

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

GLORIA HSI (EN 272969) a permanent
certificated employee,

Respondent.

OAH No. 2011060146

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California, on October 8-18, 2012, and May 13-21, 2013. The Commission consists of Arthur Eddy, Timothy D. Moore, and Administrative Law Judge Erlinda G. Shrenger, Office of Administrative Hearings, State of California.

Meredith G. Karasch, Attorney at Law, Liebert Cassidy Whitmore, represented Los Angeles Unified School District (District).

Rosemary Ward, Attorney at Law, represented Gloria Hsi (Respondent), who was present each day of the hearing. Richard Schwab, Attorney at Law, associated in as co-counsel for Respondent and appeared on some of the hearing days.

Oral and documentary evidence was received, and argument was heard.¹ The case was deemed submitted for decision at the conclusion of the hearing on May 21, 2013. The Commission thereafter deliberated in executive session.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a certificated employee of the District. On or about June 2, 2011, the District filed and served on Respondent an Accusation and Statement of Charges,

¹ The ALJ took custody of medical records Respondent produced during the hearing in May 2013, pursuant to the District's Notice to Appear and Produce Documents under Code of Civil Procedure section 1987. Those records were not offered or marked during the hearing. The ALJ returned the medical records to Respondent's counsel at the conclusion of the hearing on May 21, 2013.

which contained charges 1 through 4 relating to an incident on September 17, 2010 involving student Cynthia F. Respondent had been given a Notice of Unsatisfactory Acts and a Notice of Suspension on January 18, 2011 for the incident with Cynthia F. Respondent filed a Notice of Defense which contained a request for a hearing to contest the charges in the Accusation.

2. On or about August 10, 2012, the District filed and served on Respondent an Amended Accusation and Statement of Charges, which contained the four charges of the original Accusation and additional charges 5 through 22. Respondent filed a Notice of Defense which contained a request for a hearing to contest the charges in the Amended Accusation. At the hearing in May, the District amended the Amended Accusation by adding charge 23 and making a few minor corrections.² As a matter of law, the new charge, charge 23, was deemed controverted. (Gov. Code, § 11507.)

3. By order of the Administrative Law Judge, the hearing on the Amended Accusation was held in two parts. Evidence on charges 1 through 4 was taken on October 8-18, 2012. Evidence on charges 5 through 23 was taken on May 13-21, 2013.

Respondent's Background

4. Respondent is 78 years old. She started teaching for the District in 1977, and taught for six years until 1983, when she resigned and moved with her children to Berkeley, California. She taught for the Oakland Unified School District from approximately 1985 to 1989. Respondent returned to the District in 1989 and has been employed by the District since that time.

5. Respondent obtained her special education credential in 1990 from California State University, Long Beach. She began teaching special education in the District in the early 1990s. She taught special education at Louren Miller Elementary for a few years. She then taught fourth grade in a class for severely handicapped and autistic students at Salvin Elementary for one year. She taught a special education class (kindergarten to third grade) at Hoover Elementary until 2004.

6. In approximately 2004, the District removed Respondent from her classroom at Hoover Elementary and commenced disciplinary action to terminate her employment. While that prior disciplinary action was pending, Respondent was assigned to the Local District 4 office as a "housed employee." As a housed employee, Respondent was required to spend her work day at the Local District 4 office in lieu of reporting to her school site. The Local District 4 office was, at that time, located in the Harbor Building. The prior disciplinary action and the District's appeals were finally concluded in March 2009.

² The amendments are shown by the ALJ's interlineations on the Amended Accusation (Exh. 75).

Respondent remained employed by the District. Respondent was a housed employee at the Harbor Building from approximately 2004 until January 2010.

7. The District assigned Respondent to Franklin High School as a special day class teacher starting in January 2010. Respondent taught at Franklin High School for the 2010 spring semester (February to June 2010). She returned to this assignment for the 2010 fall semester, which began on September 13, 2010.³ Respondent was removed from her classroom at Franklin High School after the first week of the fall semester. Effective September 20, 2010, Respondent was assigned as a housed employee to the Local District 4 office, which was now located on the eleventh floor of the District's headquarters office on Beaudry Avenue. Respondent was a housed employee from September 2010 until approximately August 2012.

8. The Amended Accusation seeks to have Respondent dismissed from her employment with the District, based on allegations related to Respondent's conduct at Franklin High School during the 2010 spring and fall semesters, and at the Local District 4 office during the most recent period she was a housed employee.

