

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

DIANE HAMPTON (EN 711789), a
permanent certificated employee,

Respondent.

OAH No. 2013041139

DECISION

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California, on April 1-4 and 7-8, 2014. The Commission consisted of Deanna Clark, Katherine Estevez, and Administrative Law Judge Erlinda G. Shrenger, Office of Administrative Hearings, State of California, who presided.

Jeffery A. Morris, Esq., Stutz Artiano Shinoff & Holtz, represented Los Angeles Unified School District (District).

Diane Hampton (Respondent) represented herself.

Oral, documentary, and stipulated evidence was received, and argument was heard. The record was closed and the case was submitted for decision on April 8, 2014.

FACTUAL FINDINGS

Parties and Jurisdiction

1. Respondent is a permanent certificated employee of the District.
2. On October 15, 2012, Respondent was issued a Notice of Unsatisfactory Acts and Notice of Suspension, related to her conduct on November 21, 2011, and February 7, 2012, discussed in Findings 14, 15, and 24, below. On February 11, 2013, Respondent was issued a Notice of Unsatisfactory Acts and Notice of Suspension, related to her conduct on September 5, 2012, discussed in Findings 34 and 35, below.
3. By letter dated February 19, 2013, Respondent was notified that a meeting was scheduled for February 27, 2013, before the District's governing board to discuss her possible dismissal and immediate suspension from her employment with the District. The letter stated that Respondent could present statements and documents at the February 27 meeting in

response to the Notices of Unsatisfactory Acts issued to her on October 15, 2012, and February 11, 2013. The letter stated that, at the conclusion of the February 27 meeting, the District's governing board would decide whether or not to move forward with her possible dismissal and immediate suspension.

4. On March 29, 2013, a Statement of Charges was filed with the District's governing board by Vivian K. Echkian, Chief Human Resources Officer for the District. The Statement of Charges requested that the District's governing board give notice to Respondent, pursuant to Education Code sections 44934 and 44939, of its intent to immediately suspend her without pay and dismiss her within 30 days unless she demanded a hearing.

5. On May 7, 2013, the District served Respondent with an Accusation and Statement of Charges, and other required documents. On May 18, 2013, Respondent filed a Notice of Defense. On May 23, 2013, the District served an Amended Accusation and Statement of Charges. This hearing ensued.

General Background

6. 107th Street Elementary School (107th Street) is a Title 1 school, whose students come from families with low social and economic status. The student population is 75 percent Latino and 25 percent African-American. 107th Street is a low performing school.

7. Reuben Rios (Rios) has been the principal of 107th Street since 2003. Rios was on the committee that interviewed and selected Respondent for placement as a fifth grade teacher at 107th Street. Respondent was thereafter hired by the District for placement in the fifth grade language class at 107th Street. The fifth grade language class was for students who were far below basic and required interventions, especially in language and phonics. Respondent had experience working as an Intervention Pool Teacher for grades K-5 at Barton Hills Elementary for the 2009-2010 school year. She had also taught sixth grade science and math at Muir Middle School for the 2010-2011 school year.

8. Respondent taught fifth grade at 107th Street for part of the 2011-2012 school year, from approximately August 2011 until April 2012. In April 2012, she was reassigned to teach a first grade/second grade combination class. Respondent remained at 107th Street for the 2012-2013 school year and was assigned to teach second grade.

9. The District's Code of Conduct with Students states that all teachers are "expected to use good judgment," and contains a non-exhaustive list of situations which teachers "are cautioned to avoid." Those situations include 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, unethical, illegal, immoral, or exploitive"), and item 5 ("Making statements or comments, either directly or indirectly in the presence of a student(s), which

are not age-appropriate, professional, or which may be considered sexual in nature, harassing, or demeaning." (Exh. 118.)

10. The District's Code of Ethics states, in part, that teachers should provide the best example they can and strive to demonstrate excellence, integrity, and responsibility in their work, and create an environment of trust, care, and respect. (Exh. 119.)

