initial interaction occurred in 2017, shortly after respondent started working at Cosumnes Oaks. Respondent agreed to transfer from a full-time teaching load at Harris to a part-time 0.67 teaching load at Cosumnes Oaks. Simultaneous with the transfer, respondent requested that she be given another English class to teach so she would have a full-time teaching load at Cosumnes Oaks as a form of reasonable accommodation. Respondent provided no medical documentation indicating any work restrictions related to her teaching assignments. The District did not provide respondent with her requested accommodation. However,

separate and apart from the reasonable accommodation process, the District and respondent ultimately agreed that she could teach a Business Finance course to bring her teaching load to a full-time status, as the District was in search of an instructor for the class.

Treating Students and Colleagues with Dignity and Respect

119. In early 2018, Ms. Clark and Vice Principal Champion participated in a second interactive process meeting with respondent and her representatives based upon requests from respondent, that included she only teach English Honors classes, or alternatively, that she be allowed to identify “the bad kids” in her non-honors classes to have them permanently removed from her class. Respondent made this request either shortly before or following the beginning of the school year. The District determined that respondent’s request was unreasonable for several reasons, including that respondent was unable to specify an actual basis for her request not to teach non-honors students other than stating that the students were “bad” and would “ask ... and blurt out questions” during class. Ms. Clark considered it extremely inappropriate for a teacher to characterize students as “bad” based on their academic choices or perceived intellect.

120. While working in the District’s human resources office in December of 2018, Ms. Clark overheard respondent discussing her pay being docked with her designated leave technician, Jennifer Thoele, whom Ms. Clark supervises. Ms. Clark was in her office, but could hear respondent’s voice becoming increasingly elevated during the discussion. She heard respondent say, “You stole my money. I want my money back. When are you going to give my money back that you stole?” or words to that effect. Ms. Clark stepped out of her office and intervened. She asked respondent to put her questions in writing and send them to her by email. However, respondent

continued to accuse them of stealing her money. Ms. Clark again told respondent to put her questions and writing and asked respondent to leave. Respondent then left the office as requested. Respondent returned two days later and again accused the staff of stealing her money and demanded to know when she would get her money back.

Removing Respondent from Her Non-Honors English Classes

121. Ms. Clark found that there was neither a basis nor practical means to remove certain students from respondent's classes or change her teaching assignments as requested. Teaching two different levels within a credential was typical for a high school teacher. She asked respondent whether there was "anything else the District could do to accommodate her needs." She testified that respondent replied by saying "Nothing. There is nothing you can do to accommodate me so I can teach [the non-honors] English class[es]." Ms. Clark understood this statement to mean that respondent was either unwilling or unable to teach a full load unless she only taught English honors classes.

122. Based on respondent's unspecified health issues with teaching the non-honors English students, and her statement that there was nothing the District could do to address her needs, beyond what she had already requested, the District unilaterally decided to have a substitute teach respondent's non-honors English classes. This decision reduced respondent's teaching load from full-time to a part-time position. The District then drew from respondent's sick leave to account for the time a substitute was utilized to teach her classes to maintain her at full pay. Once respondent's sick leave and other permissible leave balances were exhausted, the District docked respondent's pay for the portion of the day that a substitute was used to teach respondent's non-honors English classes.

123. In late 2018, Ms. Clark participated in a third interactive process meeting with respondent and her representatives to discuss, in part, whether respondent could return to a full-time 1.0 teaching load by teaching non-honors English classes and to determine how to better assist respondent in working with student behaviors. As a result of this meeting, the group agreed that respondent would go back to teaching non-honors English and that Vice Principal Champion would contact the school's designated PBIS coach to work with respondent on addressing student behaviors.

124. Respondent never received the planned PBIS coaching. The District placed her on administrative leave prior to any coaching being arranged.

TESTIMONY OF KERI VAN DE STAR

125. Keri Van de Star is the District's Director of Human Resources and has held that position since August 2018. She is directly involved in the employee hiring and transfer processes, collective bargaining negotiations, employee discipline, and also oversees legal compliance. Her duties include investigating incident reports and assisting administrators with their investigations of the same. If warranted, she also may initiate employee disciplinary action.

126. Approximately one month after being hired, Ms. Van de Star assisted Cosumnes Oaks with ongoing concern related to respondent. Those concerns continued and ultimately resulted in respondent being served with the Notice of Intent and Statement of Charges.

127. Ms. Van de Star investigated a claim that, on December 10 and 12, 2018, respondent behaved unprofessionally and inappropriately in the District's human resources office when asking staff questions about absence reporting. She determined that respondent went to the human resources reception area and engaged in an

unprofessional, confrontational, and disruptive exchange with staff, about her pay being “stolen.” Ms. Van de Star’s testimony about what she discovered during her investigation was consistent with the events described in Finding 120, above. She noted that Ms. Thoele was very upset when she interviewed her about the incidents. She testified that Ms. Thoele was tearful when describing her interactions with respondent and. Ms. Thoele claimed she was both hurt and embarrassed that respondent confronted her in the office and accused her of stealing respondent’s money. Ms. Van de Star did not discuss the events of December 10 and 12, 2018 with respondent prior to forming her conclusions. She felt the other individuals she interviewed during her investigation were sufficiently credible to warrant closure of the investigation without respondent’s input.

January 2019 Letter of Reprimand

128. Ms. Van de Star determined that respondent engaged in unprofessional conduct on December 10, and 12, 2018, and that she had also violated previous directives issued to her by the District. On January 8, 2019, Keri Van de Star issued a Letter of Reprimand to respondent based on the incidents. The January 2019 Letter of Reprimand includes the following directives:

1. Be present at Cosumnes Oaks High School during your contracted hours unless you are using available leave...
2. Only request one substitute for each day you will be absent.
3. Communicate with District employees, students, parents/guardians in a respectful and courteous manner.

4. Demonstrate professionalism with all District employees, students, and parents/guardians.
5. Contact Ms. Clark directly with any leave related questions or concerns.
6. Obey all District policies and procedures.
7. Follow any and all directives issued to you by your supervisor and/or any district administrator.

You must immediately follow the directives included in this letter. Failure to do so may result in further disciplinary action up to and including recommendation for dismissal.

129. On or about May 22, 2019, Ms. Van de Star met with respondent to discuss reports that respondent continued to arrive to work late causing her students to wait for her arrival for “great lengths of time,” and that she had engaged in an unprofessional exchange with Ms. Chase during a parent-teacher conference in February 2019.

Statements to Administration

130. Respondent told Ms. Van de Star that she adequately prepared to arrive to work on time and that she previously would contact the school if she was running late, but stopped doing so because she found that her students were still waiting outside upon her arrival even when she notified the school of her expected late arrival. Respondent also admitted to Ms. Van de Star that during the parent-teacher conference with Ms. Chase, she initially directed Ms. Chase to emails she had previously sent the parents in response to Ms. Chase’s inquiries. She also

acknowledged that she brought a union representative to the parent-teacher conference and that she told Ms. Chase, in front of the parents, that she did not invite her to the meeting when Ms. Chase asserted she was there because respondent invited her.

