

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
OF THE SACRAMENTO COUNTY OFFICE OF EDUCATION
COUNTY OF SACRAMENTO
STATE OF CALIFORNIA

In the Matter of Dismissal of:

TEREZE LEAR,

A Permanent Certificated Employee,

Respondent.

OAH No. 2012050225

DECISION

This matter was heard before a Commission on Professional Competence (Commission) of the Sacramento County Office of Education, State of California, on July 10, 11, 12, 13, and 16, 2012. Commission members were Gregory P. Ludwa,¹ Mark Yost,² and Dian M. Vorters, Administrative Law Judge (ALJ), Office of Administrative Hearings.

Michelle L. Cannon, Attorney at Law,³ represented the Sacramento County Superintendent of Schools for the Sacramento County Office of Education (SCOE). Effie Crush, SCOE Chief Administrator, was present throughout the hearing.

Sarah Sandford-Smith., Attorney at Law,⁴ represented respondent Tereze Lear, who was present throughout the hearing.

Oral and documentary evidence was received. SCOE and respondent submitted written closing briefs which were marked for identification as Exhibit 11

¹ Gregory P. Ludwa, Teacher, Alternative Education Program, Monterey County Office of Education.

² Mark Yost, Director I, San Joaquin County Office of Education.

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⁴ Sarah Sandford-Smith, Attorney at Law, Beeson, Tayer & Bodine, Ross House, Suite 200, 483 Ninth Street, Oakland, California 94607-4051.

and Exhibit S, respectively. On August 1, 2012, SCOE submitted its Responsive Brief, which was marked for identification as Exhibit 13. Also on August 1, 2012, respondent submitted her Reply Brief, which was marked for identification as Exhibit T. On August 2, 2012, the record was closed and matter was submitted for decision.

ISSUES

Did SCOE prove by a preponderance of the evidence that respondent should be dismissed from her position as a teacher at the Sacramento County juvenile detention center (Juvenile Hall) based upon incidents of alleged dishonesty, immoral conduct, evident unfitness for service, and/or persistent violation of or refusal to obey school laws of the state or reasonable regulations of the school and/or district governing board under Education Code section 44932, subdivisions (a)(1), (3), (5), and/or (7)?

FACTUAL FINDINGS

Procedural

1. Respondent's students reside in a secure unit within the Juvenile Hall and have been charged with various violations of law including theft, drug use and possession, prostitution, murder, rape, and burglary offenses. They are in custody per court orders either pending adjudication or serving sentences. Respondent is a teacher at El Centro Junior/Senior High School located inside the Juvenile Hall. On or about February 6, 2012, respondent was placed on administrative leave, pending further action by SCOE regarding her continued employment as a teacher at the Juvenile Hall. In the office of Tim Taylor, then Assistant Superintendent of SCOE, respondent was given a letter written by Effie Crush, SCOE Chief Administrator for Human Resources, notifying her of SCOE's action. The letter did not specify the grounds for SCOE's action.

2. On February 10, 2012, respondent contacted David Oshige, California Teacher's Association (CTA) Regional Consultant. She was still unaware of the grounds for SCOE's action. On February 12, 2012, Ms. Crush phoned respondent at home and instructed her to attend a meeting with an impartial investigator on February 17, 2012. Ms. Crush told respondent that at the meeting she would be told the allegations and that she could bring a representative. Mr. Oshige accompanied respondent to the meeting.

3. On February 17, 2012, respondent and Mr. Oshige met with Diane Beall, Attorney at Law, who interviewed several witnesses. Ms. Beall informed respondent that she was hired to produce an impartial, unbiased report into the allegations against respondent. The interview lasted from 9:30 a.m. to approximately

4:00 p.m., during which time respondent was interviewed and shown portions of a surveillance video of respondent's Juvenile Hall classroom on October 5, 2011.

Respondent attended another meeting with SCOE representative Ms. Harris and CTA representative Mr. Villarreal (as Mr. Oshige was out of town). The purpose of the meeting was apparently to discuss the allegations filed by SCOE. The date of this meeting is not known.

4. Based on Mr. Taylor's notes, the confidential report of investigation, test score analyses, and report of E.S., a student in respondent's class on October 5, 2011, Ms. Stickel, SCOE Deputy Superintendent, determined that respondent had engaged in immoral conduct and violated testing protocols. She recommended to SCOE Superintendent Dave Gordon that respondent be terminated. Ms. Stickel also reported the matter to the CAHSEE testing body. She stated that testing irregularities can lead to student scores being overturned and students having to re-take the test. Ms. Stickel was not aware of any adverse impact on the students in respondent's class.

5. On May 8, 2012, Superintendent Gordon signed and filed a verified Accusation. The Accusation asserted that respondent should be dismissed for alleged violations of Education Code section 44932.⁵ Also on May 8, 2012, respondent was served with a Notice of Accusation informing her of her right to request a hearing in the matter. Respondent timely filed her Notice of Defense. The matter was set for a hearing before the Commission on Professional Competence. Respondent was placed on unpaid administrative leave pending a decision in the matter pursuant to Education Code section 44944, subdivision (c).

Accusation – Alleged Grounds for Dismissal

6. The Accusation filed by SCOE alleged that on October 5, 2011, respondent facilitated students in cheating on the California High School Exit Examination (CAHSEE or Exam). Specific charges are that she: 1) assisted five students with the Math portion of the exam, 2) helped students cheat on the exam, 3) allowed student helpers to assist student examinees on the Math portion of the exam, and 4) allowed students to assist each other in answering exam questions.

7. The initial report of misconduct came in January 2012, from E.S., a student in respondent's classroom. The Accusation alleged that E.S. told Juvenile

⁵ SCOE alleged that respondent had engaged in conduct that violated Education Code section 44932, subdivisions (a)(1) (immoral conduct), (3) (dishonesty), (5) (evident unfitness for service), and (7) (persistent violation or refusal to obey school laws and or reasonable regulations).

Hall teacher Patricia Millings that respondent “had the students sit in a group, and she provided the students answers to questions on the exam.” Millings was shocked, thought E.S. might be joking, and as such, did not report his statement to SCOE officials.

8. On January 27, 2012, E.S. told Lisa Mungaven, a classified special education technician, that respondent had helped the class pass the CAHSEE. Ms. Mungaven reported the allegation to SCOE officials and submitted a written statement on February 6, 2012. Ms. Mungaven did not testify, but in her statement to SCOE officials she wrote that she was surprised that E.S. had passed the CAHSEE because she had “worked with him before and thought his Math skills were low.” It is noted that Ms. Mungaven’s assessment of E.S.’s Math skills is not consistent with his Renlearn test score or the testimony of his teacher Roy Grenfell. (Factual Finding 58.) According to Ms. Mungaven’s written statement, E.S. told her the following:

...[T]he day he took the math CAHSEE, after a break in the middle of the test, they went back into the classroom. [Respondent] had erased some of their answers and told them they would do the rest of the test as a group. I was surprised by his story. When I was at the Hall later that week, I looked up the student’s score and saw that he had passed with a 394 and that he had taken the test with [respondent]. I was able to see that he had taken the test 5 months before and had failed with a 343. After seeing this, I thought there might be some truth to his story...

9. Mr. Taylor discussed the report of cheating with Deputy Superintendent Susan Stickel. Ms. Stickel directed Mr. Taylor to investigate the matter including pulling all test scores for students in respondent’s class. Mr. Taylor asked Todd Humphrey to prepare a report of recent and prior test score data for students in respondent’s class. Further analysis was performed by SCOE employee Paul Tuss. Mr. Taylor watched surveillance video of respondent’s October 5, 2011 classroom. The video contained images but no audio. Mr. Taylor took notes of his observations while watching the video. Mr. Taylor’s notes and a copy of the surveillance DVD were submitted in evidence.

10. The Accusation alleged that the video “shows both [respondent] and two student helpers, A.C. and K.H., assisting the five students in the classroom with theCAHSEE.” Also, B.A. and K.H. allegedly admitted assisting examinees along with respondent. Cheating or facilitating cheating, if found true, would be a violation of CAHSEE rules and the Education Code.

CAHSEE Test Score Report

11. The five students who took the October 2011 CAHSEE in respondent's class were B.A., D.C., A. K., A.S., and E.S. Mr. Humphrey looked at scores from three different standardized tests: the CAHSEE, the Renlearn Math Test, and the NWEA or MAP Test. He then compiled a Score Report of their results for two administrations of each examination.

- a. The CAHSEE is administered to all California high school students. It is designed to meet basic competency standards. Passage with a score of 350 or more is required for students to receive their diploma. Student scores for the last two CAHSEE administrations were:

Student	CAHSEE 1	Score 1	CAHSEE 2	Score 2
B.A.	03-09-2011	307	10-05-2011	389
D.C.	02-02-2010	306	10-05-2011	389
A.K.	10-06-2010	335	10-05-2011	397
A.S.	n/a	n/a	10-05-2011	387
E.S.	05-11-2011	343	10-05-2011	394

- b. The Renaissance Learning Systems (STAR or Renlearn) test assesses the student's approximate grade level in Math. A Renlearn score of 5.7 means the student is performing at the end of the fifth grade level in math. Student scores for the last two Renlearn administrations were:

Student	Renlearn 1	Score 1	Renlearn 2	Score 2
B.A.	09-21-2011	5.7	n/a	n/a
D.C.	04-27-2009	5.1	08-31-2009	3.9
A.K.	01-28-2009	7.7	n/a	n/a
A.S.	10-12-2010	8.3	n/a	n/a
E.S.	09-21-2011	9.1	n/a	n/a

- c. The Measure of Academic Progress or MAP Test is generated by the Northwest Evaluation Association or NWEA. MAP assesses the student's approximate grade level of performance in Math and Reading. The MAP conversion scale ranges from 186 (second grade level) to 238 (tenth grade level).

Student	MAP 1	RIT Score 1	MAP 2	RIT Score 2
B.A.	08-30-2011	231	n/a	n/a
D.C.	06-22-2011	201	10-12-2011	208
A.K.	06-17-2011	226	10-07-2011	221
A.S.	07-06-2011	219	10-26-2011	233
E.S.	07-06-2011	219	10-26-2011	233

12. Mr. Humphrey did not testify at hearing about the Score Reports that he compiled. Mr. Tuss answered questions at hearing about the Score Reports. Actual CAHSEE Scantron answer sheets are not in evidence. A review of the Score Report and other evidence indicates the following:

- a. B.A. and D.C. both received final CAHSEE scores of 389 on the October 5, 2011 administration. They sat for a prior CAHSEE on different dates, March 9, 2011, for B.A. and February 2, 2010, for D.C. and yet their scores were within one point at 307 and 306, respectively. B.A. and D.C. did not sit together during the October 5, 2011 CAHSEE; their desks were along different walls. B.A., with a MAP Score of 231, was functioning at an eighth grade level as of August 30, 2011.
- b. A.S. and D.C. did sit together during the October 5, 2011 CAHSEE. A.S.'s final October 2011 CAHSEE score was 387 compared to D.C.'s 389. A.S. presented with a Renlean Score of 8.3 on October 12, 2010. This means that one year prior, he was functioning at an eighth grade level. According to the video surveillance, A.S. and D.C. finished and submitted their tests at different times.
- c. A.K. and B.A. sat next to each other during the October 5, 2011 CAHSEE. A.K. received the highest CAHSEE score at 397. A.K.'s Renlearn score on January 28, 2009, was 7.7. Hence, two and one-half years prior he was functioning at close to an eighth grade level. A.K.'s RIT scores in June and October 2011, indicate that he was functioning at the eighth grade level.
- d. E.S. and B.A. sat next to each other during the October 5, 2011 CAHSEE. E.S. received a CAHSEE score of 394 on the examination. His prior CAHSEE score on May 11, 2011, was the highest at 343. E.S.'s September 21, 2011 Renlearn score of 9.1 indicated that he was functioning at the ninth grade level.
- e. A.S. and E.S. received identical scores on their July 2011 MAP Tests (219) and on their October 2011 MAP Tests (233). There is no evidence or claim that they sat together or received unfair help on these two dates.