2010 Spring Semester

9. It was established that during the 2010 spring semester, Respondent exhibited problems with classroom management by routinely and inappropriately sending students to the Dean's office, as follows:

(A) Respondent sent students to the Dean's office for minor behaviors or disruptions, such as talking out of turn, not following her instructions, not listening to her, using electronic devices during class, and not removing baseball caps. Referrals to the Dean's office for these types of minor behaviors was inappropriate, as these were the types of minor student behaviors that teachers were expected to handle themselves. Franklin High School followed the district-wide policy of progressive discipline. Progressive discipline, in general, means that a teacher will use the least severe discipline first (e.g., verbal warning) and move in steps to progressively more severe discipline if the student's misbehavior continues (e.g., sending student to Dean's office, suspension, or expulsion).⁴ Progressive

³ The students in Respondent's special day classes for both semesters at Franklin High School were students with specific learning disabilities, although the nature of the learning disability for each student was not specified by the evidence. Under special education law, a specific learning disability is defined as "a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or perform mathematical calculations." (Educ. Code, § 56337, subd. (a).) It does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, intellectual disabilities, or emotional disturbance. (*Id.*)

discipline applies to special education students as allowed by their IEP.⁴ Sending a student to the Dean's office is generally appropriate for serious or severe student behavior which the teacher cannot handle or remedy alone, and only after lesser disciplinary steps have failed.

(B) During the spring semester, students from Respondent's classes routinely appeared at the Dean's office claiming that Respondent had kicked them out of class. Respondent did not follow the procedures for referring students to the Dean's office, which included completing the referral form and arranging for a campus escort. Some of the students were brought to the Dean's office after campus aides found them wandering the campus. Other students came to the Dean's office on their own. Respondent's students complained that they felt Respondent did not like them, that she kicked them out of class for no reason or an improper reason, and they did not feel supported in her classroom.

(C) On five occasions during the spring semester, Respondent sent her entire class to the Dean's office. Dean Casares testified that students from Respondent's class "trickled in" to the Dean's office over the course of a class period until the entire class was in the Dean's office. There was no referral, no call from Respondent to the Dean's office that the students were being sent, and no call from Respondent requesting an escort for the students. Respondent had unusually small classes, ranging from two to eight students. Dean Casares testified that on one occasion she walked Respondent's entire class, which consisted of four students, back to Respondent's classroom. On other occasions, another administrator or campus aide walked Respondent's entire class back to her classroom.

10. The deans at Franklin High School expressed their concerns about Respondent's inappropriate referral of students to the Dean's office to Assistant Principal Trujillo. Trujillo was aware there was a problem because she monitored the radio calls for the Dean's office and saw a pattern of calls to the same classroom, Respondent's. The problem was significant enough that Principal Luis Lopez was also brought in to address the situation. Respondent was not given any written directives or memos about this problem. Principal Lopez directed specific administrators and staff, some with special education experience, to verbally counsel and provide support for Respondent regarding classroom management, discipline policies, behavior supports and interventions, and computer support to access her student's IEPs on the Welligent computer system. Franklin High School had several resources to address classroom management and student behavior issues, such as the learning center, on-line training for lesson planning, and the COST program, which evaluates a student's issues from a team perspective. Respondent claimed she was unaware of the resources because they were not offered to her. Such claim is not credible, as the evidence established that the resources were publicized to teachers at various meetings, professional development days, and written bulletins. Despite the supports given and available at the school, Respondent's problem with inappropriately referring students to the Dean's office did not improve.

⁴ IEP stands for individualized education program. It is the document that identifies the special education needs of the student and the services and supports to be provided to the student to address those needs.

11. It was established that during the 2010 spring semester Respondent failed to read the IEPs of some of her students. Respondent testified, "I don't teach by reading the IEP." She testified that she does not trust the information contained in an IEP written by someone else. Her practice is to get to know the student first so she can determine if the information in the student's IEP is true. The IEPs were on the Welligent computer system, which the District began using in 2002. Special education teachers access the IEPs for each of the students in his or her caseload through the internet using an access code issued to each teacher. Once a student enrolls in high school, the school and the student's teacher has immediate access to the student's IEP through the Welligent system, 24 hours a day. A record of Respondent's training history with the District established that she completed an introductory Welligent course on March 22, 2010. Despite having completed that course, Respondent continued to have difficulty accessing IEPs on the Welligent system. She was unable to input IEPs into the Welligent system without assistance. At the hearing in May, Respondent testified she was currently taking a basic computer class but was unable to remember what she was learning in the class or even when the class started.

12. It was alleged, but not established by sufficient evidence, that during the 2010 spring semester, on one occasion, Respondent lost her temper and pushed a desk, hitting a student.