131. During the May 22, 2019 meeting, Ms. Van de Star and respondent discussed complaints that some of respondent's classes lacked sufficient rigor. Ms. Van de Star testified that the District has mandated curriculum and supplementary materials that teachers may use. Respondent assured Ms. Van de Star that complaints regarding course rigor were unfounded. They also discussed complaints that respondent had sent as many as 10 students from her fifth period English class to OCI in a single day. According to Ms. Van de Star, respondent admitted she sent nine students to OCI at once, but initially claimed she did it as some form of disability accommodation, and then subsequently claimed the group of students were removed from class for engaging in excessive talking or other class disruptions.

132. Following the May 22, 2019 meeting, respondent submitted a detailed supplemental written response to some of the questions Ms. Van de Star asked during the meeting. Respondent's supplemental written response included the following statements:

*****I think it is discriminatory to assume that "not plan[ning] ahead of time" is the reason for disability related lateness.

Thank you for your written admission that students were "left outside [my] classroom unsupervised for great lengths of time." Clearly, the District has a protocol in place to try to

dismiss or bring about the resignation of a tenured teacher who has engaged in protected activity: Mess with her evaluation, set her up with respect to teaching line, classrooms, and specific student groupings. Say that her performance is derelict, withhold her wages, engage in illegal and criminal conduct against her etc, etc. How then do you not have a protocol in effect for the students of the teacher who arrives late regardless of whether she "account[ed] to the District that [she'd] be late by informing the school...?" What if the teacher died in her sleep or in a car accident on the way to work? You are liable for the students; are you not? Why then were the students "left outside [my] classroom unsupervised for great lengths of time?"

What if the media got ahold of this including the backstory of your criminal conduct including the years long ongoing retaliation and harassment, wage theft, and failure to accommodate (you have an affirmative duty) which sickened me and caused the lateness? You stole all the sick leave for the entire school year from a teacher you knew was sick.*****

[¶] ... [¶]

***** It was clear to me at the time that calling ahead did not necessarily result in the students being let in the classroom or supervised. The District's scheme was to give

the students a “memorable experience” by leaving them outside to promote complaints.

(Asterisks in original.)

July 2019 Notice of Intent to Dismiss and Statement of Charges

133. Ms. Van de Star reviewed each of the prior letters of warning, letters of reprimand, and 90-Day Notice of Unprofessional Conduct and Unsatisfactory Performance issued to respondent, the related underlying incidents, and incidents that occurred after the January 2019 Letter of Reprimand. In consultation with other District administrators, they concluded that respondent’s conduct warranted serving her with the Notice of Intent to dismiss her from employment. Ms. Van de Star helped to prepare the Notice of Intent and Statement of Charges, which was served on respondent on or about July 8, 2019.

134. Ms. Van de Star testified that she does not take dismissal proceedings lightly. The District initiates dismissal proceedings only after alternative avenues of redress have been ineffective. She had become increasingly concerned with respondent’s behavior and the detrimental effect that behavior was having, and could continue to have, on students, parents, and the work environment. She testified that respondent demonstrated over time that she was not willing to accept responsibility for her actions, was not open to feedback or trying to improve the deficiencies identified by several administrators. This, combined with repeated concerns expressed by students, parents, and staff, led to the decision for the District to pursue dismissal.

RESPONDENT'S TESTIMONY

135. Respondent is 55 years old and has been employed by the District since September 2014. She began her testimony by stating she is "not ashamed of the gospel of Jesus Christ." She testified that despite the allegations within the Statement of Charges, she has had "many, many, positive days in the classroom, and many students who [she has] connected with through learning experiences that were meaningful."

136. Respondent denied each and every significant allegation in the Statement of Charges. She noted that several email complaints were presented during the hearing that appear to be from the parents of her students. She asserted that the District encouraged, student's, their parents, and her colleagues to complain about her or exaggerate claims against her. She also asserted that many of the email complaints from the parents of her students were fabricated by the District, because they have the technology to make emails appear that they are sent from individuals who never sent them. She added that many of the allegations in the Statement of Charges, do not, in and of themselves, constitute violations of the Education Code or supporting regulations. She also testified that allegations in the Statement of Charges that allege she made statements about working conditions at the District, are statements that, if made by her, are protected by the California Labor Code and her First Amendment right to freedom of speech.

Performance Reviews

137. Respondent initially received very favorable performance evaluations from her supervisors at the District and was rated as "Meets or Exceeds Standards." Her April 2015 evaluation specified that she "engages and supports her students in the

lessons she presents [and] helps students to connect classroom learning to their life experiences and cultural understandings.” The review noted that she had positive interactions with her students by specifying that she frequently used “positive behavior support strategies such as, verbal praise, redirection, and other reinforcements of positive behavior,” and also noting that “[s]he is diligent about grading student work,” and “collaborates with teachers, administrators, education specialists, paraeducators, and staff to ensure that all students’ diverse learning needs, interests, and strengths are met.”

138. Respondent’s February 2016 performance evaluation describes her as a teacher who “models and promotes fairness, equity, and respect in a classroom atmosphere that values all individuals and cultures,” and “[e]ncourages, supports, and recognizes the achievements and contributions of all students.” The description of her interaction with colleagues included that she is “always very professional with students and colleagues” who “follows the school and district policies and procedures [and] is present for work and adjunct duties.”

139. In March 2017, respondent received a performance evaluation in which she was rated as “Improvement(s) Recommended.” That evaluation describes respondent as a teacher who “promotes critical thinking through inquiry, problem solving, and reflection” and “creates a rigorous learning environment with high expectations and appropriate support for all students.” She was described as one who “communicates clear, challenging, and achievable expectations for students.” The more critical parts of her evaluation specified that she “does not maintain professional conduct and integrity in the classroom and school community, ... demanded payment for EL Coordinator stipend by a certain time [and] resigned from the position due to illness.” The evaluation also specified that respondent failed to cooperate with District

administrators regarding her communications with parents related to possible student placement changes.

Claims of Retaliation

140. Respondent asserted that this dismissal action is part of ongoing retaliation the District has subjected her to for years, due to her engaging in activities that include reporting malfunctioning classroom equipment, filing grievances, and filing small claims actions against the District. She testified that all of the retaliation stems from her reporting that her classroom door was malfunctioning to Vice Principal Henderson in or around February of 2016, while employed at Harris. Respondent's request for repairs was not addressed promptly. A shooting occurred in the neighborhood near the school and the school was placed on "lockdown" for approximately two hours. After the lockdown, respondent returned to Vice Principal Henderson and asked that her request for repair be made a high priority because it was a safety issue. Vice Principal Henderson responded by saying she does not decide what requests are made a high priority by the maintenance team. After waiting approximately two days, the door remained unrepaired. So, on August 25, 2016, respondent sent an email to District Superintendent Hoffman advising him of the safety issue and requesting that the repair be deemed a high priority.

141. Both Principal Amey and Vice Principal Henderson were displeased that respondent contacted the superintendent. Respondent testified that Ms. Kobelt told her that she made them look bad in front of the superintendent and that Mr. Amey complained that the superintendent had been "blowing up his phone" over the weekend. Respondent stated that "there was hostility after that," and that there were "different ways" she was made to feel their displeasure. She testified that

administrators at Harris would stand and watch her perform her duties in a hyper-vigilant way while she supervised students arriving or leaving from school.

