

BEFORE A
COMMISSION ON PROFESSIONAL COMPETENCE
FOR THE JURUPA UNIFIED SCHOOL DISTRICT

In the Matter of the Dismissal of:

NENOISE TROTTER,

A Permanent Certificated Employee,

Respondent.

OAH No. 2017100785

DECISION

On March 19 through 23, 2018, a Commission on Professional Competence (Commission) heard this matter in Jurupa Valley, California. The Commission consisted of the following members: Adam L. Berg, Administrative Law Judge, Office of Administrative Hearings; Virginia Escobar, Baldwin Park Unified School District; and Deidra Johnson, Moreno Valley Unified School District.

Kerrie McNally, Attorney at Law with the law firm of Adams, Silva & McNally, LLP, represented complainant, Tamara Elzig, Deputy Superintendent of Personnel Services, Jurupa Unified School District (district).

Marianne Reinhold, Attorney at Law with the law firm of Reich, Adell & Cvitan, represented respondent, Nenoise Trotter, who was present throughout the hearing.

The record was closed and the matter submitted for decision on March 23, 2018.

FACTUAL FINDINGS

Procedural Background

1. Respondent is a certificated elementary school teacher who was assigned as a third grade teacher at Granite Hill Elementary School (Granite Hill) during the time period that is the subject of these proceedings. She has taught elementary school for 20 years with the district. She holds a clear multiple subject teaching credential.

2. On August 21, 2017, complainant signed the Notice of Intent to Dismiss and Statement of Charges (Statement of Charges), alleging that respondent was subject to

termination for unprofessional conduct, evident unfitness for service, and persistent violation of or refusal to obey the district's regulations, in violation of Education Code sections 44932, subdivisions (a)(2), (a)(6), and (a)(8), respectively.

3. On September 13, 2017, the district served the Statement of Charges on respondent, who timely filed a demand for hearing.

4. On January 30, 2018, the district filed a motion to amend the Statement of Charges, which was opposed in part by respondent. By order dated February 27, 2018, the district's motion was granted in part, and the district was permitted to amend the Statement of Charges to make technical, non-substantive corrections, which were not opposed by respondent. However, the district was not permitted to allege additional substantive allegations because it failed to establish good cause to do so.¹

5. On February 28, 2018, complainant filed an Amended Statement of Charges. In support of the three grounds for dismissal, complainant alleged multiple incidents between respondent and students, parents, and staff, beginning in September 2013.²

2013-2014 School Year

ALLEGATIONS RELATED TO THE GRADE-LEVEL MEETING

6. Adrienne Lara is currently a fourth grade teacher at Granite Hill who testified at the hearing. During the 2013-2014 school-year, she was one of four third grade teachers at Granite Hill, including respondent. That school-year was Ms. Lara's first year teaching at Granite Hill. She had previously taught at another elementary school in the district for five years, but several weeks into the school-year, she was involuntarily transferred to Granite Hill to fill a vacant position. Soon after she started at Granite Hill, respondent volunteered to watch her class for several hours so Ms. Lara could unpack her boxes and prepare her classroom for the new school-year. Respondent would also share instructional materials with Ms. Lara and the rest of the third grade team.

7. On November 18, 2013, Ms. Lara was teaching her students a language arts lesson when respondent called her and asked if respondent could send over a few students to Ms. Lara's class to read something they had written. Ms. Lara testified that she told respondent she was in the middle of something, at which point respondent said, "I won't bother with you" and hung up. Later that afternoon, Ms. Lara wrote an email to Granite Hill Principal Corrine Ortiz, with the subject line, "I stepped on Nenoise's Toes." The email

¹ Pursuant to Education Code section 44934, subdivision (d), the Statement of Charges may be amended less than 90 days before the hearing only upon a showing of good cause.

² Pursuant to Education Code section 44944, subdivision (b), all evidence and allegations relating to events occurring more than four years before the initial Statement of Charges was served were excluded and not considered by the Commission.

related the incident and stated that respondent had complained to the grade-level leader, Sherine Candido, who told Ms. Lara that Ms. Lara had hurt respondent's feelings. Ms. Lara wrote Ms. Ortiz that she did not want the collaboration between the two to be affected, but Ms. Lara did not feel she needed to apologize because she was in the middle of a lesson when respondent called.

Ms. Ortiz responded to Ms. Lara stating that she understood Ms. Lara not wanting to interrupt the flow of her lesson, but suggested that Ms. Lara could have provided respondent an alternative time for her students to read to Ms. Lara's class. Ms. Ortiz suggested that a conversation at the next grade-level meeting would be appropriate for the team to discuss how to deal with a similar situation in the future.

Ms. Lara sent Ms. Ortiz an email expressing that she agreed with Ms. Ortiz's suggestions and would ask Ms. Candido to address the issue at the next grade-level meeting.

8. On November 20, 2013, a grade-level meeting was held with Granite Hill's third grade teachers. The purpose of the meetings was for the teachers to collaborate and plan lessons. Ms. Candido, the grade-level leader, began the meeting with a discussion about the incident between respondent and Ms. Lara. Respondent apologized for interrupting Ms. Lara's class, but then said Ms. Lara was selfish and only cared about herself. Respondent said that she had helped Ms. Lara when she first came to Granite Hill by taking her students, she would no longer send students to Ms. Lara, and she would not accept any of Ms. Lara's students in return. Ms. Lara felt that the tone of the "apology" was clearly disingenuous and insincere. She was shocked by respondent's reaction because she felt it was a small incident that had been overblown. Lorena Graves, another third grade teacher, tried to speak, but respondent said, "Oh, shut-up Lorena," and then laughed. Ms. Lara told respondent she would not accept the apology because respondent called her selfish. She called respondent unprofessional and arrogant. Respondent began to mimic Ms. Lara and used a high-pitched voice, like that of a child's. Ms. Lara testified that she felt very intimidated by respondent during the meeting.

That evening, Ms. Lara sent an email to Ms. Ortiz and Ms. Elzig, in which she stated she felt that respondent and Ms. Candido "ripped her to shreds" during the meeting. Ms. Lara sent Ms. Ortiz another email late at night, which was very emotional and clearly expressed her frustration and anxiety about the incident. Ms. Lara testified that the incident affected her emotionally. She was intimidated because she was new at the school and respondent had a lot of clout.

9. Ms. Ortiz is currently an elementary school teacher with the district on special assignment. Previously, she was Principal of Granite Hill for three school-years, from 2013 through 2016. After Ms. Lara reported to Ms. Ortiz that she had felt intimidated by respondent at the grade-level meeting, Ms. Ortiz spoke to each of the teachers who had been present. The other teachers generally confirmed Ms. Lara's version of events. Ms. Graves confirmed respondent told her to "shut-up" when she tried to speak. Ms. Ortiz also learned that respondent mimicked what Ms. Lara said using a baby voice or demeaning tone. Ms.

Lara reported that she left the meeting by saying that she would be more careful with everyone's feelings and consider dealing with the situation differently.

10. On December 4, 2013, Ms. Ortiz sent respondent a "letter of concern" about the incident.³ Ms. Ortiz wrote that after a thorough investigation, it was determined that respondent was unprofessional when she "mocked, mimicked, and intimidated" another teacher at a grade-level meeting. Ms. Ortiz issued respondent several directives relating to appropriate communication with staff members. Ms. Ortiz also ordered that all future grade-level meetings would be held in the library, which Ms. Ortiz could observe from her office.

11. Ms. Lara testified that after the incident, she never had a substantive conversation with respondent. At future grade-level meetings, respondent would not participate. Ms. Ortiz observed several third grade-level meetings that school-year. Ms. Ortiz testified that during the meetings she attended, respondent was "standoffish," did not participate in the meetings, would grade papers, and when asked to contribute, would respond that she had nothing to say.

12. Respondent's testimony is summarized as follows: Ms. Lara started approximately one month into the school-year. When Ms. Lara first started, respondent learned that Ms. Lara's room was in disarray. Respondent volunteered to take Ms. Lara's students all day to give Ms. Lara a chance to organize her room.

In November 2013, all of the third grade classes were doing theme writing and stories. Respondent thought her students did an exceptional job, and as a reward she wanted a few of her students to go to the other classrooms to share what they had written. The other two third grade teachers said it was fine for her students to come read, but when respondent called Ms. Lara, Ms. Lara flatly said "no." Respondent was stunned at the response especially because Ms. Lara did not offer any other times, which is what respondent wanted to hear.

At the next grade-level meetings, when it was respondent's turn to speak, she apologized to Ms. Lara for interrupting her class. The other two teachers complimented respondent on what a great job her students did, but Ms. Lara said she would not accept respondent's apology. Respondent testified that her apology was sincere and not sarcastic. She explained she did not know Ms. Lara that well, and she sincerely wanted to apologize for interrupting Ms. Lara's class. Ms. Lara then stood up, pointed her finger at respondent, and "told-off" respondent about how unprofessional she was. Respondent thought this was inappropriate. Respondent denied ever mimicking Ms. Lara or making any comments about Ms. Lara being uncomfortable. Ms. Lara then left and said she was going to talk to Ms. Ortiz

³ Ms. Ortiz originally wrote a letter of concern that contained many more details about her investigation, but on advice of district administration, the letter she provided to respondent did not contain any specifics. Ms. Ortiz testified that the letter of concern she issued to respondent was maintained in the school site file but was not placed in respondent's personnel file.

because she was being harassed. Ms. Ortiz spoke to all of the teachers at the meeting and asked them to write statements.

13. Respondent continued to participate in the grade-level meetings. After that incident, the meetings were held in the library. Respondent did not remember if Ms. Ortiz ever indicated to her that Ms. Ortiz was concerned with respondent's lack of participation. All of the meetings concluded with asking the teachers if they had anything else to add. Respondent always said, "No, I don't have anything else to say." Respondent had a good working relationship with Ms. Lara after the incident and regularly communicated with Ms. Lara and the other teachers. Respondent would speak to Ms. Lara in the lounge and discussed vacations or holidays.

14. On cross examination, respondent denied that she was at all upset when Ms. Lara said her students could not come to her class to read. Respondent met with Ms. Ortiz after the grade level meeting and told Ms. Ortiz that Ms. Lara called her names and shook her finger at her. When asked why at her deposition respondent said she could not recall the details of the meeting with Ms. Ortiz, respondent testified that she remembered more details about the meeting after she gave it more thought and did not recall the details at that particular time.

15. In rebuttal testimony, Ms. Ortiz testified that she spoke to all of the teachers who were at the grade level meeting, including respondent. No teacher, including respondent, told Ms. Ortiz that Ms. Lara stood up and yelled at respondent or that Ms. Lara stormed out of the meeting. Ms. Ortiz said that Ms. Lara admitted to calling respondent unprofessional and arrogant, but this was after respondent called Ms. Lara selfish.