2010 Fall Semester

13. It was established that, on September 17, 2010, during fourth period, the following incident occurred in Respondent's classroom: Student C [REDACTED] F. was a ninth grader in the class. C [REDACTED] had a large purse that would not fit on the small shelf under the seat of the chair attached to her desk.⁵ C [REDACTED] did not want to put the purse on the floor because it was a Coach purse. When class started, the purse was on her desk, along with her book. Respondent told C [REDACTED] to put the purse under her chair. C [REDACTED] tried but the purse would not fit, and she told Respondent it would not fit. Narcisse testified it was apparent from the size of the purse that it was too big to fit under the chair. C [REDACTED] put the purse back on top of her desk. C [REDACTED] testified that Respondent had a mad look on her face. C [REDACTED] thought Respondent was coming towards her to get the purse. C [REDACTED] grabbed the purse to prevent Respondent from taking it. Respondent approached C [REDACTED]'s desk and took C [REDACTED]'s book from her desk. Teaching assistant Narcisse testified that Respondent walked the book to the back of the classroom and dropped the book on the floor near the table where Narcisse worked. The book made a loud noise when dropped. According to Narcisse, Respondent then told C [REDACTED] in a very loud and angry voice to sit in the back with her book.

⁵ The student desks are depicted in photographs (Exhibit 44) to be typical student desks made of light weight steel tube construction. The writing surface of the desk is held up by two legs in the front and by the two legs of the attached chair. The chair appears to be made of plastic. The right side of the writing surface extends back towards the chair to form an arm rest which closes off the right side of the chair. There is small wire shelf under the chair for storage.

C [REDACTED] refused and stated words to the effect that she was not a dog to sit on the floor. Narcisse offered to let C [REDACTED] sit at her table, but Respondent said no. Respondent walked back to C [REDACTED]'s desk. Respondent tilted the desk enough to cause C [REDACTED] to fall out of her chair. From the evidence, it is inferred that C [REDACTED] was leaning towards the open side of her desk, away from Respondent, making the desk unbalanced and susceptible to being tilted. Narcisse testified that C [REDACTED] did not fall to the floor, however, as she was able to catch herself and regain her balance. C [REDACTED] gathered her things and left the classroom. Narcisse testified C [REDACTED] had tears in her eyes and was visibly upset and embarrassed.

14. The testimony of teaching assistant Jeanine Narcisse was given great weight. She was the only other adult in the room who witnessed the incident. Her demeanor at the hearing appeared sincere, and her testimony was straightforward and forthcoming. She displayed no bias for or against either Respondent or C [REDACTED].

15. Respondent's handling of the September 17, 2010, incident with student C [REDACTED] F. showed poor judgment, and her treatment of C [REDACTED] F. was discourteous, disrespectful, and unprofessional. Respondent's conduct tended to escalate, rather than resolve, the situation with C [REDACTED] and her purse. There was no effort on Respondent's part to work with C [REDACTED] in a positive manner or to find an alternative solution, such as having C [REDACTED] put the purse on a nearby empty desk or hanging the purse from the back of her chair. Further, when C [REDACTED] refused to go to the back of the classroom where Respondent had dropped her book, Respondent's reaction of tilting C [REDACTED] out of her chair was entirely inappropriate.

16. It was established, as alleged in charge 4, that on September 17, 2010, Respondent failed to follow guidance and assistance that was given to her on December 4, 2009, by Local District 4 Director of School Services Luis Valentino, in that Respondent's conduct during the incident with C [REDACTED] F. violated the Employee Code of Conduct with Students, item 3 ("Engaging in any behaviors, either directly or indirectly with a student(s) or in the presence of a student(s), that are unprofessional"), and the California Standards for the Teaching Profession, standard 2.1 ("Promoting social development and responsibility within a caring community where each student is treated fairly and respectfully") and standard 2.3 ("Establishing and maintaining learning environments that are physically, intellectually, and emotionally safe").

Local District 4 Office

17. Following the incident with C [REDACTED] F., Respondent was assigned to the Local District 4 office as a housed employee effective September 20, 2010. Respondent remained a housed employee from September 20, 2010, until approximately August 2012.

18. All housed employees for Local District 4 were required to report to the Local District 4 office according to the work schedule of their school site. The housed employees were expected to remain in the area designated for housed employees or their entire work day, except for their designated lunch and break times. Respondent's hours were from 7:43

a.m. to 2:56 p.m., with a break from 9:58 a.m. to 10:13 a.m. and lunch from 12:17 p.m. to 12:52 p.m.