11. The Opening Bulletin distributed to all teachers at 107th Street before the start of each school year stated, in part, that each classroom on the first day of instruction should be neat and organized, bulletin boards covered with fresh construction paper, and school and classroom rules should be posted. Teachers were expected to reiterate with the students their high expectations for learning and responsibility. In addition, teachers were expected to maintain a positive learning room environment and utilize instructional practices that increased student engagement. (Exh. 114.)

2011-2012 School Year

12. In October and November 2011, principal Rios received written complaints from several students in Respondent's fifth grade class. Rios received a letter dated October 3, 2011, from student L [REDACTED] T. stating that Respondent made comments that she could buy L [REDACTED], that L [REDACTED]'s whole family was crazy, and she did not like L [REDACTED].¹ On November 3, 2011, Rios received a note from student M [REDACTED] B. stating that Respondent told the class to lie and tell principal Rios that student K [REDACTED] R. had hit Respondent. On November 21, 2011, Rios received notes from students J [REDACTED] S. and L [REDACTED] T. stating, among other things, that Respondent stepped on their toes. Principal Rios also received requests from at least two parents to have their children transferred from Respondent's fifth grade class.

13. Roxanne Miranda (Miranda) has worked for the District for 16 years. She was the access-to-core coach at 107th Street from 2009 until June 2013, when she left to take a similar position at another elementary school. During the 2011-2012 school year, Miranda was aware of the complaints made by some of Respondent's students. At the request of principal Rios, Miranda conducted an observation of Respondent's classroom practices and her interactions with her students.

14. On or about November 21, 2011, Miranda observed Respondent teaching a math lesson to her fifth grade class. Miranda sat among the students because there was no room for her to sit in the back of the classroom. The student desks were grouped into two large clusters. Miranda sat with the students in one of the clusters. During the observation, Miranda saw that the students were being defiant towards Respondent. Some students did

¹ Paragraph 1 of the Amended Accusation incorrectly identifies the student making the complaint as K [REDACTED] R. The complaint was made by student L [REDACTED] T. (Exh. 54.)

not have a chair or were not part of a group. Respondent told the students words to the effect you're not going to learn, you need medicine, you'll end up in a mental hospital, and child protective services needed to come and get them. Miranda heard from some of the students that Respondent called them "poor." Miranda heard Respondent call some students "ignorant" and call one student "crazy." When student J ■■■ M. and other boys talked back to Respondent, she yelled at them to sit down and said words to the effect "you don't learn." She would verbally argue with students instead of positively interacting with the students and engaging them in the lessons. Based on her observations, Miranda's opinion was that Respondent was not using effective teaching strategies.

15. Written statements dated November 21, 2011, by four of Respondent's fifth grade students included complaints that Respondent called them crazy, stupid, ignorant, and poor, and told them they needed medicine and a mental hospital, and called their parents crazy. (Exhs. 56-59.) The students' complaints were similar to the statements Miranda heard during her classroom observation of Respondent.

16. On November 29, 2011, principal Rios met with Respondent to discuss the complaints made by the students in her class. During the meeting, Rios provided Respondent with assistance and guidance. He continued to speak with her informally during the school year about her problems with students.

17. D ■■■ B. (D ■■■) was a student in Respondent's fifth grade class for the 2011-2012 school year. He is now 13 years old and in seventh grade. D ■■■'s testimony established that Respondent made comments in front of the fifth grade class that D ■■■ and student J ■■■ M. were "gay" and "boyfriends." The other students in the class laughed. Respondent's comments made D ■■■ "feel bad" (his words). D ■■■ responded by telling Respondent that she needed to fix her hair or that she needed to go home. D ■■■ told principal Rios on more than one occasion about Respondent's comments. At Rios' request, D ■■■ wrote a statement dated December 16, 2011, about Respondent's comments. D ■■■ wrote that Respondent "said J ■■■ and I was doing what adults do the day we left out the class for 45 minutes last week. She also said J ■■■ and T ■■■ was doing it to the whole class." (Exh. 50.) D ■■■ initially liked having Respondent as his teacher, but his feelings changed when she made the comments about him and student J ■■■ M.