13. Mr. Tuss has been Program Manager for Student Assessment at SCOE for almost seven years. He has a Doctorate degree in Educational Psychology. Mr. Tuss conceded that higher test scores could be a reflection of good teaching. He also added that effort is a factor in that if a student does not try, the scores will not provide an accurate reflection of academic performance. Mr. Tuss did not know why raw scores were not provided in the Score Report but stated that such information would be helpful in determining performance. The October 2011 CAHSEE Raw Score to Scale Score Conversion Tables for the Math and English Language Arts (ELA)

portions were submitted by respondent. For the Math portion, the Raw Score range was zero to 80 compared to the Scaled Score range of 275 to 450. Mr. Tuss admitted that a one-point change in the Raw Score can convert to a multiple-point change in the Scaled Score.

CAHSEE Score Analysis Report

14. After reviewing the Score Report Mr. Tuss noted that all five student scores were close in range. He prepared a further Score Analysis including data from 15 students who took the October 2011 CAHSEE at SCOE-operated schools. A review of the Score Analysis indicates the following:

- a. E.S. was the only student in respondent's class who was at a SCOE-operated school for the May 2011 and October 2011 administrations of the Math CAHSEE. He showed a significant improvement in his Scaled Score from 343 to 394 (an increase of 51 points).
- b. D.C. was the only student in respondent's class who was at a SCOE-operated school for the February 2010 and October 2011 administrations of the ELA CAHSEE. He showed significant improvement in his Scaled Score of 315 to 370 (an increase of 55 points). However, two other students who were not in respondent's class also showed significant improvement in their Scaled Scores of approximately 275 to 320 and 275 to 325 (an increase of 45 to 50 points).
- c. D.C. was the only student in respondent's class who was at a SCOE-operated school for the February 2010 and October 2011 administrations of the Math CAHSEE. He showed significant improvement in his Scaled Score of 306 to 389 (an increase of 83 points). One other student who was not in respondent's class also showed significant improvement in his Scaled Scores of 305 to 387 (an increase of 82 points).

Forensic Analysis of CAHSEE Examiners Associated with Improbable Score Increases Report

15. Mr. Tuss then prepared a report of his Forensic Analysis of CAHSEE Examiners Associated with Improbable Score Increases (Forensic Analysis Report). He testified that he undertook this analysis to see if other teachers administering the CAHSEE also had unusual test results. The chart compared the Scaled Scores of students in respondent's class to those in Roy Grenfell's Juvenile Hall class, and showed the improvement between May 2011 scores and earlier administrations in 2009, 2010, and 2011.

Teacher	Subject	Feb 2009	Oct 2009	Feb 2010	May 2010	Oct 2010	Feb 2011	May 2011	Change
Lear	Math	338						385	47
Lear	Math					322		385	36
Lear	Math						341	385	44
Lear	Math				316			363	47
Lear	Math					306		363	57
Lear	ELA	351						427	76
Grenfell	Math		299					409	110
Grenfell	ELA		276					446	170
Grenfell	Math			285				368	83
Grenfell	ELA			281				386	105

16. A review of the Forensic Analysis Report indicates that Mr. Grenfell's students showed greater score improvements than respondent's between May 2011 and all prior Math and ELA CAHSEE administrations. Mr. Tuss conceded this finding. For example, a student in Mr. Grenfell's class scored 285 on the February 2010 Math CAHSEE and 368 on the May 2011 Math CAHSEE for a score improvement of 83 points. The last column shows the point spread between the May 2011 CAHSEE and prior test administrations. Overall, Mr. Grenfell's students improved by 83 to 170 points compared to respondent's students who improved by 36 to 76 points.

17. Since Mr. Grenfell is not accused of improper test administration, it is important to look at other factors that may have contributed to increased student performance, other than the passage of time. Respondent put her students through an examination preparation which she called "CAHSEE boot camp." Mr. Grenfell co-taught with respondent and conducted the same preparation with his class. Mr. Tuss stated that he was not aware of the "boot camp" and had no knowledge of respondent's academic training on the impact of sustained Art instruction on gains in achievement. The Score Report and Forensic Analysis Report do not support a finding that respondent's students received improper help on the CAHSEE.

October 5, 2011 Surveillance Video

18. Juvenile Hall classrooms are fitted with surveillance cameras. On February 10, 2012, Mr. Taylor watched the October 5, 2011 surveillance video at the probation office. The notes he took while watching the video were submitted at hearing. Mr. Taylor testified that his concerns upon viewing the video included placement of students taking the test and the presence of student helpers interacting with students and the teacher. He stated that students should be seated four to five feet apart. Mr. Taylor watched the tape the following day with Mr. Tuss. At hearing,

Mr. Taylor compared his notes to the video and admitted that some of the times, student names, and even the date at the top were in error. However, he believed that his notes were “generally speaking” accurate.

19. Respondent contended that Mr. Taylor’s notes were largely inaccurate. For example, Mr. Taylor’s notes indicate that at 2:28 p.m., “SH2 assists #5.”⁶ However, Student #5 was D.C. who had already turned in his test at 2:12 p.m. Mr. Taylor conceded the error at hearing. Mr. Taylor’s notes indicate that at 2:48 p.m. “SH2 assists 4 with test. TL at desk.” Student #4 was A.S. who had already turned in his test at 2:34 p.m. Mr. Taylor conceded this error. Mr. Taylor’s notes indicate that at 2:35, “Students 2, 3 are helping each other.” Student #2 is B.A. and #3 is A.K. At hearing, Mr. Taylor admitted that he did not see these students’ lips moving and that he did not know if they were helping each other. He added, “It just looks like interacting.” Mr. Taylor never spoke to respondent about what was happening in the classroom during the test because he was not instructed to do so. Mr. Taylor stated that he made the notes for his own reliance and did not intend for others to rely on them. Ms. Stickel did rely, in part, on Mr. Taylor’s notes in making the determination to dismiss respondent.

20. After watching the video, Mr. Taylor determined that respondent had engaged in dishonest conduct by helping students with the test. Mr. Taylor also determined that respondent had violated test protocol based on student seating and interaction.

21. Mr. Tuss watched the surveillance video in March 2012 with Mr. Taylor. He stated that he had seen a lot of CAHSEE administrations in the past and that this was “very different” in terms of the nature, extent, and amount of interaction of the site examiner with students. Also, the two students serving as proctors had a lot of interaction; students were talking, sitting extremely close together, and not sitting in the same direction. He stated that this situation should not have happened. He thought it was “blatantly” in violation of CAHSEE standards.

22. Mr. Tuss was not aware of whether Cindy Tanaka, the El Centro Site Administrator, had met with staff to conduct CAHSEE training. He did not know if any students in respondent’s class suffered mental illness or were undergoing medication adjustment. He did not know whether any administrator had observed the October 2011 CAHSEE at the Juvenile Hall. He agreed that this was a responsibility of administrators.⁷

⁶ Mr. Taylor’s notes use standard time. However, the surveillance video displays military time. For purposes of this decision, all times are converted to standard time. If the video displays 13:30:00, this time will be converted to 1:30 p.m.

⁷ The CAHSEE Coordinator’s Manual states that the test site coordinator’s responsibilities include “Monitoring ALL examination procedures at the site(s),” and

23. Mr. Tuss reviewed a September 29, 2011 memorandum for an El Centro teacher staff meeting. The subject of the memorandum is “CAHSEE Testing-October 4th and 5th 2011.” Attached were two CAHSEE Scantron pages that contained spaces and bubbles for the student name and demographic information. Mr. Tuss agreed that if this were all respondent received from administration on the CAHSEE, it would not be sufficient. Mr. Tuss admitted that El Centro is in program improvement and performance based criteria must be met to get out of program improvement. He was not familiar with the status of El Centro’s compliance with improvement plans.

Student Testimony

24. *Student B.A.* B.A. testified at hearing. He is 17 years of age. At the time of hearing, B.A. had been in custody at the Juvenile Hall for one month, attending summer school, and in the 11th grade. In the fall of 2011, he was serving a three to four-month sentence at the Juvenile Hall and was in respondent’s class. He stated that he had a good relationship with respondent. He liked and respected respondent as a teacher. He felt she was both fair and honest.

B.A. was shown portions of the surveillance video at hearing. At approximately 1:18 a.m. he was in his assigned seat between A.K., also known as “Caveman,” and E.S. He stated that at that time, he asked a question and respondent came over. He stated that respondent would give “tips” or “hints.” He further explained that she would not give them answers, but was “just helpful.” He stated that she would try her best to let us know “we can do it...to do our best.” B.A. saw K.H. and A.C. walking around the classroom on the video. He did not think he had received help from either of them. He described any assistance from respondent as “motivating me maybe.” He thought he recalled respondent tell them not to speak to each other during the test.

At 2:13 p.m., respondent was holding B.A.’s test booklet. B.A. did not think respondent wrote anything on his booklet. Behind B.A., D.C. was at a computer station as he was done with his test. At 2:32 p.m., B.A. showed respondent that he was done with the test. He did not recall what they subsequently discussed. However, at 2:36 p.m., he was checking his test at his desk. At 2:33 p.m., respondent was at the white board. B.A. did not recall what respondent wrote on the white board. He denied that respondent was starting problems for them. He stated that she would go over what they had reviewed days before. According to B.A., student helpers did not give students help on the exam. At 2:42 p.m., B.A. turned in his completed test and left the classroom.

“Visiting each testing room during the administration ...” (Coordinator’s Manual, p. 34.)

At hearing, B.A. believed he had failed the CAHSEE because since October 2011, he had re-taken both sections at his continuation school in Carmichael. He learned he had passed at hearing. B.A. reiterated that neither respondent, A.C., nor K.H. ever worked problems for him. He denied cheating on the CAHSEE and had no knowledge of other students cheating on the CAHSEE.

B.A. remembered being interviewed by a SCOE representative in February 2012. The interview took place at his continuation school in the presence of his mother. He denied telling the SCOE interviewer that respondent had helped him by telling him some of his answers were wrong.

25. *Student Helper A.C.* Student helper A.C. testified at hearing. He is 18 years of age. He was in respondent's class at the Juvenile Hall on October 5, 2011. He received his diploma at the Juvenile Hall and passed the CAHSEE in his regular school. He was transferred to the main jail on October 18, 2011, and is pending trial in adult court. A.C. stated he had a good relationship with respondent. He liked and respected her as a teacher and felt she was fair. She asked him to be her student helper and he agreed. K.H. was her other student helper. A.C.'s duties as a student helper included setting up tables, paint, art supplies, and Accelerated Reader (AR) tests. He also helped find and log books, and assisted with whatever respondent needed.

A.C. stated that respondent worked with students to help prepare them for the CAHSEE. If they asked for help, he would help them. Students would turn in CAHSEE Pre-tests when they were done. During the CAHSEE, A.C. stated that he may have helped set up by putting books on the tables. He denied ever helping other students with their work, stating, "It was their work, not mine." He stated that respondent could not have asked him to do more than set up. He did not remember respondent giving answers to students, solving problems for students, or directing him to help students. He stated, "I couldn't even help them on their AR test." An AR test was given after students read a book to test reading comprehension. He did not remember other students helping each other on the test.

A.C. was asked if he accompanied respondent when speaking to E.S. He stated that if respondent needed help with E.S., he would help her. A.C. recalled nothing out of the ordinary occurring during the fall administration of the Math CAHSEE.

26. *Student Helper K.H.* Student helper K.H. testified at hearing. He is 18 years of age. He attended El Centro for one and one-half years and was a student helper in respondent's class in the fall of 2011. K.H. obtained his GED and passed the CAHSEE prior to the fall of 2011. At the time of hearing, K.H. had been transferred to the main jail and was pending trial in adult court. K.H. expressed that he respected respondent and never saw her behave in any inappropriate way. He

considered her to be an honest person. K.H. considered respondent to be fair and a good role model.