ALLEGED COMMENTS ABOUT THE THIRD GRADE TEACHERS

16. At the end of the 2013-2014 school-year, the teaching assignments for the next school-year were released to the teachers. Ms. Ortiz testified that respondent approached her and made a comment to the effect of, "You must not like the third grade because you put all the oldest people on the third grade team." Ms. Ortiz responded by saying that age had nothing to do with teacher assignments. Ms. Ortiz felt that the comment was unprofessional because it was not normal for a teacher to talk negatively about other teachers.

17. Respondent testified that she had gone to a training at the end of the 2013-2014 school and other people at the training made a comment about all of the older people being put on the third grade team. Respondent told Ms. Ortiz what the other people had said; she did not mean anything by the comment. Respondent did not remember what Ms. Ortiz's response was to the comment.

18. In rebuttal testimony, Ms. Ortiz testified that she never solicited respondent's opinion about the third grade team and respondent never told her that the statement about the third grade being taught by the older people came from others at a training.

2014-2015 School Year

19. Renne Wedin has taught third grade at Granite Hill since the 2014-2015 school-year. During a grade-level collaboration meeting, respondent said that Ms. Wedin should take notes because she was new. Ms. Wedin testified that she felt a little offended because although she was a new teacher at Granite Hill, she had experience teaching at another school.

20. Respondent denied telling Ms. Wedin that she had to take notes. Ms. Graves was the team leader that year and it would have been her responsibility to decide who would take notes at the meeting.

21. The Amended Statement of Charges alleged that respondent told her grade-level team that they were going to fail this year because Ms. Bjazevich was always sick, Ms. Graves always forgets things, and Ms. Wedin was new to the school. No non-hearsay evidence was presented by the district regarding this allegation. However, respondent denied telling this to the grade-level team. Instead, she said Ms. Ortiz asked her opinion about the third grade level team and respondent told her that Ms. Bjazevich was always absent, Ms. Graves was forgetful, and Ms. Wedin was new. Respondent never told Ms. Ortiz that she was “concerned” about her team or thought that it would fail.

ALLEGATIONS INVOLVING A PIZZA PARTY

22. Complainant alleged that respondent “taunted” her third grade students by having a pizza party in her classroom for sixth grade students but would not let her third grade students participate. On September 12, 2014, Ms. Ortiz received two phone calls from parents of third grade students in respondent’s class, who were upset that respondent had a pizza party for sixth grade students in front of the third graders, who were not allowed to participate. Ms. Ortiz was concerned that instructional time had been used for a pizza party for sixth graders and sent respondent an email asking for clarification. Respondent did not actually provide an explanation to Ms. Ortiz, but simply responded that the information was not correct and if the parents would contact her she would discuss their concerns. Ms. Ortiz responded that the parents wished to remain anonymous, but she had asked them to speak to respondent about the incident.

23. Respondent’s testimony is summarized as follows: This was the first year for common core, and her students were having some difficulty with the concepts. Some of respondent’s former students, who were in the sixth grade, came in during lunch to tutor the third graders and help them with the concepts. As a reward, her third grade class decided they would throw a pizza party for the sixth grade students. The sixth grade students sat on the carpet and ate pizza as respondent taught a lesson to her students. The third graders participated in planning the party, and they were excited that they could do this for the sixth graders. Respondent never held up a slice of pizza in the air to taunt her students. When respondent received Ms. Ortiz’s email, she requested that the parents who had concerns contact her so she could tell them it was a reward; however, Ms. Ortiz said the parents

wished to remain anonymous. One day, Manuel and Nancy Chavez, the parents of one of respondent's third grade students, spoke to respondent about the incident. They said they had contacted Ms. Ortiz about their concerns but were satisfied by respondent's explanation.

24. Ms. Ortiz testified that in late January 2015, several months after the pizza party, Nancy Chavez, a parent of a third grade student in respondent's class, returned to Ms. Ortiz to talk about the pizza incident. Ms. Chavez was crying and visibly upset. She gave Ms. Ortiz a letter explaining that respondent had clarified the issue regarding the pizza party and Ms. Chavez was upset that respondent had gotten in trouble for the incident.

Ms. Chavez's letter, dated January 29, 2015, stated that she and her husband had discussed the incident with respondent and realized respondent did nothing wrong. They felt they got incorrect information from their son, and they now understood that it was a reward for the sixth graders. They apologized for the inconvenience and wrote that they were extremely happy with respondent.

The letter was dated two days after Ms. Elzig had emailed respondent to schedule a meeting to discuss complaints of unprofessional conduct, and one day after Ms. Ortiz issued respondent a letter of reprimand regarding two other unrelated incidents. Considering the pizza incident occurred months before, respondent was questioned on cross examination if she asked Mrs. Chavez to write a letter on her behalf. Respondent denied telling Mr. and Mrs. Chavez that she was in trouble with the district, and said she never asked them to write a letter to Ms. Ortiz on her behalf. When asked how she had obtained a copy of the letter, which respondent submitted as evidence, respondent said that Mrs. Chavez took it to the office to give to Ms. Ortiz and then later gave respondent a copy of the letter.

25. Mr. Chavez also testified at the hearing. His son told him he was upset that other children had received pizza and he did not. Mr. Chavez and his wife spoke to Ms. Ortiz to complain. After they spoke to Ms. Ortiz, they talked to respondent, who explained why she had the party. They then told Ms. Ortiz that they had misunderstood the situation. Mr. Chavez testified that he could not remember when the party occurred or when he and his wife spoke to Ms. Ortiz. Mr. Chavez did not remember if respondent told them anything about her getting in trouble regarding the incident. He denied that respondent asked his wife to write the letter to Ms. Ortiz.

ALLEGATIONS INVOLVING INSUBORDINATION AT STAFF MEETINGS

26. Ms. Ortiz testified that an English Language Development (ELD) meeting was held for teachers on October 15, 2014. Prior to the meeting, Ms. Ortiz had sent an email to the teachers directing them to bring a certain book to the meeting. When Ms. Ortiz noticed that respondent had not brought the book, respondent told her she had already read the book and would look at her neighbor's. Ms. Ortiz asked her to retrieve the book from her classroom, to which respondent said that by the time she went to her classroom to get the book, the meeting would be over. Ms. Ortiz felt that respondent was being insubordinate, especially since her classroom was just across the hall. Ms. Ortiz denied that respondent

ever mentioned anything about not having her glasses with her, such that she was unable to read the book.

27. Respondent testified that prior to the ELD meeting, the teachers were instructed to read the ELD book. When respondent went to the meeting, she did not have the book with her. Ms. Ortiz asked her to go and bring the book to the meeting. Respondent told Ms. Ortiz that she did not have her reading glasses and thus could not read the book anyway. She explained that a student had accidentally broken her reading glasses that day, and she did not have a second pair. Respondent said in no way did she intend to be disrespectful to Ms. Ortiz.

28. Ms. Ortiz testified that during a technology meeting held in December 2014, the teachers were requested to complete a survey on their laptops. Ms. Ortiz testified that respondent did not complete the survey as requested.

29. Respondent testified that although she did not complete the survey at the meeting, she completed the survey when she returned to her room.

ALLEGATIONS INVOLVING STUDENT A.V.

30. During the 2014-2015 school-year, A.V. was in respondent's third grade class. A.V.'s mother testified at the hearing. Before the winter break, A.V.'s mother and A.V. met with respondent to discuss A.V.'s grades and how she was doing in class. A.V.'s mother was talking about A.V.'s homework, when respondent said she did not like that A.V.'s pants fell down in the back and made the comment, "nobody wants to see what your mama gave you." A.V.'s mother felt this was disrespectful and unrelated to the issue they were discussing. A.V.'s mother did not remember if respondent told her that other kids in the class were making fun of the way A.V. dressed because she would have a gap between her pants and her shirt.

At another point, respondent asked A.V. to explain something. When A.V. began crying and could not talk anymore, respondent said she would tell the story. When A.V. tried to speak, respondent put her hand up and told A.V. she had her chance and was not going to speak. A.V.'s mother testified that during the meeting, respondent called A.V. a "drama queen," although she did not remember the context in which this statement was made. She testified that respondent was very rude and she could not believe how respondent had acted. A.V.'s mother reported the incident to Ms. Ortiz, but the school refused to transfer A.V. out of respondent's class.

31. A.V. is 12 years old and now in sixth grade.⁴ A.V. testified that when she first started third grade she liked respondent. She said respondent would say mean things in class, and she and other children sometimes cried, although she did not recall why. Respondent

⁴ All of the children who testified at hearing were determined to be competent. (Evid. Code, § 700; 701.)

would call A.V. a “drama queen” in class. A.V. did not like this and wanted to be called by her real name. During the meeting with respondent and A.V.’s mother, when A.V. tried to talk, respondent put her hand up in front of her face. She called A.V. a drama queen and told her that she needed to pull her pants up in class. A.V. explained that she started gaining weight that year and normally wore leggings. However, when she wore jeans, they would sometimes fall down in back.

32. Ms. Ortiz testified that A.V.’s mother reported her concerns about respondent’s conduct during the meeting and spoke to Ms. Ortiz about the incident on January 20, 2015. According to Ms. Ortiz, A.V.’s mother felt that the meeting was supposed to be about A.V.’s missing homework, but respondent would go off topic and then made a rude comment about A.V.’s clothes that embarrassed A.V. When A.V. tried to speak, respondent made a “shushing” sound and put her hand up. A.V.’s mother also reported that respondent had called A.V. a “drama queen.”

Ms. Ortiz later went to respondent’s class to talk to respondent about the incident. Respondent said, “Get her out, I don’t want her in my class.” When Ms. Ortiz brought up A.V.’s mother’s concern, respondent put up her hand and said, “Get her out” before Ms. Ortiz could discuss the issue with respondent. Ms. Ortiz told respondent that it did not work that way and it was not possible to move every student with whom there is a problem. When Ms. Ortiz was leaving the classroom, respondent stated, “You are going to move her out of my room.”

33. Respondent testified that A.V.’s mother had stopped by the classroom and asked respondent how A.V. was doing in class. Respondent explained that A.V. had just had a progress report, but her mother had not yet seen it. There were assignments listed on the progress report that A.V. had not turned in. Respondent wanted to let A.V.’s mother know that other students, especially the boys, were laughing at A.V. because her shorts were too low and her shirt was too high, exposing her lower back. Respondent denied ever referring to A.V. as a “drama queen.” Respondent said she does not even use the phrase, and to her, the term refers to a female impersonator from a restaurant in San Francisco. Respondent denied ever making a comment about A.V. being too sensitive. A.V. was not crying during the meeting with her mother, and respondent never put her hand up to “shush” A.V. or told her to be quiet. As respondent recalled, the meeting was quite short. Respondent suggested that A.V. wear longer tops or tie a sweater around her waist but denied making any jokes about it. Respondent did not recall A.V. ever attempting to turn in late work, but there was a tray on a shelf in the classroom where students could turn in late work.⁵ Respondent taught her students about the tray the first day of class and never got frustrated when a student would attempt to turn in late homework. Finally, respondent denied ever calling A.V. a “hot mess.” She said she only uses that term to refer to her daughter’s make-up, although the

⁵ The Amended Statement of Charges alleged respondent would not allow A.V. to turn in missing work the next day and was rude to her. There was no admissible evidence supporting this allegation and respondent denied the substance of it.