18. F ■■■ L. (F ■■■) was a student in Respondent's fifth grade class for the 2011-2012 school year. She is now 13 years old and in seventh grade. F ■■■'s testimony established that, when she was in Respondent's fifth grade class, Respondent called her a lesbian and bisexual. F ■■■ also heard Respondent call other students gay, lesbian, and bisexual during class. F ■■■'s classmates told her that Respondent called her a lesbian. F ■■■ testified that Respondent's comments that she was a lesbian were not true. As discussed in Finding 23, below, Respondent told F ■■■ that she was a bum, she was not going to be anything in life, and her clothes were dirty. According to F ■■■, Respondent also threw trash on the floor and made F ■■■ pick it up. F ■■■ liked having Respondent as a teacher on Respondent's "good days," when she was happy. According to F ■■■, Respondent was happy one day and then "mad and angry at us" the next day.

19. B [REDACTED] D. (Mrs. D) is F [REDACTED]'s mother. Mrs. D's testimony established that, during the first few months of the 2011-2012 school year, F [REDACTED] complained that Respondent called her names and said she was a homosexual. According to Mrs. D, F [REDACTED] did not want to go to school because of Respondent's hurtful comments about F [REDACTED] and other students, calling them bums, they were nobody, and their clothes were dirty. On January 31, 2012, Mrs. D spoke to Respondent about the homosexual comment. During that conversation, Respondent told Mrs. D that another student said F [REDACTED] and other girls were homosexual. Respondent then told Mrs. D that she believed the girls were homosexual because "they are always in the bathroom." Mrs. D told Respondent her comment that F [REDACTED] was homosexual was wrong. Mrs. D admitted that F [REDACTED] has a temper and she is "no angel," but that F [REDACTED] will tell the truth.

20. Subsequent to her observation of Respondent's class, Miranda conducted a demonstration math lesson for Respondent with her fifth grade students. Respondent approached Miranda during the demonstration lesson, put her hand in front of her mouth as if to whisper something to Miranda, and said in voice louder than a whisper "see, those boys are gay," in reference to student J [REDACTED] M. and another boy. According to Miranda, J [REDACTED] heard what Respondent said because he responded out loud, "I'm not gay." Further, on several occasions during the school year, Respondent mentioned to principal Rios that she thought certain students were gay but she was unsure whether or not she should mention it to him. When Rios asked Respondent why she said such things, Respondent said that she thought Rios should know because that's what the kids were telling her. Principal Rios told Respondent to be careful about making comments about students and to avoid starting rumors.

21. On January 24, 2012, there was an incident in Respondent's classroom where student D [REDACTED] B. stated he was going to shoot Respondent. At this hearing, D [REDACTED] admitted making the comment about shooting Respondent. He could not remember why he made the comment but recalled that Respondent said things about him and J [REDACTED]. Written statements from the other students in the class confirmed D [REDACTED]'s statement and also mentioned Respondent calling some of the boys "gay." (Exhs. 62-75.)

22. On January 30, 2012, principal Rios provided Respondent with an Inter-Office Memo that summarized their meeting on November 29, 2011, regarding the student complaints Rios had received in October and November 2011. In that Inter-Office Memo, Respondent was reminded that she had been provided assistance and guidance by Rios including that she respect all persons and treat all persons with dignity and respect.