142. Respondent stated that school administrators withdrew their support for her in the performance of her duties. She asserted she received negative comments on her performance evaluation that were not supported and were part of a retaliatory agenda. School administrators would send students back to respondent's classroom that she had sent them out of class for disciplinary reasons. She testified that administrators would accuse her of being rude and unprofessional when she communicated with them in a fashion that was "proportional to the way [she was] being treated." She asserted that Mr. Amey would schedule meetings during her designated prep time and refused to pay her for EL Coordinator duties she performed at the school's direction.

143. Respondent testified that her efforts to move English Learner's to different classes based on their performance, and as requested by her superiors, were obstructed by administration and then became "a big thing" for the entire Department to get involved in. She asserted the Department Chair refused to move the student to the correct class solely because the request came from her. She testified that the decision-makers at Harris were determined not to give her what she requested, even if it meant jeopardizing students' education.

144. In October 2016, respondent sent another email to the District superintendent complaining that school administrators were subjecting her to unlawful retaliation. She informed the superintendent that she would file a formal complaint if the retaliation did not stop. She stated that the superintendent never replied to her and that she felt ignored. She testified that she sent similar complaints

to the Board of Education and did not receive a reply. Respondent testified that the retaliation and harassment she experienced at Harris caused her to become ill.

145. Toward the end of the 2016-17 school year, she requested that she be moved to a different site as a reasonable accommodation. However, her request was denied and she was told to utilize the voluntary transfer process, as site changes are not considered reasonable accommodations. Respondent requested voluntary transfers as a full-time employee. She testified that she applied for as many as nine different positions, but the District denied her request to transfer for every position she applied for, even when she was well-qualified, with the exception of the less than full-time position at Cosumnes Oaks. She described this as the beginning of a pattern of retaliatory conduct by the District, in which she would request a reasonable accommodation, and then the District would retaliate against her by taking part of her job away or docking her wages.

Transfer to Cosumnes Oaks

146. Respondent ultimately agreed to transfer to Cosumnes Oaks to work a part-time 0.67 teaching load, teaching ninth and tenth grade English. During the transfer process, respondent learned that Cosumnes Oaks had a vacancy to teach Business Finance. Respondent asked Principal Osborne if she could teach the Business Finance class, so she could have a full-time teaching load. Ms. Osborne agreed.

147. When respondent transferred to Cosumnes Oaks, the school had recently adopted new English teaching curriculum, so respondent had to prep to teach two different English curricula and also prep to teach the Business Finance class. And she was placed in a different building to teach each course.

Claims of Retaliation

148. Respondent testified that a prime example of the Districts retaliatory treatment was that she could only maintain her full-time employment by teaching a class outside of her credential that she was not qualified to teach. She asserted the District thereafter purposefully “impacted” her classrooms by ensuring she had several students with documented behavioral issues. In addition to meeting her teaching obligations, respondent had to frequently attend meetings with Vice Principal Champion about complaints she considered invalid.

Treating Students with dignity and respect

149. Regarding the allegation that she asked her colleagues how many sick kids she had in her class, respondent testified that one purpose for reviewing student records on the school computer is to determine whether certain students have IEP’s, peanut allergies, or identify other health issues “to further the curriculum” by placing posters in class to prohibit substances a student may be allergic to or to maintain certain information in a folder related to a student’s IEP.

150. Respondent testified that although she never yelled at students, she has raised her voice, as many teachers do, to quiet the class. She testified that describing her as “yelling” and “angry” is part of the District’s ongoing attempt to characterize her as “an angry Black woman.” Respondent used a variety of techniques to quiet the classroom that included raising her voice, raising her hand, and other sound cues such as clapping her hands or ringing a bell. She testified that these were well-established and acceptable learned techniques utilized by most teachers.

151. Respondent admitted that she questioned the parents of Student 37 about disciplining the student at home, but denied that she told the parents she

believed they failed to properly discipline the student at home. She testified that she was particularly concerned about Student 37 because he had refused to go to OCI as directed unless he was taken there by campus security. She intended to send Student 37 to the school psychologist based on his behavior, and does not believe that her stating that the student may need counseling supports that she represented herself as a mental health professional. She stated that referring a student to a school psychologist is part of what teachers do on a daily basis.

152. Respondent was dissatisfied with Student 1's performance as a teacher's assistant because Student 1 spent too much time outside of the classroom, rather than working inside of class. She testified that the day she contacted school security to locate Student 1, the student had been instructed to drop a book off at the library for repair and return to class. Instead, Student 1 remained at the library and waited for the book to be repaired when respondent needed her to work on other tasks. She advised the student that she had failed teacher's assistants in the past and warned her that her performance needed to improve.

Treating Colleagues and Parents with Dignity and Respect

153. Respondent testified that her paraeducator did not actually grade all the homework in her Business Finance class, but instead only completed an initial review of the questions the students answered on assignments to establish a baseline score that the students could improve upon by correcting their mistakes during class discussion. She added that there is no requirement that every class assignment be collected and graded, and that grading is not included as an essential job function for a teacher.

Statements to Administration

154. Respondent denied she ever told Mr. Champion that her fifth period class had been specifically crafted for her to have students with known behavioral issues. Instead, she made this statement to another teacher and a parent during a meeting in term 1 of the 2017-18 school year. She added that discussing workplace conditions does not violate the Education Code or supporting regulations due, in part, to her constitutional right to free speech.

155. Respondent denied that she told Ms. Van de Star that she “probably” stopped at Starbucks for coffee prior to arriving late to work, because she was frequently seen holding a Starbucks cup when she arrived. Respondent clarified that she replied to Ms. Van de Star by saying “possibly,” rather than “probably,” as she could have stopped instead for tea, or hot water or food she needed to take medication or for other medical reasons. Respondent also asserted that to the extent she was observed coming to work with a paper Starbucks cup, the cup may have been a few days old and was being reused.

Statements to Parents

156. Respondent denied that she told parents that she was not qualified to teach Business Finance. Instead, she made that statement to a colleague. She testified that she was not qualified to teach Business Finance during the first term she taught it because she had not applied for the emergency permit to teach the course until finals week. Respondent considers Business Finance to be a lower level math class for seniors. She suggested that parents of her Business Finance students had no right to be concerned about her reportedly lacking the qualifications to teach the course because “parents of twelfth year struggling math students should have had a low

degree of confidence about ... students who take the Business Finance course instead of their regular twelfth grade math course.” She added that even if she did tell parents that she was not qualified to teach Business Finance, “she has a right to free speech” and her statement does not violate the Education Code or Board policy.

Performing Essential Job Functions: Class Preparation

157. She denied that she prepared for her English classes during her Business Finance instructional time. However, she added that she may have graded work for other classes while students in Business Finance were working independently, which she deemed “absolutely” appropriate and not in violation of the Education Code or its supporting regulations.

158. Respondent testified that complaints or allegations that her courses lacked rigor, are unfounded as the curriculum for her courses were provided by the District through StudySync, and were grade level appropriate. She noted that the curricula include different genres of literature, and writing analysis and vocabulary and also includes actors modeling how to conduct collaborative conversations, discussing literary terms, and how to identify themes and characterizations.

159. Respondent testified that only one text, *To Kill a Mockingbird*, was required to be taught to ninth graders and she taught that text. She testified that she also taught another text, *A Raisin In The Sun*, from the Districts supplemental list of teaching materials. She stated that, in addition, she taught from excerpts of multiple texts within the StudySync curricula and had independent reading assignments as homework available to the students every school day, in addition to the student’s regular homework assignments.