19. The assigned location for all housed employees was a rectangular shaped room on the eleventh floor.⁶ The room had counters and chairs along three walls of the room. There was a large glass window on one side of the room.

20. It was established, as alleged in charge 9, that Respondent used a Local District 4 copier for personal copying, in violation of directives given to her that housed employees were prohibited from using equipment designated for District staff. Paperwork with Respondent's name was found on a District copy machine.⁷ It was further established that on June 6, 2011, Diekmann conferenced Respondent and instructed her in writing not to use equipment designated for District staff.

21. It was established that Respondent was not in her assigned location according to her schedule, in violation of the directives given to her, on November 23, 2011, at 11:00 a.m. and within the next hour, as alleged in charge 10, and on December 6, 2011, at 1:58 p.m. and at 2:10 p.m., as alleged in charge 12.

22. It was further established, as alleged in charge 10, that on November 23, 2011, when Respondent was absent from her assigned location at 11:00 a.m., the site administrator Maureen Diekmann personally checked the assigned location four times within the next hour but Respondent still had not returned. When Respondent did return to the room, she told Diekmann that she had been in the room the entire time doing exercises on the floor. Respondent then walked away from Diekmann in the middle of the conversation. When Diekmann asked where she was going, Respondent stated in an insubordinate tone, "I am going to the restroom; do you want to come with me?" The Commission finds Respondent's statement and conduct towards Diekmann, her site administrator, to be unprofessional and insubordinate. Further, the Commission finds that Respondent lied when she told Diekmann that she had been in the room doing exercises on the floor. Photographs of the room (Exhibit 78) undermine Respondent's claim. Had Respondent been in the room as she claimed, Diekmann would not have failed to see her.

23. On or about December 13, 2011, Respondent was informed in writing that she was required to sign in and sign out when arriving at or leaving her assigned location. This requirement was effective starting on December 15, 2011, and applied to all housed employees for Local District 4. It was alleged, but not established by sufficient evidence,

⁶ The "assigned location" is marked as "Housed Bay" on a diagram of the eleventh floor, which was admitted as Exhibit 76-2. Photographs of the room were admitted as Exhibit 78.

⁷ Charge 9 alleges that the violation occurred on or about June 6, 2011. However, Diekmann's memo regarding the violation (Exhibit 61) indicates that Respondent's paperwork was found on the copy machine on May 20, 2011.

that during the period December 13 through December 19, 2011, Respondent signed in and signed out only twice.

24. It was established that Respondent was not in her assigned location according to her schedule and without first having signed in and signed out, in violation of the directives given to her, on January 9, 2012, at 8:02 a.m. and 10:32 a.m., as alleged in charge 15; on January 10, 2012, at 1:04 p.m., 1:10 p.m., and 2:21 p.m., as alleged in charge 17; and on January 12, 2012, at 10:50 a.m., as alleged in charge 18.

25. On January 12, 2012, during a conference meeting between site administrator Diekmann and Respondent, Diekmann directed Respondent to always sign in and sign out each time she arrived at and left the assigned location. Respondent did not say anything at that conference, but later returned to Diekmann and said, in an angry and threatening voice, "If you want me to sign out every time I go to the restroom you need to say that on paper. Or else I will urinate in the room." The Commission finds that Respondent's statement and conduct towards Diekmann was unprofessional and insubordinate. By the written directive given on December 13, 2012, Diekmann did tell Respondent "on paper" about the requirement for signing in and signing out.

26. It was established that from January to May 2012, Respondent continued to wander around the Local District 4 office instead of remaining in her assigned area, in violation of the multiple directives given to her. Respondent's walking in the hallways and other areas of the eleventh floor was more than just walking to and from the restroom. The eleventh floor was not open to the public. Several departments of the District had offices and cubicles near or adjacent to the assigned location for housed employees. Employees from the special education department expressed concern to Diekmann and her secretary, Virginia Morales, that Respondent was lingering in and around their work areas, and listening to their conversations. On one occasion, Respondent eavesdropped on a telephone conversation Morales had with her daughter. Respondent later asked Morales something that she could have known only by listening to the telephone conversation.

27. It was alleged, but not established by sufficient evidence, that on June 3, 2011, while Respondent was housed at Local District 4, District personnel observed Respondent returning from lunch from 1:25 p.m., even though her lunch period ended at 12:52 p.m.

28. It was alleged, but not established by sufficient evidence, that on December 5, 2011, District personnel saw Respondent arriving at Local District 4 at 8:20 a.m., even though Respondent was scheduled to arrive at 7:43 a.m.