23. On February 1, 2012, an incident occurred in Respondent's classroom which prompted her to call the office for help. Principal Rios and Mr. Kossack responded to the classroom. Respondent repeatedly stated to Rios that students F [REDACTED], L [REDACTED], and J [REDACTED] were yelling at her. Written statements obtained from the students in the class established that Respondent was yelling at the students, kicking them out of class, and calling them names. (Exhs. 81-92.) F [REDACTED] was one of the students in the class that day. F [REDACTED] was upset because Respondent called her a bum, told her she was not going to be anything in life,

and said that her clothes were dirty. According to F [REDACTED], when Respondent motioned as if she was going to throw a book at her, F [REDACTED] screamed at Respondent that she should be fired and called her "big lips." F [REDACTED] was suspended on February 2, 2012, for screaming at Respondent. On February 3, 2012, Rios held a post-suspension conference with F [REDACTED], her mother Mrs. D, and Maria Villasano, SSA. During that conference, Respondent repeatedly claimed that students F [REDACTED], J [REDACTED], and L [REDACTED] were yelling at her. F [REDACTED] apologized to Respondent for screaming and calling her "big lips." Principal Rios also explained to Respondent why F [REDACTED] was upset about Respondent's comments that she was a bum and her clothes were dirty.

24. On February 7, 2012, Rios observed Respondent's classroom during instructional time for approximately 30 minutes, from 10:59 a.m. to 11:25 a.m. According to Rios, the classroom environment was "tense." Respondent yelled at student M [REDACTED] F., "We don't throw stuff in here!" Respondent screamed and yelled at the entire class, "I need it completely quiet! Did you do the review?" When student J [REDACTED] S. (J [REDACTED]) whispered in a low voice, "I can't find the paper," Respondent yelled at J [REDACTED], "Stop screaming at me!" Respondent yelled and screamed at student I [REDACTED] R., "Please don't stomp on the floor!" when I [REDACTED] lightly tapped his foot on the floor. Rios described Respondent's voice as loud and exploding. Rios did not see evidence of any classroom/behavior management system in place or being used by Respondent to address her students' behaviors.

25. During the February 7, 2012 observation, Rios saw that Respondent's classroom was cluttered. The teacher's desk was cluttered with books, crumpled papers, butcher paper, and paper scraps. Tables and desks were all messy and disorganized with stacks of books, papers, binders, and assessments. Trash littered the classroom floor. Prior to February 7, 2012, Rios had spoken to Respondent at least five times about classroom organization. There were 15 students in the class but only four of the students were engaged in the lesson. During the lesson, Respondent did most of the talking and remained seated in the front of the class. All of the student responses to Respondent's questions were one-word answers. Several of the students said, "skip," when called on by Respondent. Student J [REDACTED] M. did not have an assigned desk in the classroom.

26. Rios spoke with Respondent after the observation. He directed Respondent to go with him and observe the classroom of another teacher, Mr. Messina. Messina's class had similar students to Respondent's class in that they were low performing students and required interventions (visual aides). During the observation of Mr. Messina's class, Respondent was rolling her eyes, not taking notes, she glared at Rios, and made audible sighs.

27. On or about March 1, 2012, Rios directed Respondent to get a doctor's appointment and obtain written verification of her fitness for duty. Respondent left on or about March 1, 2012, and did not return until three to four weeks later. When she did return, Respondent did not request any accommodation for the performance of her duties as a teacher. She did not present any medical documentation requesting such accommodation.

28. Rios decided to reassign Respondent from a fifth grade class to a first grade/second grade combination class for the remainder of the school year. Rios thought this new assignment would give Respondent a fresh start, as she would have completely different students and parents. Respondent was assigned to the first grade/second grade combination class on or about April 24, 2012. She completed the remainder of the 2011-2012 school year in that class.

29. Principal Rios issued Respondent's performance evaluation on May 17, 2012. Respondent was given a rating of "below standard performance." That rating was based on specific deficiencies including, but not limited to, Respondent's failure to adequately supervise children during instructional time; failure to demonstrate sustained improvement in curricular planning, lesson delivery, student engagement, and maintaining a neat and an organized room environment; failure to follow directives given by an administrator; and failure to provide lesson plans on a consistent basis.