Commission noted that in testimony the day before, respondent referred to a student's handwriting as a "hot mess."

34. Respondent offered as evidence a written assignment completed by A.V. on January 28, 2015.⁶ The written assignment, entitled "Third Grade," stated that A.V. was glad to be in this grade, but she "kind of wanted to go back to second grade because third grade was hard." She wrote that even though respondent was strict, she was a nice person and she loved third grade. Respondent testified that she gave the class a writing assignment where they were to discuss something that they loved. She gave the class her example that pepperoni pizza was the best. She testified that the students came up with their own topics to write about. A.V. came up with the topic of why she loved third grade. Respondent denied that she instructed the students to write about third grade specifically.

ALLEGATIONS REGARDING STUDENT A.O.

35. During the 2014-2015 school-year, A.O. was also in respondent's third grade class. A.O., who is now 12 years old and in sixth grade, testified at the hearing as follows: A.O. did not like respondent because she was mean. A.O. would cry in class once or twice a week and cried after coming home almost every day. She frequently cried in the morning because she did not want to go to class. One day, the playground monitor brought her to class. Respondent told her to sit next to respondent's desk. A.O. never had to sit next to the desk before, and respondent never made other children sit next to the desk. Respondent told A.O. that she was not GATE (Gifted and Talented Education) material and asked A.O. who put her in respondent's class. When A.O. responded that her mother had, respondent pointed to other students by name and said that they were not crying. She then said in front of the class that A.O. looked like respondent's two-year-old granddaughter. A.O. felt embarrassed by this statement and felt that comment about her not being GATE material meant she was not smart.

36. Ms. Ortiz testified as follows: On January 20, 2015, a playground supervisor informed Ms. Ortiz that she found A.O. crying on the playground and A.O. said she did not want to return to respondent's class because she was "uncomfortable." Ms. Ortiz called A.O. into the office to discuss what occurred. A.O. reported the following: After the supervisor escorted A.O. to the class, respondent asked A.O. why she was uncomfortable in her classroom. Respondent pointed out other students by name and indicated that they were not crying. Respondent commented that her two-year-old granddaughter does not cry like that. A.O. then asked to go to the office, but respondent told her to sit on the floor by respondent's desk to think about why she wanted to go to the office. Respondent asked A.O. who put her in the class and A.O. responded that her mother had. Respondent said, "I did not want you here," and began to name other students and why they were in the class, such as because they were GATE students. Respondent said maybe A.O. should be in Mrs. Bjazevich's class, who

⁶ This was the same day Ms. Ortiz issued respondent a letter of concern that referenced the interactions with A.V., and a day after Ms. Elzig notified respondent that a meeting had been scheduled to discuss allegations against her.

is more like a first grade teacher. A.O. also said respondent made other comments and told her that she needed to work on her “sensitivity” and “develop a sense of humor.”

37. That morning, respondent sent Ms. Ortiz an email regarding the interaction. The email is summarized as follows: Before school, a playground supervisor had brought A.O. to her class and informed her that she found A.O. crying because she felt uncomfortable being in respondent’s class. Respondent asked A.O. why she was uncomfortable. A.O. would not answer but just whimpered. Respondent had her sit alone “for a moment to reflect so she could tell me why.” A.O. still would not answer so respondent reminded her that her parents had transferred her into the class and “perhaps they knew something more than she.” Respondent reminded her that she had asked to be with her friends. A.O. said she changed her mind, did not want to be in the class with them, and asked to go to the office. Instead, respondent had her sit and study at her table. A.O. then stopped crying. The problem started the week before when respondent moved A.O. and other students to new tables. A.O. was not happy at her new table.

38. That afternoon, Ms. Ortiz went to respondent’s classroom to discuss the interaction with A.O. in addition to the complaint by A.V.’s mother. Respondent admitted that she made the comparison to respondent’s two-year-old granddaughter and had other students stand up to indicate that they were happy in the class. Respondent told Ms. Ortiz to “Get her out. I don’t want her in my classroom.” Ms. Ortiz discussed the appropriate use of humor and that eight year old children may not always respond well to these types of remarks. Ms. Ortiz suggested a parent-teacher conference would be appropriate to address the issue.

39. A.O.’s mother testified as follows: A.O would often come home crying because of how respondent treated her. On January 22, 2015, A.O.’s mother and father, along with Ms. Ortiz and respondent, had a conference after school to discuss the issue of respondent having made A.O. sit on the floor. During the meeting, A.O.’s parents attempted to discuss their concerns with respondent. The whole time, respondent would look at her watch, scribble on her pad, and did not engage at all in conversation. At one point, respondent asked A.O.’s mother to repeat something because respondent said she was taking notes. Respondent addressed their concern that she made A.O. sit next to the desk by saying it was “orchestra seating” and the “best seat in the house.” Abruptly, respondent got up. A.O.’s mother asked her if there was somewhere she had to be. Respondent said she had an appointment and left the meeting. A.O.’s mother felt that at the meeting, respondent did not care about her daughter.

40. Ms. Ortiz, who was also at the conference, testified that respondent was “standoffish” during the meeting and just took notes. Ms. Ortiz said that neither of A.O.’s parents yelled at the meeting, but A.O.’s father did get upset when he was asking respondent questions but not getting any answers. A.O.’s mother then calmed him down and he never raised his voice again. Before the meeting was over, respondent said she had an appointment with an electrician, made a comment about not being on contract time, and left the meeting. Ms. Ortiz felt that the parents’ concerns were not addressed at all.

41. Ms. Ortiz made notes about the meeting that she documented in a draft letter of concern as follows: Respondent admitted to making the comment about her two-year-old granddaughter in order to compare it to A.O.'s whimpering. She admitted to having other students stand up in class to show how happy they were. A.O.'s mother said she wanted A.O. to stay in respondent's class but does not want A.O. to fear her teacher. She asked respondent, "If you don't want A.O. in your class, tell us. If you don't like our daughter, let us know." Respondent did not respond and most of the meeting just looked down taking notes. Finally, respondent looked at her watch so frequently that A.O.'s parents asked if there was somewhere she needed to be. Respondent said she had an electrician coming to her house and had to leave as the meeting was after her contract hours.

42. The next day, respondent wrote Ms. Ortiz an email with a summary of what occurred at the meeting. Respondent wrote that A.O.'s parents were totally unreceptive to what respondent was saying and repeatedly cut her off and prevented respondent from speaking. Respondent felt that nothing she could do would please the parents, and even though they requested their daughter to be in her class, the parents were incensed with everything she did. Respondent questioned why, if A.O. was so uncomfortable, she would come to the class early the next day and spend her lunch inside the classroom. She wrote, "Perhaps we need to investigate why the other students don't wish to play with her. We may have a social problem that needs to be addressed." Finally, respondent wrote that before she left the meeting, it had become "rather heated." She said it was "extremely hostile with anger, irritability and rage being directed directly toward 'me'!!" Respondent felt like it was teacher harassment and again referenced removing A.O. from her class "as a viable solution to the prevention of future vexations, frustrations and irritations for all."

Ms. Ortiz testified that the letter absolutely did not reflect what had occurred at the meeting, as the parents did not act in the manner described by respondent.

43. A.O. testified that the day after the parent-teacher conference, A.O. and a couple friends went to respondent's classroom to help clean before school started. Often, students from the third grade and other grades would go to respondent's class to clean the classroom. A.O. testified that she wanted respondent to like her so she went to the classroom to help clean, but respondent told her that her friends could stay but she could not. A.O. testified that she later apologized to respondent because, she again, wanted respondent to be nice to her. Respondent told the whole class that A.O. had apologized, the class clapped, and then respondent gave A.O. a piece of candy.

44. Respondent's testimony is summarized as follows: At the beginning of the school-year, A.O. was not originally in respondent's class, but her parents requested respondent as her teacher. Respondent approved the transfer of A.O. into her class. In January, it was respondent's custom to change students' seats. A.O. was one of the students that she moved. A.O. was not happy about having to move to another table, and her parents came to respondent's class after school to speak to her about this issue. Respondent explained to A.O.'s parents that she moved half the class, and A.O. had not been singled out.

Respondent submitted an email she sent to Ms. Ortiz on January 14, 2015. In the email, respondent wrote that A.O.'s parents were upset that respondent moved A.O. to another table. Respondent explained that she moved half the class around so certain students could function better. Respondent wrote that A.O.'s parents accused her of favoritism because respondent did not move all the students. Respondent concluded that she spoke to the parents for half an hour and she thought they were fine with the explanation. However, respondent suggested to them that they had the right to remove A.O. from her class if they thought respondent was treating her unfairly.

Ms. Ortiz responded by thanking respondent for the email, noting that A.O.'s parents are "quick to jump the gun," and stating that she would remind them about their request to place A.O. in respondent's class and that Ms. Ortiz thought the class was a "perfect fit" for A.O.

45. Approximately one week later, one of the playground monitors brought A.O. to respondent's class before school started because A.O. was crying and said she was uncomfortable being in respondent's class. Respondent brought A.O. to her desk and asked her what was wrong. A.O. said she did not want to be in respondent's class anymore. At the time, A.O. was not crying but was "whimpering." Class had not yet started and other students were coming into the classroom. At first, A.O. was standing, but respondent asked her to sit down next to respondent's desk because she did not want other students to hear the conversation. Respondent attempted to inquire what exactly was wrong but A.O. would only say that she was uncomfortable and continued to whimper. She told A.O. that her parents put her in respondent's class and said, "Don't you think your parents know what they are doing?" Respondent had other students in the class respond that their parents had put them in respondent's class, as well. Respondent denied making a statement that A.O. was not GATE material and never referenced GATE at all. When A.O. was whimpering, respondent could not understand anything A.O. was saying. She told A.O. that when her two-year-old granddaughter does the same thing, respondent cannot understand her either. Respondent told A.O. that she could not understand her and asked her to enunciate. Respondent never made a comment that A.O. should be in a first grade class. She explained that another third grade class was taught by Ms. Bjazevich, and since Ms. Bjazevich had been A.O.'s first grade teacher, there were not a lot of choices for classes for her to transfer to (A.O. had been transferred to respondent's class after being originally assigned to Ms. Wedin and respondent believed that Ms. Graves's class was at capacity).

Respondent documented the conversation in an email she sent to Ms. Ortiz. Respondent denied telling Ms. Ortiz that she wanted A.O. out of her class or requested that A.O. should be removed. She did suggest that if the parents were not satisfied, A.O. could be removed. Respondent testified that in her deposition testimony, where she stated that she requested that A.O. be removed, she simply meant that Ms. Ortiz could transfer her if the parents were not satisfied. Respondent testified that she did not recall Ms. Ortiz telling her during the meeting that she should be careful joking with students and they do not understand sarcasm. However, during the deposition, respondent did state that this had occurred.