29. It was alleged, but not established by sufficient evidence, that on January 9, 2012, District personnel observed Respondent setting up food at the welcome counter in the foyer, violating directives given to Respondent multiple times not to use areas or equipment designated for District staff.

Respondent's Deposition of April 13, 2012

30. It was established that during her deposition on April 13, 2012, Respondent was dishonest when she produced for the first time a calendar containing a notation in her writing that student C [REDACTED] F. was not present in her class on September 17, 2010.

31. It was established that during her deposition on April 13, 2012, Respondent was dishonest when she testified under oath that C [REDACTED] F. was not present in her class on September 17, 2010.

32. At no time prior to her deposition on April 13, 2012, did Respondent make any claim that student C [REDACTED] F. was absent on September 17, 2010, or that the incident happened the day before, on September 16th. All documentation and reports show the incident occurring on September 17, 2010. C [REDACTED]'s attendance record for September 17th does not show her being marked absent for fourth period on that date. The Commission finds that Respondent's paper calendar for the month of September 2010, presented for the first time at her deposition, is not a credible document. It appears to the Commission that Respondent fabricated the notation on the calendar to support her claim that C [REDACTED] F. was absent on September 17th, which claim the Commission finds to be unsupported by the evidence and not credible.

Respondent's Contentions

33. Respondent denied she committed the acts and violations alleged in the Amended Accusation. She contended generally that the District's actions regarding her assignment at Franklin High School and as a housed employee at the Local District 4 office were intended to harass her and cause her to resign from her employment with the District. Respondent contended that her treatment by the District was retaliation for the favorable result she obtained in the District's prior disciplinary action.⁸

34. (A) The Commission finds unpersuasive Respondent's claim that the District's actions were intended to harass her and cause her to resign. This disciplinary action was initiated due to the incident with C [REDACTED] F., which was caused by Respondent's conduct. The original Accusation contained four charges, all of which were based on that incident. Further, her assignment to a high school position was not harassment or retaliatory. The District could properly assign Respondent to Franklin High School, as she held a special education credential that authorized her to teach in grades K-12. She was placed at Franklin because there was an opening at the school. During the spring semester, Franklin administrators and deans provided supports when Respondent appeared to have problems in

⁸ Evidence of the charges and allegations in the prior disciplinary action was excluded. Those charges related to matters beyond the four-year period under Education Code section 44944, subdivision (a)(5).

the classroom. Respondent's claim that she was given "problem students" was not established by the evidence.

(B) The Commission finds, however, that Respondent's assignment at Franklin High School was the wrong placement for her. Respondent had no prior experience teaching in high school. In the six years preceding the assignment, Respondent was a housed employee and not teaching in any classroom. The District made little or no inquiry into Respondent's capabilities to teach high school level subjects, which the Commission feels would have been prudent to do under the circumstances.⁹ Teaching in elementary school, which was Respondent's only experience, is substantially different than teaching in high school, given the difference in maturity and developmental levels between grade school and high school students, and the obviously greater complexity in subjects in high school as compared to grade school.¹⁰ In addition, the Commission finds it notable that Franklin administrators did not issue any written directives or memos to Respondent regarding her problems with classroom management and inappropriate referrals of students to the Dean's office, given the extent and severity of the problem. The Commission feels that Franklin administrators should have given Respondent clearer instructions and guidelines, in writing, of the behavior expected of her. It was not enough for the administrators to give only verbal directives and instruct Respondent to read the school's policies. Written directives alert a teacher to potential problems that he or she needs to address.

(C) The Commission finds the evidence does not support Respondent's contention that her treatment while a housed employee at the Local District 4 office was intended to harass or retaliate against her. Respondent was subject to the same requirements as the other housed employees assigned to the Local District 4 office. Despite being given multiple written directives, Respondent failed to comply with the simple requirements applicable to all the housed employees. Respondent was insubordinate in her interactions with her site administrator, Maureen Diekmann.

(D) Respondent's other claims, that she was denied reasonable accommodations for medical conditions and denied union representation in conferences with Diekmann, were deemed not established by the evidence.

35. (A) Respondent contended that she was unable to tilt C [REDACTED]'s desk due to her physical and medical conditions. The Commission finds this contention unpersuasive.

⁹ For the 2010 spring semester, the subjects Respondent was required to teach in her special day class included Algebra I, Geometry, U.S. History, English, and Biology.

¹⁰ This finding is based on the experience of the two teacher members of the Commission, one of whom is currently a special education teacher and the other a special education teacher who retired last year. As members of the Commission, their experience, technical competence, and specialized knowledge may be used in evaluating evidence. (Gov. Code, § 11425.50, subd. (c).)