160. Respondent testified that during the 2018-19 school year, many of her English students told her they had never written an essay before, and some could not write multiple paragraph essays without multiple essay prompts. She testified that by the time those students finished her class they were able to write four and five paragraph essays. Respondent reiterated that any allegations that her classes lacked rigor are unfounded and added that no administrator has ever observed any class she taught during her five years teaching for the District and told her they thought her curriculum was too easy.

Compliance with School Policies: Work Hours

161. Respondent could not recall whether she arrived to work late on the dates specified in the Statement of Charges. She believes that in some instances for which she had charged with arriving late for work, she worked from home during her first period prep and then reported to work immediately following her first period prep. She testified that this was a common practice, however she was criticized for it as a form of retaliatory harassment.

Compliance with School Policies: OCI

162. Regarding her use of OCI, respondent testified that each student she sent to OCI was sent in accordance with the Education Code and for no more than two consecutive days. She noted that there was nothing arbitrary or capricious about her use of OCI because each student she referred to OCI had been disruptive or defiant and she completed OCI passes for them. Thereafter, she redirected the students, but they continued to misbehave and were lawfully sent to OCI. At times, she suggested conducting parent-teacher conferences rather than sending students to OCI. She also requested that certain students be evaluated for learning disabilities to better address

their behavioral issues. She testified that it is important to understand that the manner in which the District treated her caused her to suffer increased stress, which had negative effects on her health and therefore had a negative effect on her students.

163. Respondent acknowledged that in April 2018 she attempted to send Student 6 to OCI for four consecutive days. She asserted that this occurred due to the stress she was under due to the District's harassing conduct, which caused her to forget that OCI referrals were limited to no more than two consecutive days.

Compliance with School Policies: Substitutes

164. Respondent testified that she would schedule multiple substitutes when she was absent for the day, as a response to the fact that the District, in her view, had been stealing from her by docking her pay without justification. By calling in multiple substitutes to have them cover portions of her workday, rather than the entire day, she minimized her financial loss. Respondent asserted the practice of calling multiple substitutes in a single day was "not disallowed." She testified that her conduct was justified because she works twice as many hours as her colleagues, because she spent time in meeting with administrators, attempting to recover pay wrongfully taken from her, and explaining or justifying actions that her colleagues engaged in without criticism or scrutiny.

Compliance with School Policies: Student Privacy

165. In response to how she was being treated by the District, respondent engaged in acts she felt were necessary to protect her interest. This included secretly recording meetings with District employees, including Vice Principal Champion, Ms. Clark, Ms. Van de Star, and Ms. Chase, because the District would claim she or others in meetings with her made statements that were never made. She testified that she

lawfully recorded the parent teacher conference with the parents of Student 4, "to obtain evidence of extortion." She also took photographs of her students' grades without their permission or the permission of their parents, with the understanding that those grades were confidential student records, to "document everything because so many lies were being fabricated."

TESTIMONY OF MIKE MCCALLUM

166. Mike McCallum is an attorney who has practiced law for approximately 27 years. His areas of specialty include practicing education law, disability law, and representing clients in ADA interactive process meetings.

167. Mr. McCallum represented respondent in an interactive process meeting with the District on or about September 27, 2018, in response to a request for reasonable accommodation respondent made at the end of the prior school year. The participants discussed respondent's request that she not teach English 9 because there were more disruptive students in the class. They discussed student behavioral issues that were causing respondent a great deal of stress and possible options that would allow respondent to continue to teach English 9. The District's representatives asked whether some other accommodation could be arranged other than not having respondent teach English 9 and respondent replied by stating "No. I need the accommodation."

168. He testified that respondent never stated during that meeting that she could not teach English 9. They communicated respondent's desires, but never stated or suggested that respondent wanted her full-time employment or her wages reduced. He also did not recall respondent ever using the terms "bad kids" or "problem kids" during the meeting. Mr. McCallum offered to provide the District with a

list of the students with the more challenging behavioral issues, to see if it may be possible to transfer those students to another class. He testified that the District told him to provide them with the list and they would consider his suggestion. The District heard them out, but made no decisions during the meeting. When the meeting concluded, the District essentially told them “we’ll be back in touch once we figure out what we’re doing.”

169. Approximately two weeks after the meeting, Mr. McCallum received a letter from the District that gave respondent the option of going on unpaid leave for either all or a portion of her job. The letter specified that if respondent did not choose one of the options, the District would make the choice for her. Mr. McCallum was surprised by the District’s written response to the interactive process meeting because his understanding is the District was forcing respondent to go on unpaid leave. He testified that by unilaterally refusing to allow respondent to continue to teach non-honors English, the District took away a significant portion of her pay. He opined that instead the District should have given respondent the option to continue in her job or offer some other form of accommodation.

EVIDENTIARY ISSUES

170. Respondent objected to the admissibility of several documents, identified in Exhibit AA, on the basis that she was not afforded notice and an opportunity to review and comment on derogatory comments contained therein, as required by Education Code 44031, subdivision (b)(1), and pursuant to the court’s holding in *Miller v. Chico Unified School District* (1979) 24 Cal.3rd 704 (*Miller*). Respondent’s objection was considered a standing objection and the ruling on her objection was deferred, to allow respondent to identify each written comment that formed the basis for her

objection and to allow the parties to address the admissibility of the documents identified by respondent through post-hearing written briefs.

171. Education Code section 44031, subdivision (b)(1), essentially provides that information of a derogatory nature cannot be entered into an employee's personnel records unless and until the employee is given notice and an opportunity to review and comment on that information. In *Miller*, the school board reassigned Hal Miller, a junior high school principal, to a teaching position due to unsatisfactory performance. The notification of reassignment Mr. Miller received included, as a basis for his reassignment, 20 confidential memoranda prepared by a district associate superintendent who had previously evaluated Mr. Miller. Mr. Miller had not seen the memoranda prior to receiving the notice of reassignment and initiated a mandamus proceeding seeking his reinstatement because he had not been given the opportunity to review and comment upon the derogatory information provided to the board prior to his reassignment.

172. The court in *Miller* held that a school administrator must be permitted to review and comment on derogatory written material compiled and maintained by a school district for employment purposes, whether in an official personnel file or not, and that an employment decision could not be based on such information unless the employee was notified of the derogatory information and afforded an opportunity to comment. (*Id.* at p. 714.) The matter was remanded to the trial court to determine whether the board's review of material, including performance memoranda Mr. Miller was not aware of, was prejudicial.

173. Education Code section 44031 was enacted to minimize the risk of employment decisions that were arbitrary or prejudicial, and established a procedure

whereby employees could correct or rebut incomplete or inaccurate information in the hands of their employers which might affect their employment status. (*Id.* at p. 713.)

174. Here, respondent was fully aware of the conduct that forms the basis for the proposed disciplinary dismissal. She has received numerous oral and written warnings related to such conduct and has filed numerous detailed written replies in response. Unlike the middle school administrator in *Miller*, respondent is a tenured teacher entitled to a full hearing, with full discovery rights, prior to being subject to a disciplinary dismissal. She has had the benefit of a full hearing and has taken every opportunity to rebut and explain derogatory written evidence presented by the District, prior to any final determination by the Commission. None of the authorities cited by respondent preclude derogatory written material she may not have been aware of, prior to completing discovery in this matter, from being considered in this action. Accordingly, respondent's objection is overruled.