2012-2013 School Year

30. Respondent was assigned to teach a second grade class at 107th Street for the 2012-2013 school year.

31. During the first month of the school year, principal Rios spoke to Respondent on four occasions (August 15, 17, 21, and 24) regarding the condition of her classroom environment. When he visited Respondent's classroom, principal Rios saw that the table next to the teacher's desk was piled with papers, clutter, boxes and crumpled papers. The bookcases were messy, unorganized, and cluttered. Student books were not organized. Materials piled under the tables near the white board were messy and unorganized. The closet tops were cluttered. Bulletin boards were not up on the wall as per the Opening Bulletin. On the four occasions Rios spoke to Respondent, she told him she was working on removing the clutter, the previous teacher left the closets in a mess and there was a lot of stuff to throw away, she lost the Opening Bulletin, and she was having car trouble and had to leave.

32. On August 27, 2012, an incident occurred involving Respondent and access-to-core coach Miranda. Miranda's office was next door to the school's computer lab. Miranda was working in her office when Respondent came in and asked Miranda for help with "Study Island," which was a language arts computer program. Respondent asked Miranda if she knew the password for the computers. Miranda went with Respondent to the computer lab. Respondent's second grade students were already in the lab. Most of the students were working on the floor. Three or four of the students were sitting at computers, trying to log-on. Miranda saw that the password was written on the board in the lab. As Miranda attempted to log-on to a computer, the students got up from the floor to see what was happening. Respondent told the students to keep working on what they were doing. When the students were unsure what to do, Respondent's voice escalated and she became frustrated. She yelled at the students to sit down and yelled out, "this is why you don't learn!" Respondent's frustration increased as the students were not listening to her.

Suddenly, Respondent turned her frustration from the students to Miranda. She began yelling at Miranda words to the effect that her students were bad kids, they don't learn, and it was Miranda's fault that these kids were in Respondent's class. According to Miranda, Respondent was yelling in a very loud voice in front of the second grade children. Miranda responded by telling Respondent to stop yelling at her. Miranda left the computer lab. She reported the incident to principal Rios.

33. On September 4, 2012, principal Rios met with Respondent to discuss complaints he had received at the end of August 2012 from three different parents who each requested to have their child transferred out of Respondent's second grade class. One parent who had observed Respondent's class complained that Respondent appeared irritated, jittery, and anxious, and that the class did not have a good structure for his son. Another parent stated that her daughter had been complaining that Respondent was rude to her and that she doesn't participate in class. A third parent complained that Respondent did not properly supervise the students in the class, she was rude to the students, and she yelled and put-down her son and did not build up his self-esteem. During the meeting, Respondent stated that she didn't know that a parent could give a diagnosis, she tried not to interact with the parents, she cannot control how parents feel about her, and she was not comfortable with the parents or their diagnosis. Rios provided Respondent with assistance and guidance, including that she treat all persons with dignity and respect.

34. On September 5, 2012, the administrative team at 107th Street conducted observations of all the second grade classrooms during instructional time. The members of the administrative team were principal Rios, access-to-core coach Miranda, intervention and title 1 coordinator Tamara Honegan (Honegan), and categorical programs advisor Dr. Veronica Plascencia. The four members of the administrative team testified regarding their observations of Respondent's classroom on September 5, 2012.

35. On September 5, 2012, the administrative team had completed their observations in the other second grade classrooms when they approached Respondent's classroom. There they found four to seven of Respondent's students outside of the classroom, unsupervised by any adults. The classroom door was closed. The students were playing around the stairwell and ramp outside the classroom. The students told Rios and the other team members that Respondent had kicked them out of class, told them not to come back, and shut the door on them. Rios told the students to return to their classroom, opened the classroom door, and the team escorted the students back inside the classroom. The classroom was chaotic. Chairs were flipped over and there were papers all over the place. Respondent was in the classroom. She was visibly upset and was yelling at her students to be quiet, sit down, and do their work. Respondent was aggressively flipping pages in the student workbooks and yelling at the students words to the effect "you're not listening to me, that's why you don't know what to do!"