(B) Respondent testified about her history of back problems and back pain. She filed workers' compensation claims during the 2010 spring semester at Franklin High School for injuries she claimed occurred in mid-March 2010 when she fell down the stairs and injured her right arm, neck and back. She also filed workers' compensation claims for injuries she claimed to have suffered in three incidents in April 2010, when she tried to get away from a student who cornered her, when she held the door of her classroom closed to prevent a student from leaving, and when she had to move to avoid being hit by a white board that was coming towards her.

(C) Respondent presented the expert witness testimony of William Simpson, M.D., to support her claim that she was unable to tilt C [REDACTED]'s desk. Dr. Simpson is an orthopedic surgeon. He first met Respondent on September 26, 2012. Dr. Simpson opined that, in September 2010, Respondent did not have "sufficient functional capacity" to displace or overturn a school desk, or a school desk with a student and book pack occupying the desk. Dr. Simpson's opinion was based on his review of Respondent's medical records and information about the C [REDACTED] F. incident reported to him by Respondent. According to Dr. Simpson, Respondent had chronic conditions with her neck, lower back, right shoulder, and both knees that limited or restricted her movement, and would make it extremely difficult and improbable for Respondent, who was a 77 year old, 110 pound, frail female, to displace or overturn a desk occupied by a student and book pack.

(D) Dr. Simpson's opinion that Respondent lacked "sufficient functional capacity" to displace or tilt C [REDACTED]'s desk was given little weight. The factual bases for Dr. Simpson's opinion were speculative and not established by the evidence. Dr. Simpson never met Respondent until September 2012, two years after the incident with C [REDACTED]. Thus, his opinions about Respondent's capabilities two years earlier in September 2010 are speculative. Dr. Simpson's opinion was based on his belief that C [REDACTED] was a 17-year-old female student, weighing 130 pounds, sitting at a desk weighing 41 pounds, with a book pack weighing nine pounds. Dr. Simpson assumed the desk and book pack together weighed 50 pounds. Dr. Simpson did not examine C [REDACTED], who at the time of the incident was 14 years old and weighed 120 pounds. Respondent did not provide him with information about C [REDACTED]'s physical size. In forming his opinion, Dr. Simpson used the "average weight" of a student desk and "average weight" of a 17-year-old student, which he claimed he researched on the internet. However, at this hearing, Dr. Simpson could not identify all of the websites he used to reach his opinion, and it was shown that one of the websites he identified displayed the message, "Coming Soon!" Dr. Simpson did not know any of the specifications of the student desks in Respondent's classroom. He did not personally examine the desks or weigh a desk, or view any photos of the desk. Dr. Simpson assumed that C [REDACTED]'s purse/book pack weighed nine pounds, based on his personal experience with his own children and their book packs.

Other Findings

36. The Commission finds that Respondent would be a detriment to students if she is returned to the classroom, for the following reasons:

(A) Respondent's temperament causes her difficulty with managing students in her classroom. At Franklin, she had difficulty getting students to comply with simple instructions, such as storing their belongings, taking off baseball caps, and putting away electronics. Respondent has a stern and strict demeanor with students. The incidents at Franklin show that she is inflexible and unable to adjust her behaviors as appropriate to changes in her surroundings. She responds to non-compliant behavior by students in an angry and combative manner, rather than in a calm and constructive manner. She does not engage her students in a positive manner.

(B) Respondent displays a combative and insubordinate attitude when she disagrees with directives from administrators. She is resistant to adapting to changes in her surroundings. She has difficulty understanding and complying with simple instructions.

(C) Respondent has difficulty expressing herself in a clear and coherent manner, inhibiting her ability to engage students and effectively conduct a class. Her testimony at hearing was, at times, confused, incoherent, and did not demonstrate a flow of understanding. She had difficulty understanding simple questions posed to her.

37. Respondent has not acknowledged any responsibility for her conduct at Franklin High School that resulted in this disciplinary action. The Commission finds that Respondent's placement at Franklin High School was not a placement where she was likely to succeed, and she was ill-prepared for that assignment. The Commission feels very strongly, however, that Respondent was also partly to blame for her failures at Franklin High School. As a teacher, Respondent had a responsibility to take steps to ensure that she was prepared for her assignment. Respondent failed to take responsibility for herself and make herself ready to teach at Franklin. It is not enough for Respondent to expect that the District and others would train her for the assignment.