46. Respondent had planned to meet with A.O., her parents, and Ms. Ortiz after school on January 22, 2015. However, that morning, all of the electricity went out in her house and the electrician told her he could come at 4:00 p.m. At the morning recess, respondent went to the office to inform Ms. Ortiz that she had to leave before 4:00 p.m. in order to meet the electrician.

The parent-teacher meeting began soon after school ended, at approximately 3:15 p.m. At the meeting, A.O. spoke first and began talking about the problems she had moving desks and why she was upset. On cross-examination, respondent was asked why at her deposition respondent stated she did not remember what A.O. talked about. Respondent testified that it came back to her after going through the testimony. Soon after, A.O.'s parents jumped up, began screaming and yelling, pounded the table, and called respondent names. A.O.'s mother said that respondent had made A.O. sit on the floor, and respondent explained that it was the "orchestra section," and "the best seat in the house." Respondent said the class was going to do a stage show and had talked about orchestra seating. Respondent said A.O. had trouble seeing the board and A.O. sat there so she could see. Any student who had trouble seeing the board could go to the orchestra section to sit. Respondent asked A.O.'s mother to have A.O.'s eyes checked because A.O. did not have glasses and had difficulty seeing.

Respondent said that normally at meetings she takes notes, but did not do so on this occasion because she had no reason to take notes. She said A.O.'s parents would "tag-team" each other and pound the table. Respondent never raised her voice or asked the parents to repeat something so she could put it in her notes. Respondent did not look at her watch during the meeting; she has not worn a watch for years. Respondent said she politely tried to excuse herself when A.O.'s father asked Ms. Ortiz if respondent was leaving the meeting. Respondent explained that the electrician was coming and she was beyond her contract time. Respondent noticed the clock when she was walking out and saw it was 3:50 p.m. Respondent testified she probably could have done a few things differently, such as inform the parents at the beginning of the meeting that she had to leave early.

Respondent was shocked about the parents' behavior and had never seen anything like it before. She wrote an email to Ms. Ortiz the next day to discuss her concerns with the meeting. When asked why the e-mail made no reference to the parents yelling, screaming, and pounding the table, respondent said she used the words "irate and hostile" to describe their behavior.

The next day, A.O. came to respondent's class before school started. She said students often go to her class to help out before school starts, but if there are too many, some have to leave. She told A.O. and her friends that they had to leave so respondent could use the restroom before school started. Respondent denied making a comment that A.O. should not be there in the morning "under the circumstances," as alleged in the Amended Statement of Charges.

Respondent testified that A.O. remained in her class for the remainder of the year and was happy. On January 26, 2015, A.O.'s mother came to the class and started screaming at respondent. Students were in the classroom cleaning, and they ran to her desk because they were scared, so respondent asked the mother to leave. Respondent sent Ms. Ortiz an email about this, to which Ms. Ortiz responded that she spoke to A.O.'s mother who apologized for speaking to respondent in front of other students. Respondent replied to Ms. Ortiz's email, stating she was being harassed on a daily basis, felt A.O. should be transferred to another class, and asked Ms. Ortiz to arrange this immediately.

Like with A.V., respondent submitted a writing assignment A.O. completed on January 28, 2015. Again, respondent said the assignment was for the students to write an opinion about a topic that they chose. The students could choose whatever they wanted to write about. Like A.V., A.O. wrote about the third grade. She wrote that although third grade was hard, "it is the best."

47. In rebuttal testimony, Ms. Ortiz again testified that at no time did A.O.'s parents yell, pound the table, or use profanity during the meeting.

LETTER OF REPRIMAND

48. On January 28, 2015, Ms. Ortiz gave respondent a letter of concern outlining respondent's interactions with A.O. and A.V. Ms. Ortiz directed respondent to refrain from the use of inappropriate comments and sarcastic language, which create a climate of intimidation and negatively impact her classroom. Ms. Ortiz wrote that she expected all teachers to provide parents with the utmost respect.

49. Two days later, Ms. Elzig issued respondent a formal letter of reprimand. The letter outlined Ms. Elzig's concerns regarding respondent. For the period at issue in these proceedings, the letter referenced the 2013 grade level meeting with Ms. Lara; respondent's failure to participate in future grade level meetings; her refusal to bring materials to the ELD staff development meeting; her refusal to complete a survey; her interaction with Ms. Weden; the pizza party in which her third grade class could not participate; and the interactions with A.O., A.V., and their parents. Ms. Elzig directed respondent to treat others with courtesy, respect, and professionalism; participate in scheduled meetings; be professional in dealing with parents; refrain from making inappropriate comments and using sarcastic language; and deal with the district honestly. Ms. Elzig concluded that failure to follow these directives or make necessary improvements could result in disciplinary action. She also warned respondent not to threaten, intimidate, retaliate against, or otherwise confront any person about the contents of the letter of reprimand. The letter provided respondent an opportunity to provide a written response, which she declined.

2015-2016 School Year

50. Eric Loder is currently the lead night custodian at a junior high school in the district. During the 2015-2016 school-year, he was a custodian at Granite Hill. Mr. Loder

testified about an interaction he had with respondent after spring break. Normally during spring break, the custodial staff goes through and details the classrooms. However, in 2016, three classrooms received new carpet so he had to remove all the furniture from those classrooms. Mr. Loder explained that because he was the only custodian working on the project, he got behind on the cleaning of the other classrooms. Consequently, none of the classrooms got vacuumed over spring break. As he saw the various teachers, he apologized and explained that he would get caught up. On April 4, 2016, after school had ended, Ms. Loder went into respondent's classroom to empty the trash. He saw respondent inside with a parent and two students. Respondent came at Mr. Loder pointing at him and demanding to know why her room had not been vacuumed. Mr. Loder tried to explain, but respondent made a comment about her being smart enough to know to vacuum when cleaning the room. Respondent said she would "not get in Mr. Loder's face," but would "get in Juan's face," who was the head custodian. Mr. Loder said he was put-off by respondent's demeanor and tone of voice. Instead of engaging respondent, he left the classroom and immediately reported the incident to Ms. Ortiz, who asked him to write a statement.

51. According to the statement Mr. Loder submitted to Ms. Ortiz, Mr. Loder went to respondent's class to empty the trash when respondent said, "I'm pissed," in an aggressive tone, and demanded to know why her room had not been vacuumed. Mr. Loder attempted to explain why, and she commented that she did not get new carpet in her room. Mr. Loder wrote that respondent was very condescending and said, "If you guys had any common sense, you'd know to vacuum when you clean," and "I've been cleaning for many years and I'm smarter than that." When Mr. Loder tried to sympathize with her situation, her tone did not change and she said, "I'm not going to get in your face like I will Juan's." Mr. Loder then left the room.

52. Ms. Ortiz testified that Mr. Loder approached her that afternoon to complain about respondent's conduct. She asked him to write a statement, which he did that evening. Ms. Ortiz approached respondent in the office during her lunch period on April 15, 2016. Ms. Ortiz asked respondent if "she had a minute." Respondent replied curtly that she had "one minute." Ms. Ortiz showed respondent Mr. Loder's statement, to which respondent stated, "This is bullshit." Respondent made no other response. Ms. Ortiz told respondent to review the statement and provide a written response so that there could be a meeting about the incident.

53. On May 2, 2016, Ms. Ortiz emailed respondent and stated that she has had approximately two-and-a-half weeks to submit a response, which she had not. Ms. Ortiz attached a letter of concern stating that respondent's interaction with Mr. Loder was unprofessional, as was her reaction when Ms. Ortiz asked to speak to her during lunch. The letter of concern contained several directives, including using an appropriate and professional tone and avoiding sarcastic and hostile remarks.

54. Several days later, respondent requested a meeting with Ms. Ortiz that was held on May 17, 2016. Respondent arrived at the meeting with a union representative, Ms. Snow, although Ms. Ortiz had not been notified a union representative would be coming.

During the meeting, only Ms. Snow spoke. During the meeting, respondent was standoffish, did not speak, and only took notes. Ms. Ortiz said respondent would “smirk” and roll her eyes when Ms. Ortiz spoke. Ms. Snow provided Ms. Ortiz two letters, one from a parent and the other from a student, who were in the classroom during the interaction between Mr. Loder and respondent. Ms. Snow requested that Ms. Ortiz shred the letter of concern because she was not allowed to put written directives in respondent’s file. Ms. Ortiz refused to shred the letter. Ms. Ortiz said she never requested the parents or the student write a letter about the confrontation.

The letter from the parent dated May 7, 2016, stated that she was in respondent’s classroom after school when the janitor (Mr. Loder) came in and began to take out the trash. Respondent then asked Mr. Loder why the floor was not done. Mr. Loder responded that five rooms had new carpet and vacuuming “wasn’t their first ‘priority.’” He then said he at least dusted all the classrooms. Respondent then said she did not get new carpet and questioned why her room wasn’t vacuumed. The janitor said the vacuum was too much to carry. The parent felt Mr. Loder was rude. The parent wrote that respondent has “a special way of talking” but she did not feel that respondent talked down to Mr. Loder or said any bad words to him. The parent thought Mr. Loder should have waited before coming into the classroom.

A letter from student M.D. stated that she was in the classroom having a meeting with respondent and her mother, when the janitor came in and started talking about how none of the rooms were cleaned. She wrote, “Everything seemed nice and calm & nobody said any curse words.”

55. Respondent testified that she was in her classroom meeting with a parent and her two children when Mr. Loder came in to empty the trash. Respondent asked him if the classrooms had been cleaned during spring break. Mr. Loder began “screaming and yelling” about why they were not cleaned because new carpet was installed and there had been a district meeting so he had not cleaned any of the rooms. Respondent said she had previously gotten along with Mr. Loder quite well. She was seated at her desk the entire time, but “he got to screaming and yelling,” which caused the parent to become scared and put her arms around her children. After Mr. Loder left, the four left the classroom because they were afraid Mr. Loder would return. Respondent said she did not report Mr. Loder’s behavior to anyone because it was the first and only incident; she would have reported it had Mr. Loder’s behavior been repetitive.

56. Respondent testified that she was in the office the next day talking to the secretaries when Ms. Ortiz approached her and asked her if she had a minute. Respondent said, “Just a minute,” and Ms. Ortiz showed her the statement written by Mr. Loder. Respondent said she did not realize the incident was that important, and he was the one who was screaming and yelling. When asked why respondent did not provide a written response to the letter, respondent said she did not think it was that important, and she is “not one to report things.”