175. Respondent also requested that she be permitted to play audio or utilize self-created transcripts at hearing that she described as "surreptitiously obtained audio recordings" of her meetings with District employees and at least one parent-teacher conference meeting. The District objected to these recordings being used at hearing. Respondent acknowledged that the audio recordings were obtained without the knowledge or consent of others who participated in those meetings. She argued that her secretly recorded audio is admissible in this proceeding, pursuant to Penal Code section 632, subdivision (d), and court rulings described in *People v. Crow* (1994) 28 Cal.App.4th 440 and *Frio v. Superior Court* (1988) 203 Cal. App. 3d 1480.

176. Penal Code section 632 provides, that it is a misdemeanor for a person to intentionally and without the consent of all parties to a confidential communication, use an electronic recording device to record the confidential communication. (Pen.

Code, § 632, subd. (a).) “[C]onfidential communication” means any communication reasonably expected to be confined to the parties thereto, but excludes a communication made in a public gathering or in any legislative, judicial, executive, or administrative proceeding open to the public, or other circumstance in which the parties to the communication may reasonably expect that the communication may be overheard or recorded. (*Id.* at subd. (c).) Penal Code section 632 also provides that secretly obtained recordings are not admissible in any judicial proceeding except as proof in an action for violating that section. (*Id.* at subd. (d).)

177. Respondent’s arguments related to her secretly obtained recordings were considered and rejected because they are without merit. The cases she cited do not support her contentions and the exceptions specified in Penal Code section 632 apply to administrative proceedings or teacher discipline cases. Respondent was given full opportunity to question witnesses who participated in the meetings she recorded during the course of the hearing to establish any facts she considered critical to her presentation of evidence. Accordingly, the District’s objection to respondent’s surreptitiously obtained recordings was sustained at hearing.

Analysis

178. There was a significant amount of evidence presented at hearing by the parties to support or refute the allegations in the Statement of Charges. While respondent only called one witness, in addition to her own testimony, to testify on her behalf, she also provided useful evidence through her cross-examination of the District’s witnesses. Much of the evidence received at hearing was diametrically opposed, as respondent denied nearly all of the allegations in the Statement of Charges. Respondent asserted that many of the allegations were “fabrications,” or described conduct did not violate the law or any applicable school regulations or

policy school regulations, and claimed that the dismissal action is part of an ongoing effort by the District to retaliate against her for engaging in lawful conduct.

179. The trier of fact—in this case the three members of the Commission—may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible witness may constitute substantial evidence.” (*Kearl v. Board of Medical Quality Assurance*, 189 Cal.App.3d 1040, 1052.)

Respondent Did Not Treat Students with Dignity and Respect

180. The District presented substantial persuasive evidence from respondent’s former students, through sworn testimony, sworn affidavits, and written complaints those students submitted to school administrators, which established that respondent failed to treat students with dignity, respect, and professionalism. The student witnesses presented a consistent theme. They viewed respondent as an adversary who abused her power over them, rather than as a professional who is supportive of their growth, learning and development. They viewed her classes as obstacles to learning that they had to overcome, rather than as an essential resource for learning. Respondent’s students were unclear about class objectives and the grading strategy or

rubric she utilized, which created a significant level of frustration and disenfranchisement on the part of the students.

181. Respondent repeatedly yelled at her students without justification. She inhibited her students' learning by discouraging their questions and moving tests to dates earlier than scheduled if her students asked too many questions. She yelled at them and sent them out of class for talking to each other about classwork. She berated students by openly accusing them of cheating in front of the class, telling them "shut up" and "shut your mouth" when they were talking (Findings 78 and 99), and telling a student she had disciplined, whose mother had previously spoken with respondent about her daughter feeling mistreated by respondent, "don't go home and tell your mother that it was my fault," (Finding 41) and by diminishing the opinions of students during class discussions that were different than her own. She used profanity with her students by telling them she was "not going to give [them] the damn test" when they wanted to review their answers (Finding 103). Teachers have good and bad days and may occasionally get upset with students and say things they should not say out of anger or frustration. It is, however, significant that she failed to immediately acknowledge to those students that she behaved inappropriately toward them out of frustration. Instead, she failed to acknowledge or remediate her conduct and thereby reinforced to the students that she was their opponent.

182. Respondent also punished students unfairly by sending them to OCI for conduct that did not warrant an OCI referral, with excessive frequency, for excessive durations, and without engaging in reasonable alternative methods of intervention that would allow the students to remain in class. In March 2019, she sent at least nine students to OCI at the same time, pursuant to what she characterized as agreement between herself and the District in response to her request to only teach English

honors classes or alternatively to have students with behavioral issues removed from her class as a form of reasonable accommodation.

183. Most teachers have a unique bond with their student teaching assistants. They rely on them as a resource and require them to be fair when grading papers or other classwork that may have been completed by their friends. This should be a relationship of trust, mutual respect, and mentoring. However, respondent created a relationship of mistrust with her teacher's assistant. She accused her of being away from class too long while performing tasks. Rather than work with the student to improve their relationship, respondent reminded Student 1 that she could fail her when she knew how concerned she was that she might not get into college. She assigned tasks to Student 1 that caused her to miss lunch. This is highly inappropriate, as eating lunch at school is often the only opportunity students have to receive a nutritious meal throughout the day. Respondent's inability to develop any meaningful level of rapport or trust with Student 1 was also apparent in their dispute about student grading and Student 1's ultimate plea to be reassigned.

184. Respondent described students with disabilities or special needs as "sick kids" to another teacher. She took a photograph of one of her students sitting with his head down on his desk, without permission, so she could display the student's "disruptive" behavior to his parents at their next conference. She provided very few scored assessments in some of her classes, which minimized the opportunity for students to demonstrate their mastery of the course material, and resulted in the students' performance on one or two assessments essentially determining their grade for the entire term, because those assessments were so heavily weighted in determining the students' overall grade.

185. Respondent discouraged her students from asking questions. She was abrupt and discourteous with them. Her temperament, as established at hearing, is contrary to that of an educator. She delegated her responsibility to teach the students in her Business Finance class, to classified staff. Her decision to have her paraeducator assume the primary teaching role reflects respondent's desire not to teach her own students.

186. The testimony of respondent's former students was very persuasive. Their description of how they were mistreated by respondent was remarkably similar, even though these students were taught by respondent at different grade levels, during different school terms, and during different school years.

Respondent Did Not Treat Parents with Dignity and Respect

187. Respondent was rude and unprofessional with the parents of her students and created adversarial relationships with them. She avoided engaging in discussions with parents and instead preferred to rely on email communications. When she did hold an in-person parent-teacher conference, she brought her union representative to the meeting when there was no "union" matter at issue. She did so without providing notice or obtaining permission from the parents to discuss their child's academic performance in front of a third party. During that same parent-teacher conference, respondent avoided engaging in a discussion with the parents about the student's conduct and instead referred the parents to an email she had previously sent them regarding their concerns. She told parents of students in her Business Finance class that she was not qualified to teach the class. Whether respondent was qualified to teach Business Finance when she made the statement to parents, was not established. It does appear that respondent started teaching the class before obtaining her emergency permit. The more pertinent issue is that whether

respondent was qualified to teach the course or not, she undermined the credibility of the school to the parents of her students, by telling them she was not qualified to teach a class that she asked to be allowed to teach.