Credibility

38. The District's witnesses, who were employees at Franklin High School and the Local District 4 office, were credible in their testimony regarding the incidents involving Respondent. They appeared sincere in their demeanor, and their testimony, for the most part, was straightforward and forthcoming, using their best efforts to answer questions put to them. Student C [REDACTED]'s testimony was determined credible to the extent it was corroborated by the testimony of Jeanine Narcisse.

39. Respondent's credibility suffered as a result of her sometimes inconsistent, incoherent, and confusing statements. During questioning by the District's counsel, she appeared to have selective memory and selective ability to comprehend what appeared to be straightforward questions.

Morrison Factors

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

41. (A) *Adverse consequences on students and teachers, and the degree thereof:* There was adverse consequences for students in Respondent's classes. Tilting C [REDACTED]'s desk and causing her to fall out of her chair caused her humiliation, if not actual injury. Inappropriately sending students to the Dean's office or out of the classroom caused students to lose instructional time. Respondent's inability to properly manage a student's misbehaviors in her classroom has adverse consequences on the teacher in the student's next class, and on the overall credibility of all teachers at the school with students.

(B) *Proximity in time:* Respondent's conduct is recent, having occurred in the period 2010 to 2012.

(C) *Type of certificate held by the teacher:* Respondent's credential authorizes her to teach special education students, who are typically the most vulnerable students on a school campus. Respondent's conduct is not consistent with protecting the interests of those students.

(D) *Extenuating or aggravating circumstances:* An extenuating factor in this case is that Respondent's placement at Franklin High School was wrong and not one where she was likely to succeed, given her lack of high school teach experience. This factor does not excuse Respondent's conduct. Respondent failed in her responsibility, as a teacher, to take steps and prepare herself for the assignment.

(E) *Likelihood the conduct in question will recur:* Respondent's conduct at issue is likely to recur. By temperament, she is inflexible and resistant to change. She has not acknowledged responsibility for any of her conduct at Franklin High School or at the Local District 4 office.

(F) *Chilling Effect on Constitutional Rights:* No constitutional rights, of either Respondent or other teachers, are implicated if Respondent is terminated for her conduct described in this decision.

42. Under all of the circumstances, Respondent's conduct establishes that she is unfit to teach in the District, within the meaning of the *Morrison* decision, and she should be terminated as a teacher.

LEGAL CONCLUSIONS

Legal Conclusions Generally Applicable to All Claims

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1-3.

2. The District has the burden of proof in this matter, and the standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

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

4. The opinion of an expert witness is no better than the facts on which it is based and, “where the facts underlying the expert’s opinion are proved to be false or nonexistent, not only is the expert’s opinion destroyed but the falsity permeates his entire testimony; it tends to prove his untruthfulness as a witness.” (*Kennemur v. State of California* (1982) 133 Cal.App.3d 907, 923-924.)

5. Education Code section 44932, subdivision (a), sets forth the grounds for which a permanent employee may be dismissed by a school district. Those grounds include: immoral or unprofessional conduct (subd. (a)(1)); dishonesty (subd. (a)(3)); unsatisfactory performance (subd. (a)(4)); evident unfitness for service (subd. (a)(5)); and persistent violation of or refusal to obey school laws or reasonable regulations prescribed by the employing school district (subd. (a)(7)).

6. Education Code section 44939 sets forth the grounds for the immediate suspension of a permanent employee, which include but are not limited to willful refusal to perform regular assignments without reasonable cause.

7. "Unprofessional conduct" may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing." (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.)

8. "Dishonesty" has been defined as conduct that "connotes a disposition to deceive" and "necessarily includes the element of bad faith." It means "fraud, deception, betrayal, faithlessness," and "denotes an absence of integrity; a disposition to cheat, deceive or defraud; deceive and betray." (*Midway School District v. Griffith* (1946) 29 Cal.2d 13.)

9. "Unsatisfactory performance" was substituted for the term "incompetency" pursuant to a 1995 amendment to Education Code section 44932, subdivision (a)(4). Incompetency, as a ground for teacher dismissal, "is a plain word and means not competent. Competent, in turn, means properly or well qualified; capable-adequate for the purpose, suitable; sufficient." (*Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1175 (citation omitted).) In *Perez*, the court noted that "the teacher members of the Commission have the professional experience and skill meaningfully to assess teacher competence." (*Id.*)

10. Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. Unlike unprofessional conduct, evident unfitness for service 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 Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.)