57. After respondent received the letter of concern from Ms. Ortiz about the incident, she asked to meet with Ms. Ortiz. She wanted Ms. Snow, the union representative, to accompany her. At the meeting, she gave Ms. Ortiz the letters written by the parent and the child who observed the encounter with Mr. Loder. Ms. Snow spoke on respondent's behalf at the meeting. At the end of the meeting, Ms. Ortiz and Ms. Snow agreed to "squash the whole thing." Respondent denied smirking at Ms. Ortiz or rolling her eyes. She did not think she did anything intimidating.

Respondent testified that she did not ask the parent or the student to write a letter outlining what had occurred. Respondent said they volunteered to write the letter the same day. When it was pointed out to respondent that the letters were dated May 7, 2016, a month after the incident and several days after respondent received a letter of concern from Ms. Ortiz, respondent said she did not know why they wrote the letters when they did.

58. In rebuttal testimony, Ms. Ortiz testified that she never agreed to shred her letter of concern or quash the incident. Ms. Ortiz testified that respondent never reported to her the allegation that Mr. Loder had acted in a manner that scared the parent and students who were in the classroom during that time.

59. On May 24, 2016, Ms. Elzig issued respondent a letter of reprimand. Ms. Elzig wrote that respondent was unprofessional in her interactions with the custodian in front of a parent and two children. Respondent was unprofessional with Ms. Ortiz when she asked to speak to her about the incident, when respondent responded, "I will only give you one minute." Respondent then looked at the statement and said, "This is bullshit." Ms. Elzig alleged that respondent approached the parent and students and told them Ms. Ortiz wanted them to write letters about the incident. This was untrue and respondent inappropriately involved them in her employment issues. Finally, respondent was unprofessional at the meeting with Ms. Ortiz, when she rolled her eyes and was disrespectful. Like the previous letter of reprimand, Ms. Ortiz directed respondent to be professional in her interactions. Although respondent wrote on the letter of reprimand that a rebuttal would be forthcoming, none was submitted.⁷

60. 2015-2016 was the last school-year Ms. Ortiz was principal at Granite Hill. She testified that she has concerns about respondent's ability to be professional. She believed respondent intimidated fellow staff and students alike. She had no confidence in respondent's ability to serve as a teacher.

⁷ The Amended Statement of Charges alleged that during the 2015-2016 school-year, respondent refused to allow a female student, C.G., to use the restroom during class. This allegation was not contained in the letter of reprimand. Although there was some testimony during the hearing about respondent's practice for letting students use the restroom, there was insufficient evidence offered at this hearing to substantiate this allegation.

2016-2017 School Year

ALLEGATIONS REGARDING N.J.

61. Denise Hernandez is the current principal at Granite Hill, which she began at the beginning of the 2016-2017 school-year. N.J. was a student in respondent's third grade class that year. N.J.'s mother made a number of complaints to Ms. Hernandez regarding her daughter's treatment by respondent, which were alleged in the Amended Statement of Charges. However, because neither N.J. nor her mother testified at the hearing, most of their statements constituted inadmissible hearsay under Government Code section 11513, subdivision (d), and were insufficient to support a finding. One of the allegations was related to the way that N.J. wore her hair and a comment respondent made about her barrettes. Ms. Hernandez testified that N.J. was a "fashionista" and would wear her hair in many different styles.

62. Elisa Ortega (formerly Elisa Aguilar) is a clerk/typist at Granite Hill. Ms. Ortega testified that at the beginning of the 2016-2017 school-year, N.J. was absent for an extended period of time. N.J.'s mother came to the office, provided a doctor's note, and requested her daughter's homework or make-up work. She told Ms. Ortega that N.J. had been in the hospital. Ms. Ortega spoke to respondent about N.J. and told respondent that her mother had requested N.J.'s homework because she was going to be in the hospital for a few days. Respondent questioned how N.J. could make up work if she was in the hospital. Ms. Ortega observed that N.J. would often wear barrettes in her hair.

63. On October 19, 2016, Ms. Elzig sent respondent a memorandum entitled "Summary of Allegations." The allegations related to N.J., and a meeting was held that day with Ms. Elzig, Ms. Hernandez, and Daniel Brooks, the district's director of personnel. During the meeting, respondent denied knowing that N.J. had been in the hospital and denied talking to anyone in the office about make-up work. She also denied knowing that N.J. wore barrettes in her hair. All three of the district administrators believed that these statements by respondent were misrepresentations, based on the conversations that Ms. Ortega had with respondent, and the fact that it was common knowledge that N.J. wore barrettes. Ms. Hernandez removed N.J. from respondent's class on October 4, 2016.

64. Respondent testified that she never spoke to N.J.'s mother about N.J.'s absence. Respondent submitted a September 15, 2016, letter from N.J.'s mother requesting her daughter's absences be excused for sickness. Respondent also received a note from N.J.'s doctor stating that respondent would be out for several days in September. Respondent testified that she did have a conversation with Ms. Ortega about N.J. being absent, but Ms. Ortega never told respondent that N.J. had been in the hospital. Respondent did not tell Ms. Ortega that N.J. could not make up work, and she did not prevent N.J. from turning-in any make-up work, as alleged in the Amended Statement of Charges.

MS. HERNANDEZ'S CLASSROOM OBSERVATIONS

65. Ms. Hernandez conducted three classroom observations of respondent's class. The first observation was on November 1, 2016. Respondent would repeatedly interrupt students to tell them to speak louder. Ms. Hernandez said that she was close to respondent and felt the students had been speaking at an appropriate volume. Respondent would also call out students for making incorrect answers in a negative or sarcastic manner. Ms. Hernandez felt that respondent did not create an emotionally safe environment. Ms. Hernandez provided respondent an evaluation form indicating that she "needs improvement" in four separate categories and "meets expectations" in one category. Ms. Hernandez discussed the evaluation with respondent, who just nodded her head and did not say anything about what was being discussed.

66. Ms. Hernandez conducted a second observation on December 2, 2016. Respondent was teaching an ELD lesson. At the beginning of the lesson, respondent had each student stand up and say what level of English learner he or she was. Each student then told the class what level he or she was. Ms. Hernandez did not think it was appropriate to make students share with the class what their proficiency level was because it could make students who were less proficient feel less competent. Ms. Hernandez spoke to respondent about this, and respondent said that she was doing what the district taught her to do. Ms. Hernandez provided respondent an evaluation listing that she needed improvement in two categories and met expectations in three categories.

67. Ms. Hernandez attempted to schedule a third observation with respondent on January 20, 2017, at 1:15 p.m., and sent her an email appointment request for this time. Respondent declined the appointment request and wrote to Ms. Hernandez that lunch ended at 1:15 p.m., and she would not want to shorten the students' lunch. She requested that Ms. Hernandez schedule the observation for five minutes later. Ms. Hernandez responded that she understood that it would take a few minutes to bring the kids in from lunch, but she would be in respondent's room at 1:15 p.m. and the observation would begin once the kids were settled. Ms. Hernandez testified that it was important for her to observe how respondent transitioned her class from lunch. Ms. Hernandez admitted that at a previous observation, she started the observation five minutes after lunch ended. The third observation ultimately occurred on January 20, 2017. Ms. Hernandez rated respondent as meeting expectations for each category.

68. Respondent testified that she met with Ms. Hernandez after the first observation. Respondent did not say anything in response to Ms. Hernandez's comments because they were Ms. Hernandez's observations and respondent did not want to appear pushy or say something Ms. Hernandez might misconstrue. After the second observation of the ELD lesson, Ms. Hernandez thought it was demeaning to the students to have them stand up and announce their proficiency levels. Respondent thought that Ms. Hernandez made a valid point, and from then on changed the way she did things. As for the final observation, respondent did not refuse the observation as alleged. Instead, she said the observation time was right when the students came back from lunch, and she thought it might start at

1:20 p.m., instead. Respondent noted that Ms. Hernandez's first observation started at 1:20 p.m., so she assumed Ms. Hernandez wanted this observation to start at 1:20 p.m., as well.

NOTICE OF UNPROFESSIONAL CONDUCT

69. On January 9, 2017, Ms. Elzig served respondent with a Notice of Unprofessional Conduct pursuant to Education Code section 44938. The notice outlined all of the conduct previously addressed in the letters of reprimand, with the addition of the allegations related to student N.J. Respondent declined to provide a written response. At a meeting with Ms. Elzig and Ms. Hernandez, Ms. Elzig recommended respondent attend a training session provided by the Riverside County Office of Education about how to support students with social and emotional needs. Respondent attended this training. Ms. Elzig also referred respondent for an anger management program offered by the district's employee assistance program. Ms. Elzig provided respondent release time for the program and told her what code to use for her timecard. Respondent did not attend this program as instructed.

70. Respondent testified that she reviewed the plan of assistance and had no questions about it. She denied that Ms. Elzig gave her a flyer regarding the employee assistance program and said Ms. Elzig never told her how to record her absences. She did not attend any employee assistance program sessions because she assumed someone would contact her. She attended training on classroom management at California State University, Fullerton. Respondent said she had to register for the class but did not retain any documentation corroborating her attendance.

71. Ms. Elzig testified in rebuttal that at the meeting with respondent she provided respondent a tri-fold brochure that included the contact information for the employee assistance program. Ms. Elzig directed respondent to make arrangements to attend and told her how to arrange for a substitute teacher to cover her absence.

ALLEGATIONS RELATED TO STUDENT E.B.

72. During the 2016-2017 school-year, E.B. was a student in respondent's third grade class. E.B.'s aunt and mother both testified at the hearing with the assistance of a court-certified Spanish language interpreter. E.B.'s aunt volunteered at a Valentine's Day party held in respondent's class. When she was leaving the party, respondent told her that E.B. was not learning and was a "burro," which she thought was offensive.⁸

73. E.B.'s mother testified that she did not have much contact with respondent, except for the first day of school. One day she took E.B. to the doctor's office for a physical exam. E.B. told her that he did not want to return to class because respondent was ripping apart his homework. The next day, E.B. came home crying and reported that respondent would not let him work in the cafeteria, for which he was scheduled to work. E.B.'s mother went to Ms. Hernandez in order to get E.B. removed from respondent's class.

⁸ The interpreter translated the term to mean a "dunce."

74. E.B. is 10 years old and had respondent last year for third grade. He testified that respondent would rip his homework apart and would sometimes yell in class. He said he sometimes cried when he got home. He did not know why respondent would rip up his homework. After his doctor's appointment, he was afraid to go back to school because he feared respondent would not let him return if she thought he was sick, which he had not been. He felt that he was punished the next day because respondent did not let him work the cafeteria duty, which he was assigned.

75. K.G. is 11 years old and in fifth grade and testified at the hearing. She also had respondent as a third grade teacher and is E.B.'s cousin. Last year, K.G. and other older students would sometimes go to respondent's class during lunch to help clean or set things up. One day she was in respondent's classroom when respondent told K.G. that E.B. never did his homework. K.G. thought E.B. was there and heard this. K.G. felt sad for E.B. and told E.B.'s mother about the incident.

