

BEFORE THE
COMMISSION ON PROFESSIONAL COMPETENCE
LOS ANGELES UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

CATHERINE HOPP,

Respondent.

OAH No. 2014051105

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence in Los Angeles, California on June 23, 24, 25, and 29, and on September 14, 15, and 16, 2015. The Commission was comprised of the following members: Administrative Law Judge Mary Agnes Matyszewski, Fernando Robles and Teresa Behnke.

Mark Waterman, of Bergman, Dacey & Goldsmith, represented the Los Angeles Unified School District.

Richard Schwab, of Trygstad, Schwab & Trygstad, represented respondent Catherine Hopp, who was present throughout the hearing.

On October 14, 2015, the Commission met to deliberate and the matter was submitted.

CASE SUMMARY

The district alleged that in March 2013 it learned that on some unknown day in January 2013, Ms. Hopp dragged a student across the classroom, dropped him on his head, refused to provide him ice, and did not file a report; that on some unknown day in February 2013, Ms. Hopp forcefully pulled the same student out of his chair; that Ms. Hopp called that student a “baby” or “big baby” on “no less than two occasions”; that she refused to give the student his snack; and that she failed to report that the student was being locked in an attic, spanked and having food withheld at home. Additionally, the district further alleged that Ms. Hopp failed to report a staff member whom she suspected of abusing a student. The district sought Ms. Hopp’s dismissal from employment with the district.

The Commission unanimously determined that a preponderance of the evidence failed to establish any of the charges alleged and that no evidence provided cause to dismiss Ms. Hopp

from employment with the district. Moreover, the district's two witnesses to the events alleged to have occurred in January and February 2013 came forward months after the alleged events occurred and only after Ms. Hopp notified their employer that she had concerns regarding their absences and tardiness. Additionally, the two witnesses offered contradictory and conflicting information that changed over time, casting doubt on their credibility. Moreover, other employees present in the classroom never witnessed the alleged incidents. Furthermore, the parents of the student Ms. Hopp allegedly abused were never interviewed and the only evidence introduced regarding them supported Ms. Hopp's testimony and the other evidence she introduced at this hearing.

Insufficient evidence was offered to demonstrate that Ms. Hopp engaged in any unprofessional or immoral conduct, that she was evidently unfit to teach, or that she persistently violated laws, rules, regulations and/or policies, pursuant to Education Code sections 44932, subdivision (a), subsections (1), (5), and (7), 44938, and relevant case law. The accusation and attendant charges filed against Ms. Hopp are dismissed.

FACTUAL FINDINGS

Jurisdictional Matters

1. Ms. Hopp is a permanent certificated employee of the district. She possesses a clear single subject teaching credential in early childhood special education, a Master's degree in early childhood special education, and a Master's degree in behavior analysis. At all relevant times Ms. Hopp was a preschool teacher in the Early Childhood Education Kids Intensive Therapy (KIT) program at Shirley Avenue Elementary School in the Los Angeles Unified School District.

2. On April 3, 2014, Justo H. Avila, the district's Interim Chief Human Resources Officer, signed the statement of charges in his official capacity. The statement of charges sought to immediately suspend Ms. Hopp and dismiss her from employment with the district on the grounds of unprofessional conduct, immoral conduct, evident unfitness for service, persistent violation or refusal to obey school and/or district rules, and willful refusal to perform regular assignments without reasonable cause.

3. On April 23, 2014, the district served Ms. Hopp a 30-Day Notice of Intention to Dismiss. Ms. Hopp timely appealed the dismissal action; and, on June 2, 2014, Justo H. Avila, Interim Chief Human Resources Officer, signed the accusation in his official capacity. The accusation set forth the same facts pled in the Notice of Charges.

4. Ms. Hopp disputed the allegations, denying that grounds for her dismissal from employment existed, and this hearing followed.¹

¹ The matter was continued several times when the parties had difficulty securing panel members to serve on the Commission.

Motions in Limine

5. The district's motion in limine to exclude character witness letters and power point slides was granted in part and denied in part. Nothing requires character witnesses to observe the events at issue in the hearing. Education Code section 44944, subdivision (a)(5), provides that, "No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice" to dismiss the employee. A party may introduce "records regularly kept by the governing board concerning the employee." However, "no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." The intent of that section is to prevent the prosecution of stale claims, not to prevent an employee from submitting documents evidencing satisfactory performances during their career. Pursuant to Government Code section 11513, subdivision (d), hearsay evidence may be used to supplement or explain other evidence, but, in and of itself, it is insufficient to support a finding unless the hearsay is admissible on other grounds. The letters of support may be received as administrative hearsay. The admissibility of the power point slides would depend on foundation laid for their introduction.

6. The district's motion in limine to exclude evidence of abuse committed by other district employees was denied without prejudice as being premature. However, excluding evidence of discipline issued against other district employees was granted.

7. Ms. Hopp's motion in limine to exclude evidence of misconduct that was not alleged was denied without prejudice. Parties may introduce non-pled evidence if it would impeach evidence offered by opposing parties.

8. Ms. Hopp's motion in limine to exclude the child abuse reports filed by the district was denied subject to the district laying a foundation for the reports and establishing their relevance to the charges.