Respondent Did Not Treat Her Colleagues with Dignity and Respect

188. Respondent failed to treat her co-workers in a courteous, respectful, and professional manner. In December 2016, and January and February 2017, she communicated in a rude, disrespectful, accusatory, and condescending manner with Harris Middle School Principal Amey, Vice Principal Henderson, and several other teachers, regarding EL Student placement. She abruptly resigned from her position as EL Coordinator, a position critical to the success of EL students, as an apparent act of defiance. She also had her paraeducator provide direct instruction to her business finance students and grade all the students' homework in class, which diminished the paraeducator's opportunity to provide assistance to the special needs students she was there to assist. Respondent also communicated in a rude, disrespectful, and accusatory fashion with Ms. Baird, and her English Department colleagues, in April 2018, by accusing her of bias and promoting unlawful retaliation. In December 2018, while in the reception area of the District's human resource office, she spoke to Ms. Thoele and Ms. Clark in a rude and accusatory fashion about her pay.

Respondent Did Not Comply with School Policies: Student Privacy

189. Respondent did not maintain the confidentiality of Student 20's IEP. When she accused her of attempting to cheat on a test by using her class notes in a manner that was loud enough for Student 20's classmates to hear. Respondent also took a photograph of a student on her personal cell phone, without the consent of the student or the student's parents, to prove the student was being disruptive.

Maintaining student confidentiality and privacy is paramount. Creating or maintaining information about her students' identity or location on her cell phone without authorization is a serious breach of professional ethics.

Respondent Did Not Comply with School Policies: Work Hours

190. Respondent was repeatedly late to first period class during both the 2017-18 and 2018-19 school years at Cosumnes Oaks. Nearly every student who testified at hearing, completed a sworn affidavit, or submitted a written complaint to the District, complained about respondent's lateness. The evidence established that respondent would sporadically arrive late to work. She was often late by as much as 30 minutes, leaving the students waiting outside.

Respondent Disregarded Multiple Warnings and Directives to Comply with School Policies

191. Respondent's conduct violated multiple District and school policies. She was warned multiple times, both verbally and in writing, that her mistreatment of students, her mistreatment of colleagues, calling in multiple substitutes, and her tardiness were unacceptable and must cease.

192. Respondent repeatedly disregarded the directives of Ms. Osborne by calling in a substitute to teach her morning classes, claiming to work her mid-day prep period at home, and then calling in a second substitute to teach her afternoon class. Respondent was fully aware of Ms. Osborne's directives prohibiting her conduct. She admitted she did this as a means to recover some of the money she claimed was "stolen" from her by the District.

193. Respondent was counseled by both Principal Amey and Vice Principal Champion about treating students and colleagues in a courteous and professional manner and not abusing her authority to send students to OCI. Vice Principal Champion also counseled her about her failure to arrive to work on time. She received a letter of warning in October 2017, a letter of reprimand in January 2018, a 90-Day Notice of Unprofessional Conduct and Unsatisfactory Performance in July 2018, and another letter of reprimand in January 2019, directing her to correct behavior the District determined fell well below acceptable standards. Despite these warnings, respondent continued to engage in this and other unacceptable conduct until she was placed on administrative leave by the District.

Respondent's Defenses

194. Respondent asserted that the allegations in the Statement of Charges are largely fabrications. She claimed the dismissal action and the previous verbal and written warnings regarding her treatment of students and staff, tardiness, and classroom management are a form of ongoing retaliation against her for contacting the superintendent about her malfunctioning classroom door in August 2016, and for informing the superintendent in October 2016 that she was being subjected to retaliation by school administrators for contacting him, and would file a formal complaint if it did not stop. She asserted she was also subjected to retaliation for engaging in other lawfully protected activity, such as filing employment grievances, small claims actions, and requesting reasonable workplace accommodations. With respect to the relevant facts established at hearing that are summarized in Findings 180 through 193, respondent's arguments were not persuasive. While it was apparent that Principal Amey was unhappy that his supervisor learned about respondent's issue with the malfunctioning door before he did, there was no evidence of any connection

between respondents 2016 report and any of the facts specified in the Statement of Charges and established at hearing. The majority of her claims of mistreatment at Cosumnes Oaks related to what she described as an inequitable teaching assignments and classroom assignments. However, the evidence established that respondent taught Business Finance by her own choosing, and that she taught and had to prep for multiple levels of English was a matter of practicality and necessity rather than equity.

195. Respondent claimed that the students, parents, and colleagues who complained of respondent's conduct in written statements, were encouraged by the District to exaggerate or make false statements about her. She also claimed that the District altered evidence, particularly email communications, to make the documents appear that information was conveyed that was not, or conveyed on a date that it was not, or conveyed by a person who actually had not sent the email. These arguments were not persuasive as respondent produced no reliable evidence to support these assertions.

196. The District did not establish by a preponderance of the evidence that any of respondent's English Honors classes lacked rigor. The evidence the District presented to support this allegation came primarily from students and was anecdotal. The testimony from the students who claimed the work assigned by respondent was both basic and easy to complete, was credible. The standard for what meets or fall below acceptable curriculum rigor is not set by the students. Respondent established that the English Honors course curriculum comes from, or at least is based on, the StudySync curriculum that teachers in the District are required to use. She also established that she submitted her class syllabi to the vice principal who supervises the department in advance of each term, as required, and was not informed that her

teaching plan was insufficient. There was no evidence presented at hearing to establish the minimum level of rigor the District required for an English Honors class.

197. The District also failed to establish that respondent refused to perform any of the essential functions of a teacher. She over-utilized her paraeducator to assist her with teaching and grading in her Business Finance class, and she struggled to adequately prepare, while teaching three different courses, including one outside of her credential, during the term. This does not constitute a refusal to perform the functions of a teacher.

THE MORRISON FACTORS

198. In determining respondent's fitness to teach, her conduct must be examined in light of several criteria established by the courts in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*), and *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429 (*Woodland*), as described in detail in the Legal Conclusions, below.

199. The Likelihood the Conduct Adversely Affected Students and Teachers. Respondent's conduct clearly had an adverse effect on students, as is evident by their testimony. Her students were stressed, angered, and experienced anxiety due to respondent's conduct. They avoided attending her classes. They were concerned that respondent's failure to adequately prepare for class, arrive to class on time, and adversarial nature jeopardized their academic opportunities. They objected to repeatedly being yelled at and sent out of class to OCI without justification or exploring alternative measures that allowed them to remain in class. Repeatedly excluding students from the learning environment, especially for multiple days at a time, has an increasingly detrimental effect on students' academic progress and their

ability to be successful in a subject area. Additionally, a lack of clarity surrounding student discipline results in those students becoming frustrated, creates a lack of trust in authority, does nothing to curb perceived misbehavior, and infringes upon students' right to a free and appropriate education.

200. Many of the students independently sought the assistance of school counselors, other teachers, and school administrator to intervene and prevent further mistreatment by respondent. Several parents either removed or attempted to remove their children from respondent's classes.