76. On March 3, 2017, E.B.'s mother and aunt met with Ms. Hernandez and requested that E.B. be moved to another third grade class. They described why E.B. did not want to go to class and related the comment respondent made about E.B. being "un muy burro." Ms. Hernandez emailed the district's director of personnel, Daniel Brooks, on March 6, 2017, and summarized the complaint made by E.B.'s mother and aunt. They reported that E.B. did not want to return to school after he had a physical exam because he was afraid respondent would not let him back in if she thought he was sick and would not believe that he just had a physical. They felt respondent was causing E.B. stress and anxiety.

77. On April 11, 2017, Ms. Hernandez issued respondent a Letter of Concern related to her interactions involving E.B. Ms. Hernandez directed respondent to refrain from disparaging students, refrain from making derogatory comments, treat students in a nurturing and respectful manner, refrain from acting in anger or frustration, and conduct herself in a professional manner. Respondent did not submit a written response.

78. Respondent testified that she had met E.B.'s aunt a few times, the first being at Back to School Night. Respondent denied having any conversation with E.B.'s aunt at the Valentine's Day party held in the classroom. Respondent said she does not speak Spanish and never used the term "burro" because she does not know what it means. The first time she heard of it was when she saw it in Ms. Hernandez's letter of concern.

Respondent did have discussions with her class about coming to school sick after several students had to be sent home. She explained to them that if they were sick they should stay home. Respondent never told E.B. that he could not return to class after going to a doctor's appointment. She explained that cafeteria duty was a privilege that many students volunteered to do. They went to the cafeteria a half-hour before lunch and would volunteer during their lunch hour. If a student is absent, respondent would send a substitute student. Respondent did not know E.B. was upset about not being able to work in the cafeteria, and he never raised any issues with her about it.

E.B.'s cousin, K.G., was a student in respondent's class the previous year. She would come into respondent's classroom regularly during lunches and recesses. Sometimes K.G. would check on E.B. She found out that E.B. was hiding his homework and not taking it home. Respondent denied ever ripping up E.B.'s homework. She said that E.B. had very poor penmanship and his homework was a "hot mess." Respondent would have E.B. rewrite his work. After he rewrote his work she would have him throw away his previous version. Respondent denied ever making any comments to K.G. about E.B.

ALLEGATIONS RELATED TO STUDENT L.L.

79. L.L. was in respondent's third grade class during the 2016-2017 school-year, until he was transferred to Ms. Weden's third grade class the last couple weeks of the school-year. L.L.'s mother testified that two months into the school-year, L.L. was diagnosed with Tourette's syndrome (Tourette's). As a result, he has tics making his body twitch and he makes certain vocal noises when he is nervous. L.L.'s mother testified that in the beginning, respondent was a great teacher. However, toward the end of the school-year, L.L. would frequently come home crying. When he started developing tics, she informed respondent to ignore the tics and let him relax.

On April 18, 2017, she sent respondent an email stating that L.L. was diagnosed with Tourette's and asked that respondent continue to ignore it or it would only make it worse. She also asked that L.L.'s classmates ignore it and not make it a big deal. She included a list of "10 Things Teachers Can Do for Students with Tourette syndrome."

L.L. reported to his mother that respondent announced in front of the class that L.L. had Tourette's and they should ignore his tics. Although she wanted respondent to address the issue with the class, she did not think it was appropriate to make an announcement as it embarrassed L.L.

80. On April 20, 2017, she sent respondent another email asking to see how L.L. was doing and whether he twitched as much as the other days. She wrote that he is on some medication and would like to know if it is effective. She also asked how the seating arrangement was working and whether he was paying more attention. She concluded by asking for an update on L.L.'s behavior.

The next day, respondent emailed L.L.'s mother stating that it appeared the twitching was the same. She wrote, "As requested, he still sits in at a single desk slightly away from other students. He now shouts across the room to talk with others and sends notes in lieu of having proximity. In one of his notes he wrote on 4/18/17, he drew a distorted picture of a fellow female student and writes that she is ugly. Not acceptable!!" Regarding L.L.'s learning skills, respondent wrote that she would be sending all parents some of the students' tests to evaluate. Finally, she stated that perhaps he had not been on medication long enough to make a difference in his behavior or academics.

L.L.'s mother responded that she would address the problem, but also wanted to address that someone threw L.L.'s glasses yesterday and wanted to know if respondent was aware. According to L.L., respondent told him that if he had his glasses on it would not have happened. She concluded by saying that it might be best to move L.L. to another class more appropriate for his condition.

Respondent then emailed L.L.'s mother stating that L.L. wanted to share with her what the doctor said about what might have caused his condition. She then listed several moves the family had made to different houses, the houses being crowded, having to live in a motel room, moving to a trailer, and then moving to an apartment. Respondent wrote that L.L. was insistent on telling her this and perhaps it was bothering him "to the point that it may be worth you pursuing this avenue of thought and how it may be contributing to some of his condition."

L.L.'s mother testified that the family house had burned down in a fire and they were forced to live in a number of different locations until repairs were made. There reached a point where L.L. would come home crying every day and complain about being made fun of and not wanting to go to school. He made the comment that he did not want to live anymore if he had Tourette's for the rest of his life. She spoke to Ms. Hernandez and requested L.L. be moved to another class, which occurred. After he changed classes, his vocal tics stopped and his body tics improved. Ms. Lara is now his fourth grade teacher. He is very comfortable in the class, nobody makes fun of him, and his tics have almost stopped.⁹

81. L.L. is 10 years old and testified at the hearing. At the beginning of the school-year he liked respondent. However, something changed and he became scared that respondent would yell at him in class. He would sometimes cry and was afraid to go to class. He did not like that respondent told the whole class that he had Tourette's and felt mad and embarrassed. L.L. only told respondent that he had to move homes once. He denied telling respondent that the doctor said his Tourette's was caused by the multiple family moves.

82. Ms. Hernandez testified that she did not feel the email communication between respondent and L.L.'s mother reflected any concern by respondent or demonstrate patience in dealing with L.L. This was especially true for the email where respondent suggested that the family moves were the cause of his problems. Overall, Ms. Hernandez did not feel that respondent was treating L.L. appropriately and that she was causing him stress. As a result, she removed L.L. from respondent's class on April 24, 2017.

83. Respondent testified that L.L. was likeable, but he was new to Granite Hill, and he started to have problems the first couple weeks of school. He began making involuntary sounds, kicking his desk, and hopping out of his seat. Respondent spoke to L.L.'s mother who reported seeing the same behaviors at home. Respondent contacted the school nurse to assist her with some of the issues. She also spoke to L.L.'s mother and suggested she take him to a doctor, which she did. Respondent never heard back from L.L.'s mother so she

⁹ Ms. Lara confirmed this statement during her testimony.

asked the nurse to follow-up. Respondent testified that she moved L.L. to sit by himself at his mother's suggestion. L.L.'s parents thought respondent had moved him into time-out, but she explained to them that she moved him at L.L.'s mother's suggestion. Respondent denied telling the class that L.L. had Tourette's. She told the class that L.L. was not in trouble because he was sitting in "Siberia," which was what she referred to as where L.L. sat because it was off by itself where students would sit when in trouble. She explained to the class that they needed to have patience with L.L. After that, L.L. was fine and did not have any problems in the class. Respondent never noticed any of the students making fun of L.L. She denied ever saying anything to him that was demeaning or mean. L.L. told respondent that his doctor had said that his repeated moves had caused him stress. Until then, respondent did not know about the moves. Respondent passed this information along to L.L.'s mother because respondent had agreed to keep in close contact with her and L.L. had thought it was important.

ALLEGATIONS REGARDING STUDENT J.S.

84. J.S. was a student in respondent's third grade class during the 2016-2017 school-year, until she was transferred to another teacher at the end of the year. J.S.'s mother, who is also a district employee, testified that J.S. has been diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and Obsessive Compulsive Disorder. In the beginning, J.S.'s mother was initially satisfied with respondent, but J.S. began to come home crying, would not want to go to school, and would have temper tantrums. J.S. would tell her mother that respondent would throw away her things, such as her mechanical pencils and fidget spinner and would yell at J.S. On May 2, 2017, when J.S.'s mother picked J.S. up from school, J.S. was crying uncontrollably. Finally, J.S. was able to say that respondent threw away her fidget cube. A fidget cube is an item that J.S. uses to help with her ADHD. J.S.'s mother was livid and went to the office to speak to Ms. Hernandez, who was not there. An office staff member went to respondent's classroom and said she found the fidget cube on respondent's desk. J.S.'s mother called the district office to make a complaint about respondent, which was then referred to Ms. Hernandez the next day.

J.S.'s mother also reported other issues involving respondent. She said that J.S.'s psychiatrist had given her a rating scale to have J.S.'s teacher complete so the psychiatrist could evaluate how J.S. was focusing in class. She first gave the form to respondent in October 2016 and asked her to complete it. Two months later she followed-up with respondent about completing the form. Respondent told her she misplaced the form and requested another copy. Although she gave respondent another form to complete, respondent never completed the form. She also complained that respondent would throw away J.S.'s items. She said she gave J.S. mechanical pencils because she would sharpen regular pencils down to the bit and respondent complained to her about this. She knew that respondent did not permit mechanical pencils in class, but believed this was the only solution to the problem. When she initially told respondent that J.S. was diagnosed with ADHD, respondent said she did not believe in ADHD. She offered to show something to respondent from the psychiatrist but respondent said she did not want to see it.

85. J.S. is now 10 years old and in fourth grade. J.S. testified that she did not like respondent as a teacher because respondent would yell at her and make her cry. J.S. said she brought the fidget cube to school to help her focus. J.S. said respondent took away the fidget cube and then threw it in the trash. Respondent then took it out of the trash and placed it on her desk. Respondent did not say anything when she did this. The class was taking the state test at the time. J.S. also brought mechanical pencils to school, which respondent also threw away.

86. Ms. Hernandez testified that she spoke to J.S. and J.S.'s mother about respondent. Ms. Hernandez was concerned that respondent would not allow J.S. to use an accommodation to help with her ADHD. Ms. Hernandez reported the complaint to Mr. Brooks.

87. Respondent testified that J.S.'s mother did give her a survey to fill out, but respondent misplaced it. She asked J.S.'s mother for another survey but she never provided one to respondent. Respondent never made a comment that she did not believe in ADHD. She did ask J.S.'s mother for a doctor's note because there was nothing in her file about ADHD. However, J.S.'s mother never offered to show anything from a doctor, and respondent believed that J.S.'s mother only suspected J.S. of having ADHD. Respondent said she did have a conversation about mechanical pencils not being allowed in class. Nevertheless, J.S. would bring them to class. J.S. would take the lead in and out of the pencil and respondent spoke to her and the class about the dangers of lead poisoning. She denied knowing that mechanical pencils actually contain graphite and not lead. She swapped out J.S.'s mechanical pencils with yellow pencils and gave the mechanical pencils back for her to take home. This happened on multiple occasions.