11. Under Education Code section 44932, subdivision (a)(7), the violation of the school district's regulations or rules must be either "persistent" or "motivated by an attitude of continuous insubordination." (*Governing Bd. of Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81.) "The word 'persistent' is defined by lexicographers as 'refusing to relent; continuing, especially in the face of opposition ... stubborn; persevering ... constantly repeated.' And in the judicial decisions of this, as well as other states, the word has been interpreted to mean 'continuing or constant.'" (*Seaman, supra*, 28 Cal.App.3d at p. 82.)

12. The term "immoral conduct" has been defined to include 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 the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

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Grounds for Dismissal

13. Cause does not exist for the dismissal of Respondent pursuant to Education Code section 44939, for willful refusal to perform regular assignments without reasonable cause. This ground for dismissal was not established by the evidence.

14. Cause does not exist for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(1), for immoral conduct. This ground for dismissal was not established by the evidence.

15. Cause does not exist for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(7), for persistent violation of law or school rules. This ground for dismissal was not established by the evidence.

16. Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(1), for unprofessional conduct, in that Respondent engaged in unprofessional conduct during the incident with student Cynthia F., based on Factual Findings 13-16, 36, 37, and 40-42 and Legal Conclusion 7.

17. Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(3), for dishonesty, in that Respondent was dishonest during her deposition on April 13, 2012, based on Factual Findings 30-32, 36, 37, and 40-42 and Legal Conclusion 8.

18. Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(4), for unsatisfactory performance during her assignment at Franklin High School, based on Factual Findings 9-11, 13-16, 36, 37, and 40-42 and Legal Conclusion 9.

19. Cause exists for the dismissal of Respondent pursuant to Education Code section 44932, subdivision (a)(5), for evident unfitness for service, demonstrated by her conduct at Franklin High School and during the most recent period she was a housed employee, based on Factual Findings 9-11, 13-16, 17-26, 36, 37, and 40-42 and Legal Conclusion 10.

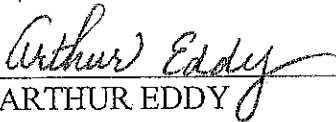
20. The Commission unanimously concluded that Respondent's conduct demonstrates an unfitness to teach within the meaning of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. The Commission considered the factors suggested in *Morrison* as set forth in Factual Findings 40-42 above. It is settled that not all "Morrison factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369, 384.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. "When the camel's back is broken we need not weigh each straw in its load to see which one could have done the deed." (*Woodland, supra*, 2 Cal.App.4th at p. 1457.)

21. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . and whether dismissal or suspension is the appropriate sanction." (*California Teachers Assoc. v. State of California* (1999) 20 Cal.4th 327, 343-344.) The unanimous decision of the Commission is that Respondent's dismissal is the appropriate sanction.

ORDER

Respondent Gloria Hsi is hereby dismissed from employment as a permanent certificated employee of the Los Angeles Unified School District.

DATED: August 16, 2013


ARTHUR EDDY

Member
Commission on Professional Competence

DATED: August __, 2013

TIMOTHY D. MOORE

Member
Commission on Professional Competence

DATED: August __, 2013

ERLINDA G. SHRENGER

Administrative Law Judge, Member
Commission on Professional Competence

21. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . and whether dismissal or suspension is the appropriate sanction." (*California Teachers Assoc. v. State of California* (1999) 20 Cal.4th 327, 343-344.) The unanimous decision of the Commission is that Respondent's dismissal is the appropriate sanction.

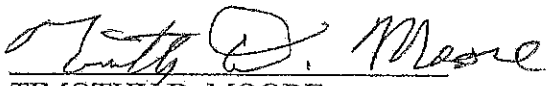
ORDER

Respondent Gloria Hsi is hereby dismissed from employment as a permanent certificated employee of the Los Angeles Unified School District.

DATED: August __, 2013

ARTHUR EDDY
Member
Commission on Professional Competence

DATED: August 9, 2013


TIMOTHY D. MOORE
Member
Commission on Professional Competence

DATED: August __, 2013

ERLINDA G. SHRENGER
Administrative Law Judge, Member
Commission on Professional Competence

21. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . and whether dismissal or suspension is the appropriate sanction." (*California Teachers Assoc. v. State of California* (1999) 20 Cal.4th 327, 343-344.) The unanimous decision of the Commission is that Respondent's dismissal is the appropriate sanction.

ORDER

Respondent Gloria Hsi is hereby dismissed from employment as a permanent certificated employee of the Los Angeles Unified School District.


DATED: August __, 2013

ARTHUR EDDY
Member
Commission on Professional Competence

DATED: August __, 2013

TIMOTHY D. MOORE
Member
Commission on Professional Competence

DATED: August 26, 2013


ERLINDA G. SHRENGER
Administrative Law Judge, Member
Commission on Professional Competence