K.H. stated that when he took the CAHSEE in Mr. Moreland's Juvenile Hall class, desks were lined up facing the same direction and he thinks a folder was placed between them. He added, "We could see the student next to us if we tried." He did not think that Mr. Moreland gave assistance during the test. K.H. shared that Mr. Moreland's class was bigger, and they sat at computer tables, not desks.

K.H. stated that respondent felt more comfortable with someone next to her at E.S.'s desk for safety. K.H. stated that respondent administered CAHSEE Pre-tests in English and Math. She also held Math and English bingo. During CAHSEE administration, K.H. stated that he would be on the computer or grading papers. He stated that calculators were kept in respondent's desk, locked, and students had to get permission to use them.

K.H. stated that Mr. Taylor had shown him pieces of the surveillance tape. During the CAHSEE, he helped a few students by "clarifying questions." K.H. did not speak to respondent about this in advance, but did this on his own. On advice of counsel, K.H. declined to answer most questions about the video shown at hearing.⁸ K.H. denied that respondent told him to help students. He did not believe she was the type of person who would help students cheat.

Prior to testifying, K.H. was interviewed by SCOE investigator Ms. Beal and by respondent's counsel in the presence of law intern Kadeidra Honey. Ms. Honey testified at hearing about the interview. Ms. Honey testified that his statements in her presence were consistent with his testimony at hearing. He denied that respondent helped any student answer exam questions or instructed him to do so.

27. *Probation Officer Jason Bergen.* Deputy Bergen testified at hearing. He has been at the Juvenile Hall since November 2000. Currently he is a Deputy Probation Officer responsible for supervision, safety, and security of residents. He interacts with residents in 12-hour shifts, three to four days a week. Deputy Bergen met respondent in March 2011 when he started in Housing Unit 1. Probation officers must interact with teachers daily both in the classroom and during physical activity. Each morning they confer on the roster of new students coming into the classroom. Deputy Bergen has observed respondent's classroom management and teaching style. In his opinion, she manages the juveniles very well from a discipline perspective. He found her to be cooperative as far as changes to daily operations. Deputy Bergen learned informally of the allegations against respondent after she was placed on administrative leave. In his opinion, "She seemed very honest."

⁸ K. H., through his attorney, Paul Irish, asserted his Fifth Amendment right against self-incrimination. (U.S. Const., 5th Amend..) K.H. is facing trial as an adult on serious felony charges.

28. Deputy Bergen confirmed that respondent's classroom was smaller than the other classrooms in the Juvenile Hall. He stated that probation requires open access from the doorway so that staff can get to fights. Teachers must keep this in mind in setting up classrooms. The set up of respondent's class met security needs. Deputy Bergen stated that deputies are supposed to be in the classroom all day. They may step out for a minute, but they must be watching from the viewing room or in class when there are one or more students present.

29. Deputy Bergen was shown the surveillance video at hearing for the first time. He recalled the CAHSEE being given last October. He did not recall what specific students were doing in the video clips he was shown. At approximately 2:38 p.m., Deputy Bergen entered the classroom and remained for approximately ten minutes. He stated that he "absolutely" did not give any student answers or help them solve problems. Also, he did not hear respondent give answers or help students solve problems. Deputy Bergen stated that on a typical day, it is common for students to be sitting quietly at their desks. The students seen walking around on the video were not taking the CAHSEE. One was a teacher's assistant or student helper and other classrooms used them as well.

30. . Deputy Bergen was familiar with E.S. and had worked with him for three to four months. Deputy Bergen stated that E.S. was quiet, but would say and do bizarre things from time to time. E.S. was on antipsychotic drugs and was seeing the resident mental health professionals. In Unit One, there are 14 rooms with single beds, a dedicated classroom, a day space, courtyard, and a probation viewing room. Students are housed by themselves. E.S. was housed in one of two rooms with a camera so that probation could view him to ensure he was not hurting himself. Deputy Bergen had discussed with respondent, E.S.'s behavior and "history of being assaultive around women."

31. No one from SCOE interviewed Deputy Bergen prior to hearing. No one asked him whether he had observed respondent give answers or do anything inappropriate during the examination. No one from SCOE ever discussed the CAHSEE administration with Deputy Bergen.

CAHSEE Administration

32. At hearing, several administrators and teachers provided information on CAHSEE protocols, training, and their administration of the test. Their understanding of testing protocols being applied at the Juvenile Hall is an important consideration in this matter.

33. *Susan Stickel.* Ms. Stickel, has been the Deputy Superintendent at SCOE for one year. She was Assistant Superintendent for curriculum and intervention for the prior five years. From January 2003 to November 2006 she

served as a Deputy Superintendent for Curriculum and Instruction at the California Department of Education (CDE).

Ms. Stickel stated that there is a protocol that teachers must adhere to when administering the CAHSEE. That protocol is delivered in writing and orally. There is a booklet with a signature page for each teacher to submit. When administering the test, desks cannot be touching and there can be no talking, except if the student has a “clarifying question” for the teacher.

Ms. Stickel last visited the Juvenile Hall in early 2006 when she first started. She has never been to the Juvenile Hall maximum security unit. She has never taught in a maximum security unit. She has never conducted CAHSEE training or special education testing modifications at the Juvenile Hall. She has never been to any CAHSEE training or staff meetings at the Juvenile Hall. She was not at the Juvenile Hall on October 5, 2011.

It was Ms. Stickel’s understanding that site teachers are supposed to receive training, including on how to handle questions during examinations, and also that a testing coordinator is supposed to monitor teachers at the sites. She did not know if anyone from SCOE visited the Juvenile Hall during the test administration.

34. *Tim Taylor.* Mr. Taylor is currently Superintendent of the Butte County Office of Education. Prior to that he served as the Assistant Superintendent of SCOE for seven and one-half years. His duties included coordination of community schools and programs. He stated that he was generally familiar with CAHSEE rules and regulations. After a site administrator for the CAHSEE is selected, that site administrator trains coordinators, who in turn go to the school sites and train site teachers. He last attended a CAHSEE training four or five years ago at El Centro. He recalled that a Mr. Little “walked through” the booklet with staff. The booklet Mr. Taylor was referring to is called the CAHSEE Directions for Administration (Directions booklet). The 2011-2012 version is 58 pages long and contains detailed information and scripts to be used by test administrators.

Mr. Taylor has never conducted teacher training at the Juvenile Hall. He has attended a faculty meeting where CAHSEE was the topic of discussion. Mr. Taylor did not know if site teachers received training on how to handle “clarifying questions” from students during the CAHSEE.

35. *Paul Tuss.* Mr. Tuss stated that SCOE has a department that coordinates testing. Mr. Tuss described the CAHSEE as a “high stakes” test because it impacts students’ futures and whether they receive a diploma. The test is offered in a standardized way so that every student is given a comparable opportunity to demonstrate their knowledge and competency. Security is high, materials are locked when not in use, and all examiners are trained in administration and safety protocols.

Mr. Tuss stated that the CDE does random security audits, bringing tape measures, to ensure that desks are arranged in the same direction and spaced accordingly.

Mr. Tuss described a “multi-level” training approach. Annually, in September, at the start of the school year, one person, the SCOE District Coordinator, is trained by the State. Mr. Tuss oversees Jackie Adams, the SCOE District Coordinator. Ms. Adams then conducts training for each Test Site Coordinator on security, procedures, and protocols. The Test Site Coordinators then go back to their schools to train the Test Site Examiners. Test examiners can be teachers or any trained school district employee who signs an affidavit. The test examiner is responsible for overseeing the administration of tests to students. A proctor assists the test examiner. For every 25 students, you should have one proctor. Mr. Tuss did not know if the Juvenile Hall utilized proctors. He stated that they can if staff is available. The decision is left up to the site. But, the proctor must be an adult employee.

36. *Michael Borgaard.* Michael Borgaard is Superintendent of the Elverta Joint Elementary School District (Elverta). He was formerly the principal of El Centro for five years through June 30, 2011. Mr. Borgaard supervised respondent and was responsible to make sure there was a Site Administrator.⁹ This position was held by Donald Little until early 2010, and then by Cindy Tanaka, who conducted the trainings. Neither trainer testified. Mr. Borgaard stated that each time a test was scheduled, a staff meeting for those teachers administering the test would be held. The training meeting lasted 30 to 45 minutes.

According to Mr. Borgaard, approximately 30 percent of SCOE students were special education. Previously there was a special education principal. Currently, a special education technician or resource teacher comes to work with the students. All teachers had access to Special Education Individualized Education Plans (IEP) located in the students’ cumulative files. The IEP files were kept in a locked file cabinet in the school office. Certificated teachers who had been cleared could sign files out. Mr. Borgaard stated that the files were updated weekly.

Mr. Borgaard confirmed that probation was under a “consent decree” and SCOE under a “settlement agreement.” These protocols stemmed from a lawsuit filed by the Prison Law Office in 2007 or 2008 regarding the quality of education being provided at the Juvenile Hall.

Mr. Borgaard transferred respondent to the maximum security unit of the Juvenile Hall in 2007 because he thought she had the qualities that would allow her to

⁹ It appears that the Site Administrator referred to by Mr. Borgaard is the same as the Site Coordinator referred to by Mr. Tuss. CAHSEE test materials also refer to this position as Site Coordinator. This position was held by Mr. Little and Ms. Tanaka at the Juvenile Hall.

be successful with these students. Mr. Boargaard had observed respondent administer the CAHSEE. He stated that he never observed anything improper. He was not aware of any complaints respondent may have filed against him at El Centro.

CAHSEE Instructional Manuals

37. Each year the CDE sends school districts two manuals for use in implementing the CAHSEE: 1) the CAHSEE District and Test Site Coordinator's Manual (Coordinator's Manual) and 2) the CAHSEE Directions for Administration (Directions booklet).

38. *Coordinator's Manual.* According to Mr. Tuss, SCOE received a set of ten Coordinator's Manuals with a shipment of test materials. The District Office kept two Coordinator's Manuals and distributed the rest to Test Site Coordinators. Under "Summary of Responsibilities," the Coordinator's manual states:

CAHSEE regulations require each district coordinator or the district superintendent to assign one person at each test site within the district to serve as a test site coordinator. The test site coordinator is responsible for the administration of the CAHSEE within the school or test site. The test site coordinator is also directly responsible for coordinating all activities pertaining to the security, distribution, and return of materials, as well as training all test examiners, test proctors, and scribes. (Coordinator's Manual, p. 4.)

39. Under "Determining Where Tests will Be Administered," the Coordinator's manual states:

Arrangements for testing rooms and seating should be completed well in advance of administering the examination. In most cases, regular classrooms will provide the most favorable testing environment. However, any room that does not crowd students, provides good lighting and adequate ventilation, and allows freedom from excessive noise or interruption could be used for the test administration.

Seating should be arranged to prevent cheating. All seats should face the same direction with spacing at least four feet from center of desk to center of desk....

(Coordinator's manual, p. 27.)

40. Under "Training Test Examiners and Proctors," the Coordinator's manual states:

Test site coordinators should conduct training sessions in a manner that will ensure that all test examiners and proctors are familiar with the procedures and guidelines for administering the CAHSEE. Distribute and review the *Directions for Administration* manual at the training sessions. If desired, the test examiners and proctors may keep these manuals for further study between training and test administrations.

[¶]...[¶]

The training session should include discussion of the following:

- Responsibilities of test examiners and proctors
- Security of the testing materials
-
- Arrangement for proctors, as required
- ...
- Assistance of students with directions (including reminder to use only No. 2 pencils)
- Administration of the test
- Procedures for completing demographic information on the answer documents

(Coordinator's manual, pp. 27-28.)

41. Under "Test Examiner and Test Proctor Responsibilities," the Coordinator's manual states that both the test examiner and the test proctor are responsible for doing the following tasks, in relevant part:

- Participate in training activities provided by the test site coordinator.
- Sign the *Test Security Affidavit* and return it to the test site coordinator.
- ...
- Monitor students to be sure that they are doing their own work.