Respondent spoke with J.S.'s mother once in the parking lot. J.S.'s mother wanted J.S. to sit on a balancing ball during class as she thought this might help her attention issues. Respondent was concerned about what might happen if J.S. fell off the ball, so she requested she provide a doctor's note.

During state testing, J.S. was sitting at a desk in the middle of the classroom. Respondent saw J.S. playing with something, but respondent did not know what it was. She asked J.S. to place the object on respondent's desk. Respondent denied ever putting the object in the trash and said she never looked at what it actually was. She never saw J.S. cry in class and denied ever making comments about J.S. crying. She denied ever throwing away J.S.'s pencils or erasers.

ADMINISTRATIVE LEAVE

88. Ms. Hernandez provided respondent a Teaching Unit Member Evaluation on April 17, 2017. Respondent received a "needs improvement" in three areas of the evaluation, a rating of "unsatisfactory" in the area of "Creating and maintaining effective environments for student learning" and an overall evaluation of "needs improvement."

89. Ms. Hernandez does not believe respondent is professional or has the well-being of her students in mind. She noted respondent may have some good qualities, and she is very kind to some students, but the number of incidents in such a short time where respondent belittled or demeaned students cause Ms. Hernandez to believe that respondent cannot provide a safe environment for her students. Ms. Hernandez felt that she gave respondent several opportunities to change and demonstrate that she cares about her students' emotional well-being.

90. On May 3, 2017, the district placed respondent on administrative leave to investigate the allegations that occurred subsequent to the Notice of Unprofessional Conduct. The district served respondent with a Summary of Allegations on May 11, 2017. Respondent did not provide a written response.

Mr. Brooks testified that it is a common practice for the district to place a teacher on administrative leave while it conducts an investigation, in order to protect the teacher and students without putting them in a compromising position. He explained that it is sometimes awkward to interview students about a teacher when they remain in the teacher's class.

91. Mr. Brooks interviewed L.L. and J.S. on May 15, 2017, with their parents present. The answers they recorded were generally consistent with their testimony at this hearing.

92. Ms. Elzig testified that after all of her interactions with respondent, she did not believe respondent recognized any areas where she needed to improve. At each meeting, Ms. Elzig reviewed her directives and was clear with what she expected of respondent. At each meeting, respondent would not engage but would instead frantically take notes, which, to Ms. Elzig, appeared to be detached and rude. Ultimately the decision to terminate respondent was made because respondent showed no improvement and Ms. Elzig believed she was not providing for the emotional needs of her students. Ms. Elzig does not believe that respondent can properly and effectively serve as a teacher because respondent, "just can't help herself, she is mean and our kids deserve better."

93. While she was on administrative leave, the parent of D.B., a second grade student, submitted a letter to Ms. Hernandez on June 2, 2017, requesting that D.B. be enrolled in respondent's class for the next school-year.¹⁰

94. Respondent testified that she wishes to return to teaching elementary students. She thinks she has been a good teacher over the years and has been able to help mold and develop students to become successful. She denied making comments that belittled students.

¹⁰ The Amended Statement of Charges contained an allegation regarding the conversation Ms. Hernandez had with the mother about the letter. However, it was determined that the conversation was inadmissible hearsay. (Gov. Code, § 11513, subd. (d).)

School District Policies

95. The statement of charges alleged respondent violated three board policies and acted contrary to one other board policy.

Board Policy 100, "Philosophy, Goals, Objectives, and Comprehensive Plans," provides that "teachers employed by the district shall have an abiding concern for students. They should demonstrate in their actions that excellence which best instructs youth, the ability to relate effectively their knowledge to students and to be dedicated to the ideals of the teaching profession as set forth in the Code of Ethics."

Board Policy 4119.21, "Code of Ethics of the Teaching Profession," provides principals regarding commitment to students, the public, and the profession. Included in the code are that a teacher "honors the dignity of students and influences them through constructive criticism rather than by ridicule and harassment." The Code of Ethics contains a clause at the end providing that the code governs the profession and any violations will be considered "unprofessional." The clause goes on to say that in order to constitute grounds for discipline, the violation must "endanger students, evidence malice, indicate serious incompetency, bad judgement, or a pattern of bad judgement."

Board Policy 4119.32, "Duties and Responsibilities of Teachers," defines instruction, pupil supervision, and communication. Complainant alleged respondent refused to cooperate with her colleagues, despite multiple directives to do so, and exhibited a reluctance to meet with parents outside regular class hours.

Board Policy 5000, "Concepts and Rules," sets forth responsibilities of the governing board and explains the commitment of the governing board to students. The policy cannot be violated by teachers, but complainant alleged that respondent failed to provide her students with a safe, positive school environment and created a negative, unwelcoming environment contrary to the policy.

Respondent's Character Witnesses

TESTIMONY OF BRIGIT PARDO

96. Brigit Pardo was a student in the district from kindergarten through 12th grade. She graduated from University of California, Santa Barbara, with a degree in political science. Although Ms. Pardo never had respondent as a teacher, her four siblings had been in respondent's class. In March 2015, while on a break from college, Ms. Pardo volunteered to work in respondent's classroom. Ms. Pardo was in the classroom each day for the entire school day for approximately three or four weeks. She testified that respondent always treated the students with respect, and they in turn respected her. She said respondent was very professional with the way she ran the classroom, and the class was conducted at a level of maturity uncommon for that age. Respondent spoke to her students about the importance

of education, and she asked Ms. Pardo to speak to the students to explain that it was possible for them to go to college too.

TESTIMONY OF SOLEDAD RAMIREZ

97. Soledad Ramirez is the mother of a student who was in respondent's class during the 2016-2017 school-year. Ms. Ramirez had requested her child be placed in respondent's class. Ms. Ramirez volunteered in the class approximately 10 times. She described respondent as an excellent third grade teacher, and she never observed respondent be mean to students.

TESTIMONY OF JAMES MOORE

98. James Moore began working as a teacher for the district in 1965. He predominantly worked as an elementary school teacher until he retired in 2004. After he retired, he worked as a substitute teacher at Granite Hill. He was respondent's substitute teacher on a number of occasions and would be at the school site approximately once or twice a week. If he knew respondent was going to be out, he would go to the school the day before to meet with respondent about her lesson plan. They discussed particular students and the best ways of working with them. For example, respondent spoke to him about L.L. and told him that she was concerned about his tics and the reaction by the class. She did not want the class to laugh at him. Mr. Moore had the opportunity to observe respondent interacting with students and other teachers. He said she had a good sense of humor and was often laughing and visiting with other teachers. He never observed respondent be disrespectful or discourteous with students. He said, "It is not in her DNA." He said respondent had high expectations for her students. When he observed her teaching, her students were relaxed. If he was a parent, he would love to have respondent teach his child.

Mr. Moore testified that respondent discussed her discipline by the district with him. Respondent told Mr. Moore she believed it was unfair and that nothing she did was right in the district's view. She said she would continue to do the best job that she could.

TESTIMONY OF DEBBIE RAMIREZ

99. Debbie Ramirez has been a teacher for 15 years, 13 years at Granite Hill. She has taught at the same grade level as respondent but not for the past four years. She is currently a primary intervention teacher for second and third graders. In this position she identifies high risk students and provides them strategies to improve reading. She goes into the classroom and works with small groups of students. During the 2016-2017 school-year, she worked with four of respondent's students. Ms. Ramirez would periodically do assessments and work with students in the back of respondent's classroom for brief periods of time. During this time she was able to observe respondent's teaching. She believed respondent's classroom was extremely well-managed; the students knew exactly where they needed to be and what they needed to be doing. Ms. Ramirez believed that respondent had a good relationship with her students. She spoke to them respectfully and they seemed to have

a sense of being safe in the classroom. Ms. Ramirez never observed respondent's students be frightened or upset. Ms. Ramirez also had a good working relationship with respondent. Respondent often wanted to know how second grade students were doing and she seemed very interested in all her students. Ms. Ramirez said she learned a lot from respondent. She said respondent would occasionally come into the lunchroom. She was friendly and joked around with other teachers. Ms. Ramirez acknowledged that respondent's reputation among the other teachers at Granite Hill was mixed. There were people who liked and respected her and those who did not get along with her. Respondent is strong-willed and "has a strong face."

Ms. Ramirez testified that she does fear retaliation by the district for testifying on respondent's behalf. However, Ms. Ramirez loves the work she does as a teacher and feels it is important for her to be honest about her support for respondent.

TESTIMONY OF LILA GUILLEN

100. Lila Guillen has worked as a bilingual tutor for the district since 1995 and spent three years at Granite Hill. She worked in respondent's classroom for two years. She worked with a small group of students for approximately 45 minutes a day. Ms. Guillen loved working with respondent. She described respondent as firm who did not tolerate students misbehaving. She tried to make them responsible for their learning, which was a quality Ms. Guillen liked. Ms. Guillen never observed respondent yell at or demean students. She said respondent's voice would change, not necessarily in volume, but such that students would know if they were doing something wrong. Ms. Guillen was familiar with L.L. Respondent told the students that L.L. could not help what he was doing and that it was not on purpose. Ms. Guillen thought she was a great teacher. She did recall a student upset once, but that was because she had not done her homework.

TESTIMONY OF RHONDA BREWSTER

101. Rhonda Brewster has worked for the district for 27 years and teaches first grade at Granite Hill. She testified that respondent had a lot of energy and was outgoing. Ms. Brewster never had any problems getting along with respondent. She was not aware of respondent's reputation; she just heard positive things. Ms. Brewster never spoke to any other teachers about their interactions with respondent.

Evaluation of the Factual Allegations

102. The district alleged multiple incidents spanning a four year period involving staff, parents, and students. For almost every detail involving each of the alleged incidents, respondent's testimony directly contradicted the district's numerous witnesses who testified about their recollection of events. Thus, in evaluating the district's factual allegations,

credibility is the determinative issue. In this regard, respondent's testimony is found to be wholly lacking in credibility.¹¹

103. Ms. Lara's testimony regarding her interactions with respondent at the third grade-level meeting during the 2013-2014 school-year was far more credible than respondent's testimony. Respondent testified that Ms. Lara stood up, pointed her finger at respondent, and "told-off" respondent. Whereas Ms. Lara's testimony was largely corroborated by Ms. Ortiz's investigation, which included interviews with all the teachers present, respondent had no corroborating evidence. Indeed, this hearing was the first time that respondent alleged Ms. Lara had behaved in this manner. Moreover, respondent's testimony that she was not mad at Ms. Lara for declining to host her students and that her apology to Ms. Lara had been sincere was unconvincing. Accordingly, the district's witnesses were fully credible regarding respondent's conduct at the meeting; respondent's testimony is rejected.