201. Respondent's conduct also adversely affected fellow teachers. Several administrators and teachers testified to the difficulties they had communicating and collaborating with respondent. Specifically, Ms. Baird testified that she spent an inordinate amount of time reviewing the emails she sent to respondent to avoid unnecessary confrontation. She requested that respondent include an administrator on all email communications to prevent unwarranted accusations. Both Ms. Clark and Ms. Van de Star testified that respondent's December 2018 outbursts in the District's human resources office, during which she accused her leave technician of stealing her pay, left embarrassed and hurt by the accusations. That respondent's conduct had an adverse effect on students, fellow teachers, and staff, his highly likely.

202. Degree of Adversity Anticipated. Respondent's repeated inappropriate comments to students, her overuse of OCI, and her ongoing tardiness conveyed a message to her students and their parents that the students' education was not valued and that it was acceptable for a teacher to engage in the misconduct she displayed. Her communication with co-workers stifled communication and collaboration. For these reasons, there is a substantial likelihood respondent's conduct had a significant

adverse effect on students who observed or were subjected to her conduct as well as her colleagues.

203. Proximity or Remoteness in Time of Respondent's Conduct. Respondent engaged in misconduct from approximately December 2016 through March 2019. The incidents occurred over a period of more than two years and at two different sites within the District. Respondent's misconduct was not remote in time.

204. Respondent's Teaching Certificate. Respondent is a high school English teacher. It is one of the core subjects that students are required to complete. Therefore, a large portion of students at Cosumnes Oaks will spend a significant amount of their instructional time in one or more of respondent's classes. High school students are impressionable. To the extent respondent is permitted to continue teaching at the District, the potential for her to negatively influence impressionable students is significant. A teacher is often described as "... an exemplar, whose words and actions are likely to be followed by the children coming under [the teacher's] care and protection.'" (*Palo Verde etc. Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 970.)

205. Extenuating or Aggravating Circumstances. There was no evidence of any justification or excuse for respondent's misconduct. There were no aggravating circumstances beyond the misconduct alleged in the Statement of Charges.

206. Praiseworthiness or Blameworthiness of Respondent's Motives. It is difficult to identify praiseworthiness or blameworthiness in conduct that respondent outright denies ever occurred. To the extent respondent acknowledged that she engaged in conduct that, at least by others, including this Commission, was inappropriate, she justified her conduct as a response to unlawful discrimination or retaliation, or a method to protect herself from unlawful discrimination or retaliation.

However, respondent's motives are unjustified as there are numerous well-established methods to protect oneself from unlawful discrimination and retaliation that do not involve mistreating students or staff. Respondent also claimed that when her communications were described by her superiors, colleagues, and the parents of her students as being accusatory, confrontational, or defensive, she instead was responding "proportionally" to how those individuals communicated with her. This assertion was not supported by the evidence. Respondent's stated motives for the conduct she acknowledges are blameworthy.

207. Likelihood of Recurrence. Respondent has not acknowledged any wrongdoing. Consistent with her assertion that she is without fault in this matter, she did not demonstrate substantial rehabilitation or provide sufficient evidence to ensure she would not engage in similar misconduct in the future. Thus, the likelihood that respondent's misconduct will recur is substantial.

208. Chilling Effect of Discipline. There is some evidence that dismissal of respondent will have an adverse or chilling effect upon respondent's constitutional rights or the constitutional rights of other teachers. Respondent asserted that this dismissal action stems from her complaining to the superintendent about a malfunctioning door, complaining of unlawful retaliation, filing grievances, or engaging in other lawfully protected activity. To the extent other teachers or District employees perceive respondent's dismissal as being the result of those activities, it could dissuade them for engaging in protected activity for fear of retribution.

209. While it is clear that the District issued respondent several warnings and reprimands regarding her behavior, the District must bear some responsibility for what occurred. The District demonstrated an egregious lack of responsibility with regard to providing interventions, coaching, or support to an obviously struggling teacher, as

well as her distraught students. Vice Principal Champion received complaints about respondent's teaching methods and interaction with students and staff within a few weeks of her assignment at Cosumnes Oaks. However, there was no evidence that respondent received any performance evaluations while at Cosumnes Oaks. No formal classroom observations were completed to validate or address any of the concerns raised by respondent's students, her paraeducator, or her teacher's assistant. There was no evidence that the District ever implemented any form of mentoring or coaching to assist respondent in areas of performance the District long considered substandard. This failure to respond exacerbated the situation. In addition, the District's failure to follow a prescribed formal evaluation process shows a lack of effective administration and employee performance management at Cosumnes Oaks.

210. The District's failures are noteworthy. The District should be prompted by this experience to take proactive steps when facing similar circumstances in the future. However, these failures by the District do not relieve respondent of her obligation to meet basic but critical standards of behavior and professionalism. When the evidence is considered in light of the applicable determinative factors, the District established cause to dismiss respondent from employment, as described in the Legal Conclusions below.

LEGAL CONCLUSIONS

The Burden of Proof and Standard of Review

1. Absent a statute to the contrary, the burden of proof in disciplinary administrative proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The "burden of

proof” means the obligation of a party, if he or she is to prevail on a particular fact, to establish by evidence a requisite degree of belief or conviction concerning such fact. (*Redevelopment Agency v. Norm’s Slauson* (1985) 173 Cal.App.3d 1121, 1128.) The burden of proof in this proceeding is thus on District to prove the charging allegations.

2. The standard of proof in this proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040; Evid. Code, § 115.) “The phrase ‘preponderance of evidence’ is usually defined in terms of probability of truth, e.g., ‘such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.’ (BAJI (8th ed.), No. 2.60.)” (1 Witkin, Evidence, Burden of Proof and Presumptions § 35 (4th ed. 2000).)

Applicable Policies

3. Board Policy 4119.21, in part, provides that an educator shall not unreasonably restrain students from independent action in the pursuit of learning, unreasonably deny students access to varying points of view, intentionally expose students to embarrassment or disparagement, assist a non-educator in the unauthorized practice of teaching, or knowingly make false or malicious statements about a colleague.

4. Board Policy 5144.1, in part, provides that except where permitted by law for a student’s first offense, an on-campus suspension, or OCI, shall be imposed only when other means of correction have failed to bring about proper conduct. (Ed. Code, § 48900.5)

5. The Cosumnes Oaks Certificated Working Hours Policy provides, in pertinent part, that "Contract hours are from 7:50 a.m. to 3:20 p.m., Monday through Friday." And, that "[t]he supervision of students is the responsibility of every staff member from the time [they] enter the campus until the time [they] leave."

6. The Cosumnes Oaks Student Discipline Policy includes a defined and progressive set of interventions, remediation and consequences that schools follow when students misbehave. The policy specifies that these alternatives include parent contact, counseling, personal responsibility, such as written apologies, restitution, or school service; detention; community service; parent conference, or in-school suspension.

Applicable Statutes

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

8. Pursuant to Education Code section 44944, subdivision (b), the dismissal hearing must be conducted by a three-member Commission on Professional Competence. Two members of the Commission must be non-district teachers, one chosen by the respondent and one by the district, and the third member of the Commission must be an administrative law judge from the Office of Administrative Hearings.

9. When a school board recommends dismissal for cause, the Commission may only vote for or against it. Likewise, when suspension is recommended, the Commission may only vote for or against suspension. The Commission may not dispose of a charge of dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subd. (c)(1)(3).)