[¶]...[¶]

In addition, test examiners are responsible for the following tasks:

- Review and become familiar with test administration procedures prior to testing.
- Follow test administration instructions and read the scripts verbatim.

- Clarify directions for any student as needed.

(Coordinator's manual, p. 29.)

42. Under "Supervising Test Administration and Test Security," the Coordinator's manual states that "test site coordinator's responsibilities include, but are not limited to," the following:

- Monitoring ALL examination procedures at the site(s)
- Ensuring that the appropriate number of proctors is available and that the test examiners know the administration procedures they are to follow
- Visiting each testing room during the administration to make sure the administration scripts are being read word-for-word
- Securing ALL booklets and answer documents in a locked storage area during extended breaks, such as lunch.

....

(Capitalization in original, Coordinator's manual, p. 34.)

43. *Directions booklet.* The 2011-2012 Directions booklet was 58 pages in length. According to Mr. Tuss, SCOE provided Directions booklets to every test examiner. According to Mr. Borgaard, Directions booklets "were available" in the training room, however, trainers specifically went over the bulleted information on pages three and four with staff. On these introductory pages under "Test Examiner Responsibilities," there are 14 bullets listing test examiner responsibilities as follows, in relevant part:

- Participate in training activities provided by the test site coordinator.
- Review and become familiar with test administration procedures prior to testing.
- Sign and return the Test Security Affidavit to the test site coordinator.
- ...
- Provide accommodations and/or modifications to students with individualized education programs (IEPs) or Section 504 plans.
- ...
- Follow test administration instructions.
- Read scripts verbatim. You MAY clarify directions, but not test items, for any student
- Monitor students to be sure they are doing their own work.
- Respond immediately to cheating incidents.

...

(Capitalization in original, Directions Manual, p. 3.)

44. Under “Test Variations Regularly Used in the Classroom,” the Directions manual states:

Some exceptions to the administration of tests apply to all students and some apply to students who have special conditions as part of their classroom activities. All students may have directions, but not test items, simplified or clarified. Please reference the *Testing Variations, Accommodations, and Modifications* matrix in Appendix A.

(Directions manual, p. 13.)

45. In the Script section of the Directions manual for both Math Sessions, it states: “If you do not understand what to do on any part of the examination, please raise your hand, and I will clarify the directions for you.” (Directions manual, Script, pp. 42 and 45.)

46. Appendix A is a matrix that lists permissible “test variations,” “accommodations,” and “modifications.” Additionally, all students are allowed to have “test administration directions that are simplified or clarified (does not apply to test questions),” mark in their test booklet, be tested in a small group setting, and have extra time on a test within a testing day.

Students may have additional “test variations” if regularly used in the classroom. These include, in relevant part: “colored overlay, mask, or other means to maintain visual attention.”

“Accommodations” are permitted for “eligible students” if “specified in the eligible student’s IEP [individual education program], or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment.” “Accommodations” include, in relevant part: having responses dictated orally, or in manually coded English, or American Sign Language (ASL), to a scribe for multiple choice questions, and test questions read aloud to student or use of audio CD presentation for Math and Writing Tasks.

“Modifications” on the CAHSEE are permitted for “eligible students” if specified in the eligible student’s IEP or Section 504 Plan for use on the examination, standardized testing, or for use during classroom instruction and assessment. Modifications include use of a dictionary, manually coded English or ASL to present test questions, test questions read aloud or use of audio CD, and use of a calculator on the Math tests. (Directions manual, Appendix A, p. 49.)

47. Additionally, SCOE generated a CAHSEE Accommodation/Modification October 2011 Chart purporting to list all special education students and the accommodations/modifications applicable to each. Only two students on this list,

K.H. and D.C., were in respondent's class on October 5, 2011. According to this chart, D.C. was eligible for small group, flexible scheduling, and "check for understanding." K.H. is listed on the October 2011 Accommodations list as in the eleventh grade and entitled to "Small group and supervised breaks." It is noted that K.H. had already passed the CAHSEE as of the October 2011 administration.

48. Robin Pierson is the Assistant Superintendent of Special Education at SCOE. She is credentialed in Administration and Speech Pathology. She supervises all special education programs and services for SCOE. She stated that students are asked when they come into the Juvenile Hall to "self-identify" if they are receiving special education services. An assessment is done and SCOE learns the student's status within three days using a "special education query," or by contacting the student's home county/district.

Once identified, resource specialist program teachers meet with each of the teachers who have special education students in the Juvenile Hall. A Special Day Class is provided for Juvenile Hall students who have an active IEP or for Emotionally Disturbed Students, if their behavior impacts classroom functioning. However, maximum security students cannot be in the Special Day Class. She reiterated that only D.C. was identified with an active IEP. Special education technician, Eric Nichols, was assigned to work with IEP students at the Juvenile Hall. A student assistance log is maintained by all special education assistants. Respondent recalled seeing Mr. Nichols work with B.A. Dr. Pierson reviewed the September 2011 log and did not find an entry showing that Mr. Nichols had helped B.A. B.A. also testified that he had not received help from Mr. Nichols.

Dr. Pierson has not conducted CAHSEE training at the Juvenile Hall on variations, modifications, or accommodations. Also, Dr. Pierson has never attended CAHSEE training at the Juvenile Hall. She confirmed that use of a calculator is a "modification" on the CAHSEE. She stated that she is at El Centro at least once a month. She last observed special education technicians at the Juvenile Hall in April 2012 and before that in October 2011. Dr. Pierson recalled visiting respondent's class sometime in the last two to three years.

Investigatory Interviews Conducted by Diane Beal

49. Diane Beale, a licensed attorney, was charged with conducting a confidential investigation on behalf of SCOE. Ms. Beal practiced as a Deputy District Attorney in Contra Costa and Sonoma County from 1991 to 1998. She practiced civil litigation for two years and since December 2006, education law. Since November 2011, Ms. Beal has worked for the law firm of Kronick, Moskovitz, Tiedemann & Girard, the same firm representing SCOE in this dismissal matter. Ms. Beal conducts workplace disciplinary investigations. She has performed at least 35 such investigations. She attended two trainings as a member of the Association of Work Place Investigators. In the present matter, she was asked to investigate a claim

by a student that his teacher had helped him answer questions on the Math CAHSEE. Ms. Beal interviewed twelve people including administrators, teachers, SCOE staff, B.A., K.H., and respondent.

50. On February 17, 2012, respondent submitted to an investigatory interview with Ms. Beal. Respondent's CTA representative, Mr. Oshige, was also present. Mr. Taylor provided Ms. Beal with the surveillance video but did not remain in the room. Respondent's recollection of the interview is as follows:

51. The investigator introduced herself as an attorney hired by SCOE to produce an "impartial, unbiased, report into the allegations against [respondent]." Ms. Beal would not give respondent her card. Ms. Beal informed respondent that the interview was not being recorded. Respondent recalled Ms. Beal stating, "I know SCOE doesn't want to keep paying you so she would get this filed next week and send you a copy." Ms. Beal then informed respondent that she had given students answers on the October 2011 CAHSEE. This was the first respondent had heard of the allegations. Respondent asked what employee had brought the allegations forth. Ms. Beal did not remember the name. Respondent asked what student had brought the allegations forth. Ms. Beal stated she was not allowed to divulge that to respondent.

Ms. Beal began by asking questions about the students. She asked respondent to describe E.S. Respondent asked to step outside to talk to Mr. Oshige because she was not sure what she could divulge about his mental illness. Respondent had been informed by probation that he suffered schizophrenia and was being treated with psychotropic medication. Ms. Beal then asked questions about K.H. Ms. Beal stated that K.H. had been convicted of murder. Respondent told her that K.H. was waiting to stand trial as an adult and had not been convicted of anything.

Ms. Beal asked if the students were good or bad at Math. She showed respondent written documentation of Renlearn and RIT scores. Ms. Beal asked respondent "leading questions" such as, "Don't you see that this student's score was too low to have passed the CAHSEE?" Respondent replied that she did not see that and that these children "do not take the NWA [MAP] test seriously."

Ms. Beal showed respondent the CAHSEE Test Security Affidavit and verified her signature. Respondent did not remember signing this two-page form. She only recalled signing a one-page form that said nothing about teachers being trained on the CAHSEE. Respondent was suspicious of tampering. Ms. Beal showed respondent clips of the surveillance video. Respondent recalled much rewinding and fast forwarding of the video which took "hours."

Respondent described the tone of the interview as "very hostile." In respondent's opinion, Ms. Beal was not conducting an impartial and unbiased investigation, but instead, "a witch hunt." Respondent stated that if Ms. Beal did not

like a response, she would accuse respondent of “lying.” Respondent stated that Ms. Beal “raised her voice” and became “very combative.” Respondent described the experience as “horrible” and “extremely stressful.” Respondent stated that she had not eaten since breakfast, she is a diabetic, and her blood glucose levels were dropping. She mentioned this to Ms. Beal. However, the interview went on for “hours and hours and hours.”

52. *David Oshige.* Mr. Oshige, CTA representative, attended the February 17, 2012 meeting with respondent. Mr. Oshige stated that the attorney recorded the interview. He recalled her resetting the tape recorder.¹⁰ Mr. Oshige stated that the interview lasted from 9:30 a.m. to 4:00 p.m., when he had to leave. At the meeting, the attorney showed them the surveillance video of respondent’s classroom on “a particular day.” He stated that video clips were “disjointed” and only “vignettes” were shown. He has never been shown the entire tape from start to finish. Respondent could not remember what was occurring in some of the vignettes.

Mr. Oshige stated that the tone of the interview was “official.” The attorney was focused on what she wanted to show. He stated, “She was abrupt.” The meeting felt like “an interrogation” rather than a review of what had transpired. Mr. Oshige interrupted the attorney at one point to say that her question was “leading.” He recalled that she “almost got out of her chair” and was very demanding that if respondent did not answer the question, she would be held “insubordinate.” In Mr. Oshige’s opinion, it was not an “objective review.” He repeated that it was like being in an interrogation rather than getting clarifying responses about what was on the tape. He stated that the attorney raised her voice at him more than once. He did not feel that her behavior was appropriate for this type of meeting. To Mr. Oshige, “It was like she was the employer” trying to get respondent to say things to justify the investigation.

53. *Diane Beal.* At hearing, Ms. Beal provided her version of what occurred during respondent’s investigatory interview on February 17, 2012. She informed respondent that her job was to be an impartial investigator, to look at all the facts, and to come to a conclusion as to whether there was evidence to support the allegations. She declined respondent’s request for a copy of the investigation report based on confidentiality. The interview was three and one-half to four hours long because respondent was diabetic “so we took breaks.” Respondent’s demeanor was nervous, particularly watching the video, evasive, and “a little argumentative.” Ms. Beal denied raising her voice at any time and describe it as “a conversational tone.” Moving through the video was a “tedious process” and respondent and her representative had to leave around 3:30 p.m.

¹⁰ No tape recording or transcript of the February 17, 2012 interview was submitted in evidence.

54. At hearing, Ms. Beal discussed her interviews with K.H. and B.A. Ms. Beal interviewed K.H. in custody on the morning of February 17, 2012. The interview lasted one hour. Unlike at hearing, K.H.'s attorney was not present for the interview with Ms. Beal, K.H. was not under oath, and the session was not recorded. Ms. Beal showed K.H. the classroom surveillance video. According to Ms. Beal, K.H. made admissions to cheating. He told her that when a student raised their hand for help, Ms. Lear directed him to help them. K.H. would tell them what he thought the answer was. K.H. stated that respondent would look at test questions with the student. Respondent would call K.H. over and ask him what he thought the answer was. He would tell her out loud in front of the students. K.H. also purportedly stated that A.S. helped D.C. with Math questions. K.H. did not recall using a calculator. K.H. used a text book to help one student. When Deputy Bergen entered, they obtained the text book from respondent who gave it to the probation officer, who gave it to one of the students. At hearing, Officer Bergen denied helping students on the exam. (Factual Finding 29.) At hearing, K.H. denied that he or respondent helped students on the exam. (Factual Finding 26.)