36. Respondent rushed towards the administrative team, pointing at a female student, P [REDACTED] D., and yelling out, "I want her arrested! She tried to hit me!" Rios asked Respondent where she had been hit and if she needed medical attention. Respondent said

that P [REDACTED] did not really hit her but had only tried to hit her with the door. Respondent raised her voice and began yelling out words to the effect "I want her [P [REDACTED]] arrested! You're not doing your job! It's okay for others not to do their job and get away with it. I'm calling the school board on you!" and "I don't care about this school." Respondent also yelled out that one of the male students was "humping" other students.

37. When Rios attempted to get closer to Respondent to help her calm down, Respondent quickly moved away from him while yelling out "Get away from me! Get away from me! You're not doing your job! I'm calling the school board." Respondent stated she was uncomfortable having the administrative team in her classroom, especially team member Miranda. Several times, Rios directed Respondent to leave the classroom and meet him in the conference room in the office. Respondent, at first, did not comply. Eventually, she grabbed her purse and belongings and slammed the door as she left the classroom. The second grade students appeared shocked, with some students making comments like "she's really mad now!" and "she's calling the police!" Rios directed the administrative team to take over the class. Honegan cleaned up the papers on the floor and picked up the overturned chairs. The students were directed to sit on the carpet and Miranda read a book out loud to them. Afterwards, the students were disbursed to other classrooms for the remainder of the school day.

Other Findings

38. No defenses or mitigating circumstances were established on behalf of Respondent. Respondent did not testify at the hearing. Nor did she present any other witnesses to testify on her behalf. The documentary evidence (six exhibits) she presented during the testimony of the District's witnesses, without more, were insufficient to establish any defenses or mitigating circumstances. The testimony of the District's witnesses was taken as unrefuted.

39. Allegations contained in the Amended Accusation and Statement of Charges for which there are no specific findings in this Decision were found by the Commission to be not established by sufficient evidence.

LEGAL CONCLUSIONS

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1-5.²

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.)

² All further statutory references are to the Education Code unless otherwise indicated.

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. Section 44932, subdivision (a), sets forth the grounds for which a permanent employee may be dismissed by a school district. The grounds alleged in this case are: unprofessional conduct (subd. (a)(1)); immoral conduct (subd. (a)(1)); 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)).

5. (A) Cause exists to dismiss Respondent from her employment with the District under section 44932, subdivision (a)(1), for unprofessional conduct, based on Factual Findings 6-37.

(B) Unprofessional conduct as used in section 44932, subdivision (a)(1), 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.” (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

(C) In this case, Respondent called her students demeaning and derogatory names. She made inappropriate comments regarding the sexual orientation of one or more students, including F [REDACTED], D [REDACTED], and J [REDACTED] M, in the presence of other students, Miranda, and principal Rios. Respondent addressed student misbehaviors in her classroom by yelling and screaming at the students, engaging in verbal arguments with students, threatening to throw a book at F [REDACTED], and aggressively flipping the pages of her students' workbooks, rather than employing behavior techniques to control the situation and create a positive interaction with the students. Respondent failed to maintain a neat, orderly, and positive learning environment in her classroom. She failed to treat fellow teacher Miranda and principal Rios in a professional and respectful manner. She was resistant to the guidance and directives given to her by principal Rios. Respondent's conduct was unbecoming of a teacher in good standing and thus constituted unprofessional conduct.

6. (A) Cause exists to dismiss Respondent from her employment with the District under section 44932, subdivision (a)(1), for immoral conduct, based on Factual Findings 6, 7, 12-15, 23, and 32.

(B) 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.)

(C) In this case, Respondent engaged in immoral conduct by repeatedly making demeaning and derogatory comments about her students and their families. She called them, among other things, crazy, stupid, poor and ignorant, and called their parents crazy. She told F [REDACTED] she was a bum, she was not going to be anything in life, and her clothes were dirty. Such comments, when directed at students who are from underprivileged backgrounds, exceed the bounds of common decency because they criticize the students for things in their background that they cannot control. Respondent's comments that the students were stupid and ignorant are similarly egregious because they were directed at students who are low performing, far below basic, and require interventions to assist them in school. Respondent's demeaning and derogatory comments towards her students demonstrated moral indifference to the opinions of respectable members of the community, and an inconsiderate attitude toward good order and the public welfare.