Immoral Conduct

10. Pursuant to Education Code section 44932, subdivision (a)(1), a school district may discipline a permanent certificated employee for immoral conduct. For the purpose of dismissal of a teacher, immoral conduct is defined as conduct that:

is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as wilful [*sic*], flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare.

(*Palo Verde Unified Sch. Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972, citing *Board of Ed. of San Francisco Unified School District v. Weiland* (1960) 179 CalApp.2d 808, 811.)

11. The District established that respondent mistreated her students and colleagues and that her mistreatment had an adverse effect on the students' educational opportunities and the work environment. The District established that respondent repeatedly arrived late for her own classes. The District also established that respondent continued to engage in this conduct after being directed on multiple occasions to end said behavior. However, that conduct was not sufficiently egregious to be considered immoral because it was not "indicative of corruption, indecency, depravity, dissoluteness [or] shameless [or representative of] ... an inconsiderate attitude toward good order," as described above. Accordingly, the District did not

establish cause to dismiss respondent from employment for engaging in immoral conduct, as described in Education Code section 44932, subdivision (a)(1).

Unprofessional Conduct and Persistent Violation of or Refusal to Obey School Laws or Reasonable Regulations Governing Them

12. Pursuant to Education Code section 44932, subdivision (a)(2), a school district may discipline a permanent certificated employee for unprofessional conduct. "Unprofessional conduct" as used in § 44932, subd. (a)(2), may be defined as conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.)

13. Pursuant to Education Code section 44932, subdivision (a)(8), a school district may discipline a permanent certificated employee for "persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her." "Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her," as described in Education Code, section 44932, subdivision (a)(8), requires a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) Persistence requires a showing of "continuing or constant" behavior. (*Governing Board of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.)

14. Based on the Findings as a whole, but particularly those described in Findings 180 through 193, respondent engaged in unprofessional conduct and persistently violated and refused to obey school laws or reasonable regulations of the Districts governing board. Over a period of more than two years, she repeatedly mistreated her students, their parents, and her colleagues, and repeatedly arrived late to teach her students. She was directed multiple time to end this conduct and warned that she was in violation of the law, school policy, and District rules and regulations. Despite these warnings, respondent's conduct continued until she was placed on administrative leave. Her conduct established that she repeatedly violated the rules and ethics of her profession, refused to comply with school laws or reasonable regulations of the governing board of the District, and exhibited conduct unbecoming of a teacher in good standing. Accordingly, the District established cause to dismiss respondent from employment for engaging in unprofessional conduct, as described in Education Code section 44932, subdivision (a)(2). These facts also established separate grounds to dismiss respondent from employment for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her, as described in Education Code section 44932, subdivision (a)(8).

Unsatisfactory Performance

15. Pursuant to Education Code section 44932, subdivision (a)(5), a school district may discipline a permanent certificated employee for unsatisfactory performance. The term "unsatisfactory performance" is not specifically defined in the Education Code or case law. Inasmuch as there is separate cause for dismissal for unprofessional conduct in subdivision (a) of Section 44932, and we are not to presume

the Legislature intended to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, Education Code section 44938, subdivision (c), specifies that “unsatisfactory performance” does not include any other cause for dismissal specified in Education Code section 44932.

16. While unprofessional conduct can be determined by analyzing a teacher’s conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher’s performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and refers to Section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs unsatisfactorily to her employing school district. However, the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass’n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed unsatisfactorily.

17. Based on the Findings as a whole, but particularly Findings 113 through 116, and 137 through 139, the District did not establish that respondent engaged in unsatisfactory performance. Respondent’s performance evaluations were mostly

favorable. Her 2017 performance evaluation, the most recent one admitted into evidence at hearing, identifies that her communication with colleagues has been poor, but otherwise speaks very favorably of her teaching methods, preparedness, and ability to engage with students. There appeared to be only a single formal observation of respondent's teaching during timeframe described in the Statement of Charges and very little effort was made to provide respondent with supports to improve deficiencies identified by her superiors. The District did not establish cause to dismiss respondent from employment for unsatisfactory performance, as described in Education Code section 44932, subdivision (a)(5).

Evident Unfitness for Service

18. Pursuant to Education Code section 44932, subdivision (a)(6), a school district may discipline a permanent certificated employee for "evident unfitness for service." In *Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 (*Woodland*), the Third District Court of Appeal defined the term "evident unfitness for service," as used in Education Code section 44932, subdivision (a)(6), to mean "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." The court found that the term "connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Ibid.*) The court held that the *Morrison* factors "must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service." (*Id.* p. 1445.) As the court in *Woodland* explained, "[i]f the *Morrison* criteria are satisfied, the next step is to determine whether the 'unfitness' is 'evident'; i.e., whether the offensive conduct is caused by a defect in temperament." (*Ibid.*)

19. In *Morrison, supra*, 1 Cal.3d at p. 235, the California Supreme Court held that “an individual can be removed from the teaching profession only upon a showing that his [or her] retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his [or her] actions as a teacher,” based on several factors discussed in Findings 199 through 208, above. (*Id.* at pp. 229-230.) Not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.)

20. The analysis of the *Morrison* factors, as set forth in above, demonstrates that respondent’s conduct had an adverse impact on students, school administrators, fellow teachers, and school staff; there is a substantial likelihood respondent’s conduct had a significant adverse effect on her students and colleagues; her misconduct occurred over a period of more than two years and was not remote in time; because respondent is a high school English teacher, a core subject, the potential exposure to students is significant if her misconduct is allowed to continue; there were no extenuating circumstances and no aggravating circumstances beyond the misconduct alleged in the Statement of Charges; respondent’s motives for the conduct she acknowledges were blameworthy; the likelihood that her misconduct will recur is substantial; and there is evidence that dismissal of respondent could have an adverse or chilling effect upon respondent’s constitutional rights or the constitutional rights of any other teachers. This analysis of the *Morrison* factors established that respondent is not fit to remain a teacher for the District.

21. Respondent did not treat students with dignity and respect or communicate with parents or colleagues in a courteous, respectful, and professional manner or report to work on-time to teach her classes. She failed to address these deficiencies after receiving multiple oral and written directives and warnings over a period of years. At hearing, she demonstrated an inability to either recognize or acknowledge that her conduct was, in fact, highly deficient. Based upon these facts, and the evidence as a whole, the Commission is persuaded that respondent's misconduct is caused by a defect in temperament and that is non-remediable. The District therefore established that respondent is evidently unfit under the reasoning set forth in *Woodland*.

22. In sum, when all the factors set forth in *Morrison* and *Woodland* are analyzed, the District proved that respondent is evidently unfit to teach children. The District therefore established cause to discipline respondent pursuant to Education Code section 44932, subdivisions (a)(6).

Cause for Dismissal

23. Given respondent's evident unfitness to teach children, and based on the Findings and Legal Conclusions as a whole, the District established cause to dismiss respondent from employment, pursuant to Education Code section 44932, subdivisions (a)(2), (a)(6), and (a)(8).

ORDER

Respondent Camille Piper is DISMISSED as a permanent certificated employee of the Elk Grove Unified School District pursuant to Legal Conclusions 1 through 23, jointly and individually.

DATED: _____

KARISA SCOTT
Commissioner
Commission on Professional Competence

DATED: _____

FYNN CARROLL
Commissioner
Commission on Professional Competence

DATED: _____

ED WASHINGTON
Administrative Law Judge, Chair
Commission on Professional Competence

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.