55. Ms. Beal interviewed B.A. at La Entrada Continuation School on February 8, 2012. B.A.'s mother was present for part of the interview. B.A. was not under oath and the session was not recorded. Ms. Beal did not have access to the video in order to show it to B.A. B.A. said he received assistance from respondent. He would raise his hand for help with algebra. Respondent would come over, look at the questions, and give him variables for him to complete. If his computation was wrong, she would help him complete it. At hearing, B.A. denied receiving help from respondent. (Factual Finding 24.)

Juvenile Hall Teachers' Testimony

56. *Joseph Kozel.* Mr. Kozel was a teacher at SCOE for 20 years. He retired in June 2012. He taught in various units including the maximum security or S1 unit, rotational school, self-contained units, and community schools. All units are determined by probation based on age, charges, and disposition. Mr. Kozel worked in the maximum security unit for five years. The maximum security unit is for high risk juveniles, classified by charges serious enough that probation does not want to integrate them in with other residents. Mr. Kozel was teacher-in-charge for two years from 2009 to 2011. This is an elected position responsible for administrative matters when the principal is out for the day.

Mr. Kozel has known respondent for 10 years. He has never worked in her classroom but has sat in on her unit. Respondent had students that were previously in Mr. Kozel's class, and he would stop by for 15 minutes to look in on instruction. He has not visited during a CAHSEE administration. Mr. Kozel collaborated with respondent as Site Council. Mr. Kozel chaired Site Council the year after respondent. The position was responsible for budgeting and planning school funding based on

guidelines controlled by the State. He has also interacted with her at staff meetings and on committees.

Mr. Kozel stated that stimulating these students was “challenging.” Respondent set up a “great Art program,” which critically required control of art supplies, in order to motivate students. She was doing “stuff that was outside the box,” and “a lot of good work” to control the class. As such, her students were engaged. In Mr. Kozel’s opinion, respondent was honest and frank. In assessing her integrity, he described hers as “great” and “fantastic.” She maintained good interaction with probation and Mr. Kozel never heard complaints about her ability to monitor her class.

Mr. Kozel has attended approximately 10 pre-CAHSEE staff meetings. He was present at the September 29, 2011 staff meeting. He received the meeting memorandum from Philip Moore and Ms. Tanaka. The subject memorandum was “CAHSEE Testing – October 4th and 5th 2011.” However, Mr. Kozel stated that that they received no training on the CAHSEE and the “check for understanding” test variation was not discussed. They covered picking up materials and recording demographics. As of the October 2011 CAHSEE, he never received training on how to administer the CAHSEE, how desks should be configured, variations that could be provided, or how to “check for understanding.”

Mr. Kozel read the Directions booklet the first “couple of times” he gave the test and scanned it after that. He was aware of the “Test Examiner Responsibilities” listed in the Introduction but stated that “some things did not mesh.” He cited desk arrangements as an example. Desks should be facing the same direction and spaced at least four feet from the center of desks. Mr. Kozel stated that probation told them “how desk are going to be arranged.” Teachers were made aware of special education accommodations but never received any training on what to do with special education students. Mr. Kozel stated that at one time, teachers had help from “instructional aids” or para-professional teacher aids. However, they have had no classroom assistance in the last five years.

Mr. Kozel testified that teachers were not provided with the entire Directions booklet. He did not recall seeing Appendices A, C, or D. Mr. Kozel was familiar with the “scripts,” but stated, “We were never told to read that.” He stated that no administrator had ever come in to observe his administration of the CAHSEE. When he administered the October 2011 CAHSEE, only the five to ten student examinees were present. He did not do anything to prepare them to take the CAHSEE because his philosophy was that the “GED track” was a better option. The population fluctuated such that he never knew who he was going to have.

Teachers sign a “Test Security Affidavit” upon picking up CAHSEE test materials. Several teachers commented that the form had changed in length from one

to two pages.¹¹ Mr. Kozel stated that signing the form was a “pretty standard thing” but that it “was not gone over.” He has administered the ELA and Math CAHSEE which is given two to three times a year. He explained that he had a combination class of special education/special day class students, chronic offenders, ROP students staying three to four months, and maximum security students there for eight months or more pending trial. He stated, these students “do not integrate well” and “need lots of attention.” Hence, the room was “as quiet as you can expect” when dealing with “kids who have a very short attention span.” He stated that students ask questions throughout the examination. Types of questions were: “What does this word mean?” or “What is a fraction?” or “What is a decimal?” Mr. Kozel’s response was “I can’t help you. This is a standardized test. You do the best you can.” He stated that he has never been trained on how to respond to student questions. However, it was his style to be “very abrupt with my students.” He gave them “no margin” to go with. He did not show students how to start problems, read test questions aloud, or ask them to read questions aloud.

57. *Linda Taylor.* Ms. Taylor was a para-professional with SCOE for 17 years. She retired in August 2011. She was assigned to the Juvenile Hall until two years ago when para-professionals were taken out of the classroom. Her classroom duties had involved helping teachers with reading, Math, and other needs. She has known respondent for nine years and worked with her daily for three years in the classroom. She has observed respondent teach in the maximum security unit. In her opinion, respondent is a good teacher who liked the students and they liked her. She stated that respondent listened to the students, tried to help them get their education/diploma, and introduced Art to help them think. Ms. Taylor has interacted with respondent in and out of the classroom. She thinks respondent is honest, fair, a good person, and has worked hard to help students achieve goals and improve in all subjects.

Ms. Taylor has attended CAHSEE staff meetings. She recalled them lasting five to ten minutes. She attended one with Mr. Little and Dan Powazensky. They were told to “bubble it in,” watch students, and lock up and turn in test books. There was no discussion on how desks should be turned. She has observed four teachers administer the CAHSEE including respondent and Mr. Kozel. Students would ask her questions about what words meant, going to the bathroom, and stating that they did not want to or were not going to do the examination. She denied ever engaging them by reading questions or asking them to do so. She never observed respondent give students answers, help students solve problems, or ask students to repeat a

¹¹ In the copy of the July 2011-May 2012 Coordinator’s manual submitted in evidence, there are two different Test Security Agreement forms. A single page form contains seven pledges agreed to by the signer. (Coordinator’s manual, p. 41.) A two-page form contains 10 pledges agreed to by the signer. (Coordinator’s manual, p. 49.)

question. She did not recall students working together or using calculators in respondent's class.

58. *Roy Grenfell.* Mr. Grenfell has been a teacher for SCOE since 1992. In those 20 years he has been assigned to the Sacramento County Boys Ranch, a Community School Independent Study program, and at El Centro for a majority of the time. From 2006 to 2011 Mr. Grenfell co-taught 30 residents with respondent, in a unit with two classrooms. Sometimes the students would switch classroom and other times, he and respondent would physically switch classrooms. He stated that they taught to their strengths and collaborated on lesson planning. Mr. Grenfell focused on Government and Math and respondent on Science and English. Mr. Grenfell has observed respondent teach over the years and would frequent her class when he had a para-educator in his room. In Mr. Grenfell's opinion, "[Respondent] is absolutely one of the best if not the best educator at El Centro. That is why I wanted to co-teach with her."

Mr. Grenfell also collaborated with respondent on preparing their students to take the CAHSEE. This was referred to as "CAHSEE boot camp." They concentrated on Math and English. Respondent would intensively review essays and writing skills. They utilized a book called *Classroom Strategies that Work*. Mr. Grenfell also served on Site Council with respondent for two years. A lot of data collection was involved in creating collaborative plans and respondent was instrumental in getting the plans written correctly. She researched the laws and gained knowledge that "outstripped everyone."

As for the CAHSEE, Mr. Grenfell has been involved in almost every administration. He administered the Math CAHSEE in October 2011. He rejected the notion that they were "trained" for the test. He said staff were told about bubbling demographics, special education codes, and where to pick up materials. He attended a staff meeting on September 29, 2011. Mr. Grenfell reiterated that at this meeting, they covered where booklets were and where they could pick up materials including booklets and pencils. There may have been questions on whether a particular student passed or was to receive an accommodation. Otherwise they were told to "read the manual" and "it needs to be quiet in your rooms."

Regarding room arrangement, Mr. Grenfell stated that no one at SCOE ever told them how student desks should be facing. He stated that student seating is dictated by probation for safety, and he does not go against their directions. Generally, the desks are the same for testing as they are during regular classroom times. He has from 10 to 13 students, correlating to rooms in Unit Two. The Unit Two classroom is much larger than respondent's unit one classroom, at least 50 percent larger. He confirmed that respondent's classroom was one of the smallest. His desks are configured in three rows of four desks in each row. Other than moving a particularly disruptive student, he does not move desks in any other way for the CAHSEE. He tends to walk around. Students may get up during testing to sharpen a

pencil or take a restroom break. They may have gotten up to ask him a question, but normally he goes to them. Mr. Grenfell has used student helpers in his class in the past. Their role was to help him get materials.

A couple of days before the CAHSEE, teachers received from SCOE a list of particular students and their accommodations. On the October 2011 chart, several students have “Check for understanding” next to their names. Mr. Grenfell stated that no one from SCOE ever explained what “check for understanding” meant, “We were told to follow the manual.”

A subsequent SCOE generated Accommodations list was submitted in evidence. It is undated, but lists K.H. as in Grade 12, and “Passed Math and ELA.” At the bottom of the chart is a list of five Standard Accommodations: (1) Extra time within a testing day, if needed (2) Test over more than a day, if needed, (3) Supervised breaks within a section, if needed, (4) Testing individual separately or in small groups, and (5) “Check for understanding of directions at the beginning of testing.” This language does not strictly correlate to the Directions manual, Appendix A. Mr. Grenfell testified that when he received this chart, he commented to another teacher that it was “interesting” because CAHSEE directions say, “if at anytime during the test you do not understand the directions, please raise your hand and I will clarify.” In Mr. Grenfell’s opinion, the booklet makes it “clear” that teachers are allowed to clarify questions at any time during the test. (see Factual Finding 45.)

Mr. Grenfell stated that students often ask questions during the examination, such as “I don’t understand what they mean in this question.” Mr. Grenfell expressed that it was appropriate to help clarify questions. For example, the test booklet might say “reduce” a fraction, but “simplify” is the term the student has heard. He understood this script to mean that clarifying words, such as synonyms, were okay as students may have been taught with a different vocabulary. Mr. Grenfell also was not opposed to asking “What do you think the problem is asking you to do?” in order to make sure the student understood the booklet. For Math accommodations, Mr. Grenfell may have read a problem aloud to a special education student if noted in the IEP. Other than the acting principal glancing into the room,” Mr. Grenfell did not recall anyone from SCOE coming in and observing his test administration. He qualified the principal’s visit as “less than a minute,” “trivial,” and “routine.”

E.S. was a student in Mr. Grenfell’s math class in the spring of 2011. When Mr. Grenfell arrived in the unit, E.S. was on administrative confinement due to erratic episodes. E.S. was heavily medicated, walked with a strange gait, and had a “far away” look in his eyes. Mr. Grenfell stated this was typical of kids he had had over 20 years to keep them from becoming violent. Academically, E.S. seemed to sometimes act like he did not understand what was going on around him. However, Mr. Grenfell stated that “Surprisingly, he could do math.” E.S. performed algebra at a higher level than Mr. Grenfell anticipated. Even during free time, E.S. preferred to do Math and read books “rather intensively.” Mr. Grenfell’s assessment of E.S.’s

Math skills is consistent with E.S.'s Renlearn score of 9.1, the highest in respondent's October 2011 CAHSEE test group.

No one from SCOE interviewed Mr. Grenfell about the allegations or how he administered the CAHSEE. In his opinion, respondent is honest to the point of being brutally frank and she possesses a high degree of integrity. She has a reputation for speaking up at staff meetings on laws, practices, and what is best for students. She would not hesitate to speak up when something was not correct. He believes that respondent occasionally "ruffled a few feathers" of administrators. He was grateful she had the courage to speak up to administrators.