7. (A) Cause exists to dismiss Respondent from employment with the District under section 44932, subdivision (a)(4), for unsatisfactory performance, based on Factual Findings 6-37.

(B) The term "unsatisfactory performance" is not specifically defined in the Education Code or case law. Inasmuch as there is a separate cause for dismissal for unprofessional conduct in subdivision (a) of section 44932, and it is presumed that the Legislature did not intend to enact completely duplicative statutes (*In re Maes* (2010) 185 Cal.App.4th 1094, 1110), unsatisfactory performance must mean something different from unprofessional conduct. In fact, section 44938, subdivision (c), specifies that "unsatisfactory performance" does not include any other cause for dismissal specified in section 44932.

(C) While unprofessional conduct can be determined by analyzing a teacher's conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificate employee performs unsatisfactorily to his or her employing school district.

(D) However, the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties

efficiently and well. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn. 20.) Therefore, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed unsatisfactorily.

(E) In this case, Respondent performed her duties in a way unsatisfactory to the District. Respondent's unsatisfactory performance included her failure to adequately supervise children during instructional time; failure to demonstrate sustained improvement in curricular planning, lesson delivery, student engagement, and maintaining a neat and an organized room environment; failure to follow directives given by an administrator; and failure to provide lesson plans on a consistent basis. She yelled at her students, and made demeaning and derogatory comments about them. Some parents complained to principal Rios and requested to have their children transferred from Respondent's class. She engaged in verbal arguments with misbehaving students, rather than interacting with them in a positive manner. She blamed her difficulties with classroom management on Miranda, for placing bad students in her classes. Respondent was not responsive to the direction and guidance provided by principal Rios. Principal Rios was on the committee that interviewed and selected Respondent to teach at 107th Street. Thus, he had every incentive to make sure that Respondent succeeded in her placement at 107th Street. Unfortunately, Respondent's performance of her duties at 107th Street was contrary to the expectations of principal Rios and the District.

8. (A) Cause exists to dismiss Respondent from her employment with the District pursuant to section 44932, subdivision (a)(5), for evident unfitness for service, based on Factual Findings 6-37.

(B) Evident unfitness for service means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) 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." (*Id.*)

(C) In this case, Respondent's misconduct demonstrates that she loses her composure and falls apart under difficult and stressful situations. She becomes loud, angry, frustrated, combative, and aggressive. When she is having a "good day," students like having Respondent as their teacher. But, as F [REDACTED] and D [REDACTED]'s testimony established, she has unexplained mood swings, where she is happy one day, but mad and angry the next day. Despite repeated counseling and guidance from principal Rios about treating all persons with dignity and respect, Respondent's difficulty with students and her demeaning and derogatory name-calling of students continued. The totality of the circumstances established that Respondent was, and is, suffering from a temperamental defect and is otherwise unfit to serve as a teacher.

9. (A) Cause exists to dismiss Respondent from her employment with the District pursuant to section 44932, subdivision (a)(7), for persistent violation of law or school rules, specifically the District's Code of Conduct with Students (items 3 and 5), the District's Code of Ethics, and the 107th Street Opening Bulletin, based on Factual Findings 6-37.

(B) Under Education Code section 44932, subdivision (a)(7), the violation 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, 81-82.) Isolated events or incidents involving an issue unresolved over a period of time are generally not considered persistent. (*Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317.) Cause for discipline may be based on the violation of school rules. (*San Dieguito Union High School Dist. v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1180-1181.)

(C) In this case, principal Rios provided direction and guidance, and met with Respondent on several occasions, regarding her misconduct, to no avail. She was resistant to the directives and guidance he provided. During the observation of Mr. Miranda's class, Respondent did not take notes, rolled her eyes, glared at Rios, and made audible sighs. Thus, it was established that Respondent acted in persistent violation of the school rules and the District's policies.