104. In September 2014, respondent held a pizza party in her class for sixth grade students. This caused two parents, including Mrs. Chavez, to complain to Ms. Ortiz. No further action was taken regarding this incident. Four months later, Mrs. Chavez tearfully went to Ms. Ortiz to inform her that the issue regarding the pizza party had been a complete misunderstanding. As if this was not enough, Mrs. Chavez wrote a letter to Ms. Ortiz, a copy of which respondent also obtained. Respondent testified that she never told Mr. and Mrs. Chavez that she was in trouble with the district and never asked them to write a letter to Ms. Ortiz on her behalf. Although this was corroborated by Mr. Chavez, he could provide no explanation for why they would have tried to intervene with Ms. Ortiz four months later. It is also suspicious that Mrs. Chavez approached Ms. Ortiz a day after Ms. Ortiz issued respondent a letter of reprimand and two days after Ms. Elzig scheduled a meeting with respondent to discuss allegations of unprofessional conduct. Respondent's testimony that she had no involvement in Mrs. Chavez's decision to write a letter to Ms. Ortiz was not believable.

¹¹ The credibility of the witnesses has been evaluated pursuant to the factors set forth in Evidence Code section 780: The demeanor and manner of the witness while testifying; the character of the testimony; the capacity to perceive at the time the events occurred; the character of the witness for honesty; the existence of bias or other motive; other statements of the witness which are consistent or inconsistent with the testimony; the existence or absence of any fact to which the witness testified; and the attitude of the witness toward the proceeding in which the testimony has been given. A trier of fact 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 p. 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 it is not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal. 3d 875, 890.)

105. A.V. and her mother presented consistent testimony about their interactions with respondent. This testimony was corroborated by statements they made to Ms. Ortiz shortly after the incident. Respondent's testimony on the issue was not credible.

106. A.O and her mother presented consistent testimony about their interactions with respondent. In particular, respondent's version of the meeting that took place between A.O., her parents, and Ms. Ortiz, was not believable. Although respondent did write an email to Ms. Ortiz the next day in which she claimed A.O.'s parents were hostile, respondent's testimony was far more vivid. Had A.O.'s parents acted in such a manner, it is implausible that Ms. Ortiz would have permitted the meeting to continue. Indeed, respondent only left the meeting because she claimed she needed to meet an electrician, a claim in itself that was not believable. Finally, respondent offered a written assignment by both A.O. and A.V. stating why they liked third grade. This assignment was completed a day after respondent received a letter of concern from Ms. Ortiz regarding respondent's interactions with A.V. and A.O. Although respondent testified that she only prompted the students to write about something they liked, not specifically why they liked the third grade, her testimony is simply not believable under the circumstances.

107. Respondent's account of her interaction with Mr. Loder was not credible. By her testimony, Mr. Loder entered respondent's room and began a rampage against respondent for not having had time to vacuum her classroom. This caused respondent, two students, and their parent sufficient alarm such that they immediately left the school. Yet, respondent did not report Mr. Loder; rather, Mr. Loder immediately reported respondent to Ms. Ortiz. Like the pizza incident, respondent testified that she never asked the parent and student who had observed the interaction with Mr. Loder to write letters on her behalf. Respondent testified that they volunteered to write letters about what they saw right after the incident. However, when it was noted that the letters were dated a month later, and just days after respondent received a letter of reprimand about the incident, respondent offered no credible explanation.

108. These examples reflect a pattern in respondent's testimony: an absence of credibility in almost every aspect of her testimony. In almost every detail, respondent's testimony flatly contradicted the testimony offered by the district's witness. This case did not just involve one or two witnesses; it involved over a dozen witnesses with nothing to gain by lying about their observations. Some of respondent's actions, such as instructing Ms. Weden to take notes because she was new, do not constitute unprofessional conduct. However, when viewed cumulatively, the district's witnesses, who were all credible, established respondent made inappropriate comments to her students, parents, colleagues, and principals; failed to follow the directives of her supervisors; and continuously engaged in an unprofessional manner that impacted her students' education.

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LEGAL CONCLUSIONS

Burden and Standard of Proof

1. The standard of proof in a teacher disciplinary proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) “Preponderance of the evidence” means evidence that has more convincing force than that opposed to it. If the evidence is so evenly balanced that one is unable to say that the evidence on either side of an issue preponderates, the finding on that issue must be against the party who had the burden of proving it. (*People v. Mabini* (2000) 92 Cal.App.4th 654, 663.)

Applicable Law

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

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

4. A permanent certificated teacher may be dismissed for the following: unprofessional conduct, evident unfitness for service, and persistent violation of or refusal to obey the reasonable regulations prescribed by the governing board of the school district employing him or her. (Ed. Code, § 44932, subds. (a)(2), (a)(6), & (a)(8).)

Applicable Case Law

5. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the Supreme Court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” The court delineated the following criteria to determine whether a teacher’s conduct indicates that he or she is not fit to teach: (1) the likelihood that the conduct may have adversely affected students or fellow teachers; (2) the degree of such adversity anticipated; (3) the proximity or remoteness in time of the conduct; (4) the type of teaching certificate held by the teacher; (5) the extenuating or aggravating circumstances, if any, surrounding the conduct in question; (6) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (7) the likelihood of the recurrence of the conduct in question; and (8) the extent to which disciplinary action may inflict an adverse impact or have a chilling effect upon the constitutional rights of the teacher involved or other teachers. (*Id.* at pp. 229-230.)

6. In *Board of Education v. Jack M.* (1970) 19 Cal.3d 691, the Supreme Court detailed the process to be considered in determining fitness to teach. In addition to the

Morrison factors, the court provided additional factors that may be considered to determine whether there is a nexus between the conduct and a teacher's fitness to teach: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers' and students' relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Id.* at fn. 5.)

UNPROFESSIONAL CONDUCT

7. The phrase "unprofessional conduct" is conduct such as to indicate unfitness to teach. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1174.) Unprofessional conduct has been defined as "that conduct which breaches the rules or ethical code of a profession, or conduct which is unbecoming a member in good standing of a profession." (*Shea v. Bd. of Medical Examiners*, (1978) 81 Cal. App.3d 564, at 575; *Bd. of Education v. Swan* (1953) 41 Cal.2d 546, 553.)

The definition of unprofessional conduct must be considered in conjunction with the unique position of public school teachers, upon whom are imposed responsibilities and limitations on freedom of action which do not exist in regard to other callings. (*San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.) The determinative test of a charge of immoral or unprofessional conduct is fitness to teach, which is a question of ultimate fact. (*Bd. of Education v. Jack M.* (1977) 10 Cal.3d 691.)

EVIDENT UNFITNESS FOR SERVICE

8. Unfitness for service means "not fit; not adapted to a purpose, unsuitable; incapable; incompetent; and physically or mentally unsound." (*Palo Verde, supra*, at p. 972.) As a threshold matter, the *Morrison* criteria are examined to ascertain whether the conduct in question is related to the teacher's fitness to teach. In reaching a conclusion that grounds exist to dismiss a certificated employee on the basis of evident unfitness for service, not all *Morrison* factors need be examined, only the pertinent ones. (*Governing Board v. Haar* (1994) 28 Cal.App.4th 369, 384.) In this sense, the purpose of examining the *Morrison* criteria is to establish a nexus between the proven conduct and fitness to teach.

However, even if the *Morrison* analysis shows a nexus between the conduct and fitness to teach, it must also be determined that the alleged conduct shows *evident* unfitness for service. (*Morrison, supra*, at p. 1445 [emphasis added].) "Evident unfitness for service" means clearly not fit for teaching, ordinarily by reason of *temperamental defects or inadequacies*; it connotes *fixed character trait*, presumably not remediable merely on receipt of notice that one's conduct fails to meet expectations of the school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444 [emphasis added].)

PERSISTENT VIOLATION OF OR REFUSAL TO OBEY LAWS

9. The word “persistent” is defined by lexicographers as “refusing to relent; continuing, especially in the face of opposition . . . stubborn; persevering . . . constantly repeated.” (*Governing Bd. of the Oakdale Union School District v. Seaman* (1972) 28 Cal.App.3d 77, 82.) Subdivision (7) pertains to unintentional as well as intentional transgressions, and hence the Legislature has decreed that a single violation is not sufficient to warrant dismissal, apparently to allow for correction; “it is the persistent disregard” of school rules that the subdivision is designed to regulate. (*Id.* at. p. 84.)

A violation of Education Code section 44932, subdivision (a)(7), must also be established by reference to the *Morrison* factors. If unfitness to teach is shown, then the District must further establish that employee’s refusal to follow the laws or regulations was “persistent,” i.e., “stubborn and continuing.” (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1183.) Isolated incidents or incidents involving an issue unresolved over a period of time are not generally considered “persistent.” (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.)

Cause Exists to Dismiss Respondent

10. Cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(2). A preponderance of the evidence established respondent engaged in unprofessional conduct throughout the period subject of the Amended Statement of Charges. This conduct was directly related to her fitness to teach, as it directly impacted the education of her students and the district’s operations.

11. Cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(6). A preponderance of the evidence established respondent is evidently unfit for service. Respondent’s principals and the district gave respondent multiple opportunities to correct her conduct and to treat students, parents, and her colleagues with respect. Respondent consistently refused to follow these directives and continued to act in a manner that reflected a complete lack of insight or desire to remedy her behavior. Her conduct directly impacted students and directly related to her fitness to teach.

There was no evidence that respondent appreciates the nature of her behavior or has engaged in any meaningful self-reflection. Her testimony at hearing reflected an indifference to the truth. Consequently, there is little doubt that respondent would treat students, parents, and colleagues in a similar manner if returned to the classroom. Ample evidence has demonstrated that respondent’s temperament is not remediable and she is evidently unfit to teach.

12. Cause exists to dismiss respondent pursuant to Education Code section 44932, subdivision (a)(8). A preponderance of the evidence established respondent persistently violated or refused to obey the reasonable regulations prescribed by the governing board of

the district. Respondent received multiple directives from district administrators to change her behavior and to create a positive environment for her students. Respondent refused to follow reasonable direction from his supervisors and the multiple incidents of unprofessional conduct represented repeated bad judgment and constituted a violation of Board Policy 4119.21, "Code of Ethics of the Teaching Profession."

Conclusion

13. It is clear that for many of her students, respondent was a good teacher who had a positive impact on their education. However, the issue in this case is not how she treated the students, parents, and colleagues whom she liked, but how she treated those who are the subject of the allegations. Although the district provided respondent with multiple opportunities to correct her behavior, respondent consistently refused to change or comport her conduct to the professionalism expected by the district. Her inability to accept any responsibility, or provide credible testimony, leaves no doubt that dismissal is appropriate based on any one of the three established grounds.

ORDER

Respondent, Nenoise Trotter's, appeal from her dismissal of employment by the Jurupa Unified School District is denied. The district's request to dismiss respondent is upheld.

DATED:

ADAM L. BERG
Administrative Law Judge
Office of Administrative Hearings

DATED:

VIRGINIA ESCOBAR
Commission Member

DATED:

DEIDRA JOHNSON
Commission Member