59. *Loretta Murray.* Ms. Murray has been employed by SCOE for 21 years. In that time she has served as a classroom teacher, staff development coordinator, work force coordinator, and Arts lead. She taught at El Centro for three of her nine years as a classroom teacher. Ms. Murray has known respondent for seven to eight years. From 2008 through 2011, she worked with respondent on an Art Cohort team, a professional development team that developed a plan to integrate Arts into community school classrooms. Ms. Murray also worked with respondent on professional learning development for court and community schools and ROP teachers. Their task was to plan two full-day professional development events. The product was a 100-page document covering staff development, attendance, and recruitment. They included an excerpt from respondent's master's thesis on "arts infused" learning in a maximum security environment to see the effect on reading. They found arts-infused classrooms to be twice as successful in gains, as non-arts-infused classes. Ms. Murray worked with respondent on a "Bricks and Clicks" learning lab and respondent was largely responsible for the creation of a "Hybrid Community School Model" using integrated arts with younger students. Finally, Ms. Murray worked with respondent on the CAHSEE Writing Boot Camp, getting students ready for the essay portion of the CAHSEE.

Ms. Murray's opinion of respondent is that she has "remarkable integrity" and was a "good professional colleague." She described respondent as "very honest," never having any reason to question that. Ms. Murray was aware of respondent's reputation for speaking up in staff meetings. Respondent would ask questions if she felt a plan was not fully thought out. Ms. Murray confirmed that El Centro is in its fourth or fifth year of Program Improvement Status. She explained that it means their students are not meeting No Child Left Behind (NCLB) requirements or making adequate progress on standardized tests.

Mr. Murray administered the CAHSEE at least twice during the 2011/2012 school year. Training consisted of how to fill out the demographic sheet with proper codes for special education, reduced lunch, name, and birth date. She never received training on how to respond to student questions during the examination. She referred to a test booklet that says, "If you have any questions raise your hand and I will clarify for you." As for the SCOE produced Accommodations/Modifications chart,

Ms. Murray noted that most of their Juvenile Hall CAHSEE groups are already small and she is not sure how to “check for understanding.” They never really discussed these. She stated that though it varies day to day, approximately 40 percent of the students were special education. Finally, her classroom in Unit Five was twice as large as respondent’s classroom. Ms. Murray’s class has tables, not desks. She has 15 to 18 students, with approximately five that take the CAHSEE at a given time. She placed one student at each table.

60. *Gerald Brooks.* Gerald Brooks testified at a deposition prior to hearing on June 22, 2012. He has taught at El Centro for approximately 18 years in all living units. He previously served SCOE as an administrator/principal at El Centro for two and one-half years. He stated that all classroom units are well-watched and well-supervised by probation. Mr. Brooks has known respondent as a colleague for four to six years, and served with her on Site Council, and in other capacities. He has not observed periods of her teaching but has entered her classroom and found students to be “well engaged.” He described respondent as vocal at staff meetings. She has questioned SCOE policies and procedures, and requested to see the budget as a member of Site Council. Mr. Brooks stated that every time respondent would speak, it was always in the interest of students, what could make the school a better place, and how students could be better served.

Mr. Brooks has administered the CAHSEE and other standardized tests to students. He was present at the September 29, 2011 staff meeting at which CAHSEE was discussed. They went over an outline in a memoranda prepared by Ms. Tanaka. He stated “No training was provided ... we’ve done it many times. It was believed and commonly expected that we knew how to do this already. ...Everyone in the room were all veteran teachers. They had done this before.” He described the meeting as “more of a clarification.” Normally, someone from special education would be present at the pre-CAHSEE staff meetings to answer questions.

His protocol was to read directions verbatim as directed. He made it clear to students that he could not help them and they must rely on their own abilities. For special education students, if documented in their IEP or on the Accommodations list, Mr. Brooks would “read a question for them.” He explained that if a word in a question was “outside of their realm of vocabulary,” he would explain to them “this is what this word means ...this is what they are asking.” He denied ever helping students solve problems or allowing them to help each other. He has not used the whiteboard and would not unless it was in the administrator’s instructions.

Mr. Brooks has worked with respondent, seen her interact with colleagues, and knows what her “general belief systems are.” His opinion as to her honesty is, “I think she has the highest level of honesty and integrity. I completely respect her. I would trust her with anything.” Regarding allegations that respondent helped students cheat on the CAHSEE, Mr. Brooks stated: “That’s beyond any realm of what I would believe she would ever do, and it would defy any reason why she’d even try

something like that. I just couldn't even begin to fathom that she would do something like that." He has never seen her act in any immoral or dishonest way.

Respondent's Testimony Regarding Surveillance Video

61. At hearing, respondent was asked numerous questions about portions of the surveillance video. On at least three occasions, probation officers entered the classroom during test administration. Officer Thompson at 11:40 a.m., Officer Bergen at 1:02 p.m. and 2:28 p.m., and Officer Sasser at 1:16 p.m. Officer Bergen was assigned to respondent's unit for approximately nine months. Respondent drew a diagram of her room including the assigned desks for her students D.C., A.S., E.S., B.A., and A.K. Her two student helpers, K.H. and A.C., were stationed at a table to the right of the teacher desk in chairs facing the white board. In the wall behind and to the far right of the teacher desk is the probation viewing window. From a room located behind this window, probation was afforded a direct view of the classroom.

62. Respondent admitted that she was talking to students at various times as seen on video. She denied giving answers or helping students solve problems at any time. Respondent admitted that students were walking around at various times during test administration. She attempted to recollect what was occurring at various points in the video. Most of her testimony centered on video of the class after the lunch recess which occurred from approximately 11:00 a.m. to 1 p.m. The classroom was dark during the lunch recess. Highlights of respondent's recall of events seen on the video are noted here.

63. Respondent left the room at 11:41 a.m. for lunch. She went to the office to make copies and handle other administrative matters. She returned to the classroom at 1:02 p.m., just before her students began to enter. She is seen talking to students during the test administration.

64. *Student E.S.* At approximately 1:09 p.m., respondent asked E.S. to move his desk back to his assigned spot. She stated that he liked to move his desk around but that probation did not want him in the blind spot where he had been. According to respondent, E.S. is diagnosed with schizophrenia and had had violent outbursts in the past.

At approximately 1:15 p.m., respondent is seen talking to E.S. with K.H. standing nearby. She stated that E.S. was having a "schiz episode," hearing voices and she was trying to calm him down. She recalled K.H., one of her student helpers saying, "It's okay," and "calm down." Objective signs of his episodes alternated from being focused to being in an agitated stated, rocking in his seat, arms outstretched, talking about hearing voices. She recalled an incident when he picked up a keyboard and started hitting the monitor when a different teacher, Ms. Frihoe was there. He was removed from the room by probation. Though respondent has filed two incident reports on E.S., she has never had him removed. She would, however, allow him to

wander from the room into the contained day space. She stated that students cannot get to any other classrooms from the Unit One day space. Because of his mental illness, she did not like to confront E.S. She believed he was being held on sexual assault charges on an educator at another school. Respondent denied at any time giving E.S. answers or telling him how to solve problems. She denied that K.H. at any time gave E.S. answers or told E.S. how to solve problems.

At approximately 1:37 p.m., E.S. is rocking in his seat and lifts his sweat shirt up pulling it over his face. Two other students also lift their shirts over their face. Respondent stated that this move indicates that someone has “passed gas” or a fight is about to occur. She sprayed air freshener at 1:39 p.m.

At approximately 1:45 p.m., respondent is seen interacting with E.S. She denied giving answers or assistance in how to solve problems. At 2:28 p.m., E.S. is seen rocking. Respondent stated that he was starting to get into an “agitated state.”

65. *Student A.S.* At approximately 1:11 p.m., respondent is seen on the video talking to A.S. with K.H. nearby. She reflected that it appeared she was looking at A.S.’s test booklet. Respondent denied telling him how to answer questions or solve problems. She denied that K.H. gave A.S. answers or told A.S. how to solve problems. At approximately 1:50 p.m. respondent is seen talking to A.S. and at 1:52 p.m. there is some “horse play” between A.S. and K.H. Respondent denied that any cheating was occurring. A.S. gave respondent his test booklet at approximately 1:59 p.m. Respondent stated that she always checks the front of the booklets and back questionnaires to ensure they are fully completed. She vaguely recalled telling A.S. to review his answers again because he may have skipped a question. At 2:01 p.m., A.S. was looking for a pencil that K.H. had hidden while walking around. K.H. then took the pencil from his pant cuff and tossed it to A.S.

At 2:25 p.m., A.S. turned his test booklet in to respondent. At 2:27 p.m., A.S. was looking at books on respondent’s desk. These may have been AR books, books on logic, National Geographic magazines, or origami instructions. Respondent was certain that there were no math materials on her desk from which answers could be gleaned. At 2:28 p.m. A.S. is seen holding what respondent was sure were origami instructions. At 2:32 p.m., A.S. returned to his desk with a logic puzzle. Respondent had placed A.S.’s test booklet in a locked closet.

66. *Student B.A.* At various times including 1:25 p.m., 1:36 p.m., and 2:04 p.m., respondent is seen talking to B.A. and picking up his test booklet. She stated that she may have been “clarifying instructions, checking his understanding.” She understood this was allowed by the CASHEE script. (Factual Finding 45.)

At 2:33 p.m., respondent was talking to B.A. She recalled that Mr. Nichols used to come in and work with B.A. often. As such, she assumed that B.A. was a special education student. B.A. processed information better in color writing so

respondent would use colored markers on the white board. She would say, “You tell me the numbers in the problem and I will write them on the board for you.” After writing them on the board she would say, “Here are your numbers, figure out what you should do with them.” B.A. approached the teacher’s desk to turn in his test booklet at approximately 2:42 p.m.

67. *Student A.K.* At approximately 2:11 p.m., A.K. dropped a note and respondent picked it up. The contents of the note are not in evidence. Respondent also assumed that A.K. was a special education student. At one time, the roster indicated that A.K. was special education and then he was “decertified” off the list.

68. *Student D.C.* At approximately 2:13 p.m., D.C. gave his test booklet and pencil to respondent.

69. *Student Helper K.H.* At approximately 1:31 p.m., K.H. took a book off of respondent’s desk. Respondent could not tell what type of book it was but she stated she did not have any math texts on her desk. She suggested the book may have been an “AR” book or the novel, *To Kill A Mockingbird*, which the class was going to read next. All math texts were on a rolling bookshelf in a corner and she did not see any student remove a math text from that shelf. Respondent did not have any CAHSEE Math answer books on her desk. Respondent never heard either of her student helpers, K.H. or A.C., give examinees answers or help with solving problems.

At approximately 1:48 p.m., K.H. was standing with a folder in his hands. Respondent stated that he was holding copies of origami instructions which she provides to students to take back to their rooms. At 1:54 p.m., K.H. picked up what appeared to be a calculator from the teacher’s desk. Respondent requires students to ask for permission to use it. She stated that she had given her student helper, A.C. permission to use it to calculate percentages. At 1:57 p.m., K.H. was bringing what looked like a calculator back to the teacher’s assistant table. Respondent did not see K.H. bring a calculator to A.S. or assist A.S. with problems.

At approximately 2:01 p.m., K.H. is walking around interacting with various students. At some point he took A.S.’s pencil, apparently as a game. Respondent did not hear K.H. give students answers or help them to solve problems.

At approximately 2:13 p.m., K.H. participated in “horse play” and then started A.K.’s computer. Respondent stated that she allowed them to use the computer when they were done with the test. Students use each others’ computers to challenge them on interactive games because the monitors are not linked.