The Morrison factors

10. Cause for discipline against a teacher must relate to her fitness to teach within the meaning of the factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. Here, the Commission has found cause exists to dismiss Respondent based on unprofessional conduct, immoral conduct, unsatisfactory performance, evident unfitness for service, and persistent violation of school rules. With regard to those causes for dismissal, the Commission considered all the factors suggested by *Morrison* and compared them to the facts established above. Not all "*Morrison* factors" need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.) In this case, the Commission finds the factors clearly demonstrate that Respondent's misconduct related to teaching as follows:

(A) The likelihood the conduct may adversely affect students or fellow teachers. Respondent's misconduct adversely affected the involved students and fellow teachers. Respondent's students made written complaints to the principal regarding her conduct and demeaning and derogatory name-calling. F [REDACTED] did not want to go to school because of Respondent's name-calling. D [REDACTED] felt bad when Respondent made comments that he and J [REDACTED] M. were gay and boyfriends. Principal Rios received complaints from the parents of some students, who requested their children be transferred from Respondent's

class. Other teachers were affected when Respondent's second grade students had to be disbursed to other classrooms following the September 5, 2013 incident.

(B) The degree of such adversity. Respondent's misconduct caused great adversity to her students.

(C) The proximity or remoteness in time of the conduct. Respondent's misconduct was recent, having occurred in 2011 and 2012.

(D) The type of teaching certificate held by the party involved. Respondent's hiring at 107th Street established she held the credential required for that assignment. The specific credential held by Respondent was not established by the evidence presented. Respondent did not testify at the hearing.

(E) The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. None established. Respondent did not testify at the hearing.

(F) The praiseworthiness or blameworthiness of the motives resulting in the conduct. None established. Respondent did not testify at the hearing.

(G) The likelihood of recurrence of the questioned conduct. Respondent's conduct at issue is likely to recur. Warnings and counseling from principal Rios have not helped in the past. Respondent has not acknowledged responsibility for any of her conduct. Under these circumstances, the Commission believes there is more than a remote possibility that she would engage in the same sort of activity again.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. Not applicable.

Disposition

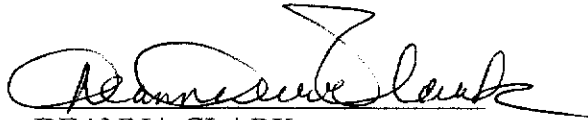
11. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 222.)

12. 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. (Factual Findings 6-37 and Legal Conclusions 1-10.)

ORDER

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

DATED: May 21, 2014



DEANNA CLARK

Member

Commission on Professional Competence

DATED: May __, 2014

KATHERINE ESTEVEZ

Member

Commission on Professional Competence

DATED: May __, 2014

ERLINDA G. SHRENGER

Administrative Law Judge, Member

Commission on Professional Competence

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

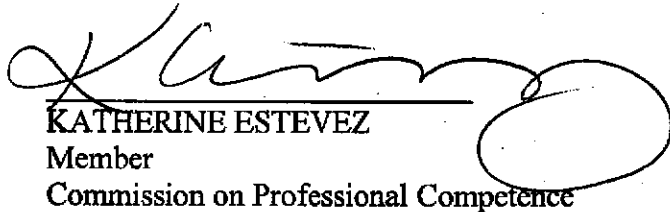
DATED: May __, 2014

DEANNA CLARK

Member

Commission on Professional Competence

DATED: May 23, 2014



KATHERINE ESTEVEZ

Member

Commission on Professional Competence

DATED: May __, 2014

ERLINDA G. SHRENGER

Administrative Law Judge, Member

Commission on Professional Competence

ORDER

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

DATED: May __, 2014

DEANNA CLARK

Member

Commission on Professional Competence

DATED: May __, 2014

KATHERINE ESTEVEZ

Member

Commission on Professional Competence

DATED: May 30, 2014



ERLINDA G. SHRENGER

Administrative Law Judge, Member

Commission on Professional Competence