70. *Student Helper A.C.* At approximately 2:20 p.m., A.C. walked to the desk where E.S. was sitting. Respondent stated that when E.S. starts rocking back and forth and motioning with his arms, he is getting into an agitated state. She surmised

that A.C. may have gone over to calm E.S. down. She did not hear A.C. give answers or help to E.S. on the test.

71. *Probation Officer Bergen.* At approximately 2:29 p.m., Officer Bergen and A.S. were looking at a National Geographic magazine or other material at respondent's desk. Respondent was certain it was not CAHSEE material. A.S. had turned in his test booklet before Officer Bergen entered the room.

72. *Probation Officer Sasser.* At approximately 1:16 p.m., Officer Sasser walked into the class to speak to D.C. about a sick call. He had previously signed up to see the nurse. She told him the nurse would see him after the examination.

Respondent's Contentions

73. Respondent has a Bachelor's degree in History and in 2010 earned her Master's degree in Education, Curriculum, and Instruction with an emphasis in Art Education. She holds a single subject credential in History and a CLAD for English Language Learners.¹² Her Master's thesis was on the impact of Art instruction on incarcerated students. With the permission of the Site Administrator and Mr. Taylor, she received the "renaissance learning data" for three groups of students in the maximum security housing unit. Two groups received art instruction and two did not. Student test scores were compiled. Findings were that students who received Art instruction saw their scores double compared to those who did not receive Art instruction. Hence, twice the achievement was seen over the "non-Art" control group.

74. Respondent began working for SCOE in the fall of 1998 as a substitute teacher. She was offered a full-time position in December 1998 at a SCOE Community School where she remained through 2001. She was then assigned to the Sandra Larson Center, a placement center for Juvenile Hall students sentenced to 90 days. This site closed and respondent returned from maternity leave to El Centro in July 2003. She has been in the maximum security unit since 2007. She has taught ages six to 18 at the Juvenile Hall. She is currently on unpaid leave from this assignment.

75. Respondent has been involved in extra duty work including with School Site Council, Professional Development Council, and creation of a Hybrid Community School model. She developed a CAHSEE writing boot camp using books provided by SCOE (CAHSEE Revolution) and CAHSEE Power Books. September 2011 was the first time respondent introduced CAHSEE Math prep to her students.

¹² Cross-Cultural Language and Academic Development (CLAD).

76. Respondent was moved to Unit One at the Juvenile Hall in the spring of 2011. Her room was 15 by 20 feet, one of the smallest classrooms. She tried two different desk configurations. She wanted all students to see the white board and television. Someone from probation came in and asked her to change the seating for security reasons. She rearranged the desks and they remained in the configuration as seen on the surveillance video. The maximum security unit houses juveniles who have committed serious crimes and may have gang affiliations. Every day, respondent wears a waist alarm issued by probation. There is a riot and fight protocol where students must get on the floor or be pepper sprayed. Fights have erupted in respondent's room approximately 50 times. She has been present for one riot. She stated that it takes time to build rapport with her students. She applied behavioral management daily. She has had students threaten to kill her, react, and destroy equipment when unprovoked. She knows of three student grievances in the last nine years. Students have complimented her as well for effort at CAHSEE prep, art work, and even provision of a box of crayons.

77. All of the students in respondent's unit present with behavioral issues. Many have been emotionally, physically, and sexually abused. Some are involved in the foster care system, lack trust for adults, have been diagnosed with conduct and oppositional disorders, may be detoxing off drugs, and have mental health needs that are not being met due to lack of insurance and treatment. Respondent received a student roster each morning of residents enrolled in her class. She asked Mr. Nichols to run a "special education query" on A.K. and E.S. A.K. was initially listed as special education but he was "decertified" meaning his guardians waived the right to special education services. E.S. was diagnosed as schizophrenic but was not identified as special education. Respondent suggested that a "study team" be assembled to address his educational needs. She testified that Mr. Borgaard thought it was a good idea, but the study team never happened.

78. Respondent's interaction with SCOE administration has been positive and negative over the years. In 2001 she was terminated by Ms. Crush but CTA filed an unfair labor practice law suit on respondent's behalf. The matter ultimately settled with her reinstatement and back pay. In 2009, respondent was nominated as SCOE teacher of the year. In 2011, Mr. Taylor wrote a very positive letter of recommendation for respondent in the event she was laid off due to budget issues. In his letter dated July 7, 2011, Mr. Taylor stated that respondent possessed leadership skills leading to the highest quality of educational and supportive services for students. He expressed that she was professional, admired, and respected by colleagues and administration. He cited her classroom instruction and collaborative efforts. At hearing, Mr. Taylor stated that he had observed respondent teach, felt she did a good job, was energetic, and took on difficult projects. Until this report of wrongdoing, he felt she had been a good role model to her students.

79. Respondent stated that her relationship with probation and teachers was excellent with the exception of one, Lisa Mungaven. Ms. Mungaven is a special

education technician. According to respondent, Ms. Mungaven had created a hostile work environment since January 2011, which continued through February 2012. Respondent cited instances of Ms. Mungaven interfering with probation directives for a student who was cleared to visit the nurse and “screaming and yelling” at respondent in the presence of staff and students. Respondent filed formal complaints against Ms. Mungaven in January 2011 and March 2012. SCOE investigated the March 2012 complaint and notified respondent by letter that her account could not be corroborated.

80. Respondent has administered the CAHSEE approximately 27 times since 2004. This includes 15 times within the maximum security unit of the Juvenile Hall. The first time she administered it, she saw her students sit and “bubble in nonsense.” So she started a CAHSEE boot camp, one month before the test date. She employed educational BINGO games with parts of speech, and made the prep progressively more challenging as the test date approached. Mr. Grenfell did the Math preparation until September 2011, when respondent conducted it herself.

81. Respondent stated that SCOE only provided them with photocopies of a portion of the Directions booklet. She has never been provided with an entire Directions booklet which is twice as thick as the pages she received. Respondent signed Test Security Affidavits before each administration of the CAHSEE. She arranged her room according to probation considerations for safety. At the staff meeting prior to the October 2011 CAHSEE, a September 29, 2011 memorandum with attached Scantron sheets was distributed. According to respondent, the information was summarized and most of the time was spent on bubbling in the demographics fields. Mr. Powazinski, a teacher on special assignment to El Centro, covered CAHSEE “logistics” and instructed them to “please read” the booklet. Respondent stated she has never received training on administering the CAHSEE.

82. During the CAHSEE, respondent sought a calm, consistent environment. She had students sit in their regularly assigned seats. She wrote instructions on the board on how to fill out their demographics. Then she would follow the script and begin the test. Respondent has read the examiner scripts many times and basically memorized them. She read some pages verbatim but paraphrased others. She would constantly tell her students to sit quietly and focus on their work.

83. It was respondent’s understanding that the CAHSEE script said, “At any time if you have questions raise your hand and I will try to clarify instructions.” She explained that when a student raised their hand and requested help, saying, “I need help or don’t understand,” per CAHSEE script, she would take the booklet and read the question to herself. Then she would ask the student to read the question aloud to her. She might say to the student, “I can’t give you the answer but you know, what are the numbers that you have to work with, and what do you think they are trying to get you to solve for, and how can you use those numbers to solve the problem.” Respondent was adamant that she did not give answers or instruction on

how to solve problems on the CAHSEE to B.A. or any other student. She denied writing anything on student test booklets, other than bubbling demographics as directed.

84. Respondent heard B.A. testify that respondent “helped students start problems.” She stated that she “did not.” She reiterated that if a student stated they did not understand, she would instruct them to re-read the question, look at what they were being asked, and try to solve the problem. She stated that she believed this was allowed by CAHSEE and no one had ever told her otherwise.

85. Respondent stated that after the CAHSEE Math Session One, students turned their tests in to her and went on a lunch break. Their break on October 5, 2011, was from 11:00 a.m. to 1:00 p.m. Respondent put the tests back on their desks after lunch. She has watched the entire surveillance video. She did not see herself helping D.C. during the October 2011 CAHSEE. She understood that students were prohibited from discussing answers during the test. She feels that her students were working independently during the test. However, she did not realize that her student helpers were interacting so much. She disagreed with the notion that D.C. and A.S. were interacting a lot. In the future, she would not use student helpers during the CAHSEE. Also, she would not “check for understanding” in the same way. Respondent would like to keep working at the Juvenile Hall. She emphasized her education and passion for working with Art to help students learn in unexplored areas.

Cause for Dismissal

86. The burden is on SCOE to prove the truth of the allegations by a preponderance of evidence. The Accusation filed by CAHSEE specifically alleges that respondent: 1) assisted students taking the Math CAHSEE, 2) assisted students in cheating on the Math CAHSEE, 3) allowed students to assist others students on the Math CAHSEE, and 4) allowed student helpers to assist students taking the Math CAHSEE.

The evidence supports a finding that respondent and K.H. assisted students on the CAHSEE by clarifying questions of non-special education students. Also, respondent allowed K.H. to assume the role of a proctor during the exam. Also, students interacted with each other during the exam. The evidence does not support a finding that respondent facilitated cheating on the exam by providing answers or help solving problems, or instructing or permitting K.H. or A.C. to provide answers and solve problems.

87. SCOE asserts that respondent’s conduct amounts to dishonesty, immoral conduct, evident unfitness for service, and persistent violation of or refusal to obey the school laws and/or reasonable regulations of SCOE. (Ed. Code, § 44932, subds. (a) (1), (3), (5), & (7).) SCOE relied on statements of three students,

surveillance video of respondent's classroom, and standardized test score analyses to support grounds for dismissal. Each will be discussed below.

88. *Report of E.S.* It is alleged that student E.S. reported to a SCOE teacher, Ms. Millings, that "[respondent] had the students sit in a group, and she provided the students answers to questions from the exam." E.S. later reported to SCOE special education technician, Ms. Mungaven, that "after a break in the middle of the test, they went back into the classroom. [Respondent] had erased some of their answers and told them they would do the rest of the test as a group." (Factual Findings 6 & 7.) The Math CAHSEE is administered in two sessions with a break in between. Respondent's break occurred over the lunch recess. The DVD shows a probation officer in the room with respondent at 11:40 a.m. Respondent left the room for lunch at 11:41. It appears test books were on the student desks. The lights were turned off. At 1:02 probation officer Bergen walked into the classroom. Respondent returned at approximately 1:03 p.m. and students returned within minutes. At no time during the afternoon session are students seen sitting in a group taking direction from respondent with test booklets in hand.

It is noted that E.S. is diagnosed with a mental illness identified as schizophrenia, heard voices, was being treated by the resident psychiatrist, and was taking psychotropic drugs at the time of the October 2011 CAHSEE. This information was supported by the direct testimony of respondent and Officer Bergen, was not controverted by SCOE, and is found to be true. E.S. did not testify at hearing and was not interviewed by SCOE. The veracity of E.S.'s report is undermined by his mental illness, surveillance video that fails to show students sitting in a group receiving information from respondent, and the testimony of Officer Bergen that he did not see or hear respondent give any student inappropriate assistance. Also, no other student or witness corroborated E.S.'s report of sitting in a group and receiving answers from respondent. It is conceivable that E.S. was referring to CAHSEE Pre-test sessions administered by respondent. However, the evidence does not support a finding that events reported by E.S. occurred during the Math CAHSEE on October 5, 2011.

89. *Surveillance Video.* The surveillance video lacked sound and the clarity of images was often poor. In some instances, witnesses shown the tape had difficulty recognizing and identifying students appearing in the video. The notes formulated by Mr. Taylor contained errors in identifying students. The video does show student helpers walking around and interacting with respondent and student examinees, students walking around (before and after test submission), and respondent interacting with probation, her students helpers, and her students. The video does not establish that respondent, student helpers, students, or probation officers articulated answers or supplied material and information towards solving problems.

The interaction in the classroom during the test is concerning for the *opportunity* it provided for inappropriate conduct. Several teachers testified that students in this setting have short attention spans and a number of behavioral and emotional issues affecting their ability to “sit quietly.” At least two other teachers, Mr. Grenfell and Mr. Brooks testified that sometimes their students do get up to ask questions, sharpen pencils, and request to go to the bathroom. Officer Bergen was the probation officer assigned to supervise respondent’s class on October 5, 2011. He stated that he saw nothing to indicated cheating during the examination. It is noted that he was not interviewed by SCOE.

90. *Student Statements/Testimony.* K.H. made unsworn statements to the SCOE investigator that were against his interest and inconsistent with his limited testimony at hearing. He gave unsworn statements to respondent’s counsel that were consistent with his limited testimony at hearing. According to Ms. Beal, K.H. stated that he, respondent, and Officer Bergen gave a textbook to students during the test. This is contradicted by Officer Bergen who is deemed more credible. Ms. Honey testified that during their interview, K.H. denied that cheating had occurred. Under oath, K.H. refused to answer most questions on advice of counsel. He stated that he helped clarify questions but not at respondent’s direction or with her knowledge. K.H.’s statements lack credibility and are unreliable. (Evid. Code, § 780, subd. (h).)

B.A. gave an unsworn statement to the SCOE investigator that was against his interest but inconsistent with his hearing testimony in which he denied receiving assistance from respondent or student helpers on test answers. He also denied telling the investigator that respondent had helped him with test answers. B.A.’s statements lack credibility and are unreliable. (Evid. Code, § 780, subd. (h).)

A.C. was the other student helper in respondent’s class. He testified at hearing and denied assisting or being directed by respondent to assist students with answers. He was not previously interviewed by SCOE or respondent’s counsel. He was candid at hearing but generally lacked recall for the particular day in question. Hence, A.C.’s statements are unreliable. (Evid. Code, § 780, subd. (c).)

91. *Test Score Analyses.* Looking solely at CAHSEE Scaled Scores for the five students taking the October 2011 test, elevated scores are noted. Also, two students had the same final scores. However, it is noted that raw scores of varying point spreads can yield the same CAHSEE scaled score. So too, A.S. and E.S. achieved the same scores on their July and October 2011 MAP of 219 and 233, respectively. Also, Mr. Tuss’s forensic analysis indicated that both respondent and Mr. Grenfell both saw significant increases in student scores when comparing the May 2011 and earlier administrations of the CAHSEE. In fact, Mr. Grenfell’s students showed greater improvement than respondents. One reasonable explanation might be that both respondent and Mr. Grenfell implemented a “boot camp” to prepare students for the CAHSEE. Also, respondent incorporated Art as a means of increasing student achievement. Ms. Murray, a 21-year veteran of SCOE, testified

that Art-infused learning in a maximum security environment had a profound effect on scores yielding “twice the successful” gains as non-arts infused classes. These examples of good teaching cannot be overlooked in assessing whether gains were legitimate or not. (Factual Findings 17, 56, 58, 72.)

92. *CAHSEE Protocols and Training.* Mr. Tuss explained the multi-level training approach used by SCOE in implementing the CAHSEE. A District Coordinator, Jackie Adams, is trained by the State. It is Ms. Adams job to train each Test Site Coordinator, who for El Centro were Donald Little and Cindy Tanaka. Test Site Coordinators are responsible to train Test Site Examiners, largely teachers. No trainer in the link testified at hearing. CAHSEE training was to include how to assist students with directions and test administration. A Test Site Coordinator was to ensure that seating arrangements were appropriate in advance of the test, monitor all examination procedures at the site, and visit classrooms during the administration of the test. (Factual Findings 39 & 42.) Numerous teachers and a para-educator testified that this was not done.

The Directions booklet stated in the introduction that scripts must be read verbatim and examiners may clarify directions, but not test items. (Factual Finding 43.) Under “Test Variations,” the Directions booklet states that all students may have directions, but not test items, simplified or clarified. (Factual Finding 44.) Also, Appendix A, of the Directions booklet states that students may have additional “test variations” if regularly used in the classroom, including “colored overlay, mask, or other means to maintain visual attention.” (Factual Finding 46.) Finally, the script in the Directions booklet stated that teachers were to read to students the following: “If you do not understand what to do on any part of the examination, please raise your hand, and I will clarify the directions for you.” (Factual Finding 45.)

The testimony of several teachers highlighted confusion as to what was and was not permitted by way of assisting examinees. Several teachers including respondent, Ms. Murray, Mr. Grenfell, and Mr. Brooks testified that they have clarified, translated, used synonyms, and simplified test questions. Mr. Brooks did this for special education students with IEPs. Mr. Grenfell and respondent “clarified questions” regularly and were adamant the manual permitted any student to raise their hand for clarification. The certainty by which these teachers understood their role in clarifying questions does not support a finding of dishonesty, but confusion about CAHSEE protocol.

The training was insufficient to dispel these methods (correct or incorrect) that veteran teachers considered within their discretion. Teachers did not receive the entire Directions manual as was directed in the Coordinator’s manual. (Factual Finding 40.) Further, if reading the manual were sufficient, tiered training would not be required. There was no testimony on how long the District Coordinator’s training from the State lasted, but clearly, by the time it was shared two tiers down the chain, much was missed. As a final check, a CAHSEE administrator was responsible for

“visiting each testing room during the [test] administration.” Mr. Grenfell, Mr. Kozel, and respondent testified that no SCOE administrator ever came out to observe their administration of the CAHSEE. Mr. Grenfell recalled an acting principal briefly glancing in the door in what he described as a “trivial” and “routine” manner. Further, these teachers did not receive any direction from the Site Coordinator on how to arrange desks in a Juvenile Hall classroom constrained by room size, security mandates, and unique student needs.

The evidence supports a finding that respondent was attempting to implement the test using her best judgment and discretion within the confines of a maximum security unit with little to no advisory assistance from the Site Coordinator. The CAHSEE protocol was not followed by respondent or SCOE. This does not, however, support a finding of malfeasance by either party.

93. For the reasons stated above, the totality of circumstances do not support respondent’s dismissal. Any other assertions put forth by the parties at the hearing and not addressed above are found to be without merit and are rejected.

LEGAL CONCLUSIONS

1. A school district which seeks to dismiss a permanent certificated employee from its employment bears the burden of proof and the standard of proof is by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035; *Bevli v. Brisco* (1989) 211 Cal.App.3d 986.)

2. Education Code Section 44932, subdivision (a), provides in pertinent part that no permanent employee shall be dismissed by a school district except for one or more of the following causes, including for (1) immoral or unprofessional conduct, (3) dishonest, (5) evident unfitness for service, and/or, (7) persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him or her.

3. Dishonesty connotes “a disposition to deceive.” (*Midway School Dist. v. Griffeath* (1946) 29 Cal.2d 13, 18.) It “necessarily includes the element of bad faith” and means “fraud, deception, betrayal, faithlessness.” (*Small v. Smith* (1971) 16 Cal.App.3d 450, 456.) Dishonesty denotes an “absence of integrity, a disposition to cheat, deceive, or defraud; deceive and betray.” (*Ibid.*)

4. The term “immoral” has been defined generally as “that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters, but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of

respectable members of the community, and as an inconsiderate attitude toward good order and public welfare.” (*Palo Verde Unified School Dist. v. Hensey* (1970) 9 Cal.App.3d 967, 972.)

5. Unfit means “unsuitable, incompetent and not adapted for a particular use or service.” (*Ibid.*) “Evident unfitness for service” properly means “clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies...[The phrase] connotes a fixed character trait, presumably not remediable merely on receipt of notice that one’s conduct fails to meet the expectations of the employing school district.” (*Woodland Joint Unified school District v. Commission of Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

6. Teacher dismissal for failure to obey rules must be premised on “persistent,” willful violation or refusal.” (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) Case law requires “*a showing of intentional and continual refusal to cooperate.*” (Italics in original; *Ibid.*) The word “persistent” is defined as “refusing to relent; continuing, especially in the face of opposition...stubborn, persevering ... constantly repeated.” (*Ibid.*)

7. In *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 235, the California 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 *Morrison* court recommended eight criteria be considered relevant in determining whether a teacher’s conduct indicates that he or she is not fit to teach:

- a. The likelihood that the conduct may have adversely affected students or fellow teachers,
- b. The degree of such adversity anticipated,
- c. The proximity or remoteness in time of the conduct,
- d. The type of teaching certificate held by the party involved,
- e. The extenuating or aggravating circumstances, if any, surrounding the conduct,
- f. The praiseworthiness or blameworthiness of the motives resulting in the conduct,
- g. The likelihood of the recurrence of the questioned conduct, and
- h. The extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

(*Id.* at pp. 229-230.)

8. As set forth in the Factual Findings and Legal Conclusions as a whole, the evidence does not demonstrate by a preponderance of the evidence that respondent's conduct constituted "dishonesty" within the meaning of Education Code section 44932, subdivision (a)(3).

9. As set forth in the Factual Findings and Legal Conclusions as a whole, the evidence does not demonstrate by a preponderance of the evidence that respondent engaged in "immoral conduct" within the meaning of Education Code section 44932, subdivision (a)(1).

10. As set forth in the Factual Findings and Legal Conclusions as a whole, the evidence does not demonstrate by a preponderance of the evidence that respondent's conduct constituted "evident unfitness for service" within the meaning of Education Code section 44932, subdivision (a)(5).

11. As set forth in the Factual Findings and Legal Conclusions as a whole, the evidence does not demonstrate that respondent's conduct constituted "persistent violation of or refusal to obey the school laws of the state or reasonable regulations" of SCOE within the meaning of section 44932, subdivision (a)(7).

12. There is insufficient evidence to sustain the allegations. Respondent stated that she would not in the future use student helpers during a test and would not "check for understanding" in the same way. Respondent desires to return to SCOE service. The Commission has considered the *Morrison* factors in light of the record as a whole. Respondent is respected by her peers and students. Fellow teachers, probation staff, and students believe she is honest, fair, a good role model, and demonstrated the highest integrity. Prior to the filing of these allegations, administration's regard for her service was high. No adversity is anticipated in light of SCOE's zero tolerance policy against retaliation. Respondent's credential and Master's degree in Art Education make her well-suited to continue her art-infused instruction within SCOE schools.

Mitigating circumstances include lack of thorough and comprehensive training for administration of the CAHSEE in the Juvenile Hall setting, including an assessment of desk arrangements, a common understanding of discretion examiners have in clarifying or simplifying questions, and clear instruction on how accommodations and modifications should be implemented. The teachers uniformly described training as abbreviated in terms of both verbal and written instruction. The issue appears to be systemic in nature. With adequate training and visitation by the CAHSEE Coordinator both before and during the administration of the examination, the recurrence of the questioned conduct is not likely to be repeated. There is a likelihood of a chilling effect on remaining teachers who continue to have an uncertain understanding of their discretion in arranging their classrooms to satisfy probation and CAHSEE protocols, and administering the CAHSEE at the Juvenile Hall.

13. For the reasons stated above, SCOE did not establish that in administering the CAHSEE on October 5, 2011, respondent engaged in dishonesty, is evidently unfit to teach, demonstrated immoral conduct, or engaged in persistent violation of or refusal to obey school laws or reasonable regulations. The misconduct alleged is either unsupported by the evidence and/or not serious enough to support dismissal. (Factual Findings 85 through 92.) (*Fontana Unified School Dist. v. Burman* (1988) 45 Cal.3d 208, 219.)

14. Consequently, SCOE did not sustain its burden of proving, by a preponderance of the evidence, respondent's unfitness to teach, for which it suspended her without pay. Respondent shall not be dismissed as a Junior/High school teacher from SCOE, pursuant to Education Code sections 44932, subdivisions (a)(1), (3), (5), and (7) and 44944, subdivision (c)(1)(C).

ORDER

Tereze Lear, respondent, is not dismissed as a permanent certificated employee of the Sacramento County Office of Education.

DATED: _____

MARK YOST, Member
Commission on Professional Competence

DATED: _____

GREGORY P. LUDWA, Member
Commission on Professional Competence

DATED: _____

DIAN M. VORTERS, Chair
Commission on Professional Competence