9. Ms. Hopp's motion in limine to exclude interview notes not produced in discovery was denied without prejudice as being premature so long as Ms. Hopp was given an opportunity to review any such notes prior to their being offered or used at hearing.

10. Ms. Hopp's motion in limine to exclude documents regarding the Skelly² hearing and reassignment was denied without prejudice as those documents might be relevant to the issues before the Commission.

² In *Skelly v. State Personnel Board* (1975) 15 Cal.3d 194, 215, the California Supreme Court held that in order to satisfy due process, an agency considering disciplinary action against a public employee must accord the employee certain "preremoval safeguards," including "notice of the proposed action, the reasons therefor, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." The Supreme Court's directive gave rise to an

Background Information

11. Teaching is Ms. Hopp's second career. After enjoying a successful business career, Ms. Hopp obtained her teaching certificate and originally taught at the district's Elam Early Education Center. Because of her success at that program, she was recruited to be the KIT pre-school teacher at Shirley Avenue Elementary School. The KIT program consisted of a morning and an afternoon session. Each session had eight students. Student #1, who was four years old, was one of Ms. Hopp's students in the morning session.

12. The district's program description of KIT indicated that it provided "intensive therapy using a multidisciplinary team to support the development of learning to teach skills to children with significant needs." Intensive therapy was used to target core skills and children received intensive services aimed at capitalizing on a wide range of viable, evidence-based approaches that allowed skills to generalize into a classroom setting. The key tenets of the program, its guidelines for placement, and the Transactional Support Plan were outlined in the district's documents.

Ms. Hopp adhered to the Transactional Support Plan and implemented it in her classroom. Student #1's records documented his Target Behavior and strategies to address it. Ms. Hopp complied with those strategies and followed the tenets of the KIT program and the Transactional Support Plan while teaching Student #1.

Evaluation and Chronology of Events

13. February 16, 2010, notes from Elam Principal Marietta Tambalo indicated she observed Ms. Hopp's classroom on January 29, 2010, and February 11, 2010. The notes contained several commendations. In her evaluation of Ms. Hopp, Ms. Tambalo noted that the children were focused and attentive; that during circle time the children's interests were sustained; that reenacting stories helped students understand the concepts; that the children were able to focus and participate actively; that there were smooth transitions; that Ms. Hopp utilized adults to assist during small group time, and worked collaboratively with them; that Ms. Hopp showed an awareness to adjust activities according to the children's needs; that Ms. Hopp had hands-on activities that were implemented with Play-Doh and allowed children to participate; and that Ms. Hopp and her staff were actively involved during free play. Ms. Tambalo recommended that Ms. Hopp have 10 to 15 minutes of circle time because small group activity worked best with young children; that Ms. Hopp implement two or more choices for practice activities that related to the weekly theme; that she inform her supervisor regarding the method of documentation she used to observe and obtain information; and that she post her lesson plans.

14. Ms. Hopp's May 24, 2010, personnel evaluation, performed when she was still teaching at Elam, indicated that Ms. Hopp met all district standards except she needed to

administrative procedure known as a *Skelly* hearing, in which an employee has the opportunity to respond to the charges upon which the proposed discipline is based.

improve in the attendance category because she had exceeded the district's expectation on absenteeism, having been absent eight days.³ Overall, Ms. Hopp had "standard" performance scores and one "below standard" score. The commendations section noted that Ms. Hopp maintained a good relationship with the parents, and assisted them by giving them strategies to help their children improve socially, emotionally, and physically. Ms. Hopp was advised to continue to "team collaborate" with the general education teacher and staff, and she was given a copy of the employee attendance policy. The comment section noted that Ms. Hopp worked collaboratively with the staff members to assist the children with special challenges; that she used different instructional materials in order to meet children's individual needs; and that she provided learning opportunities for students to practice skills through play and other hands-on activities provided in the classroom.

15. While at the Shirley Avenue KIT Center, Carolyn (Cara) Gelfand, the KIT Center Program Administrator, performed Ms. Hopp's evaluation on January 6, 2011. Ms. Gelfand gave Ms. Hopp "outstanding" ratings in all personal qualities categories and "strong" ratings in all personal competence categories.

16. On April 20, 2012, Ms. Gelfand filed a suspected child abuse report regarding Ms. Hopp's interactions with "Student #2." The incident information section indicated that Ms. Gelfand was advised "to have the school conduct an internal investigation [and] that they⁴ do not need to take the report."

17. On May 14, 2012, Ms. Gelfand sent a letter to Ms. Hopp informing her that she had been "cleared of the allegations made against you." The letter noted that Ms. Hopp had been reassigned in order for staff to conduct an investigation and that it "was determined that the allegations were unfounded." The district returned Ms. Hopp to her duties at Shirley Avenue Elementary School effective May 8, 2012.

18. On May 14, 2012, Ms. Gelfand forwarded Ms. Hopp an e-mail she received from Juliana Brandes, of the Preschool Intake Team, who wrote that Ms. Hopp "does an awesome job out here. She and her team work so hard and are so dedicated. I am always proud to show that class."

19. On August 14, 2012, Ms. Gelfand submitted a suspected child abuse report advising that Student #3's mother alleged that their son reported that "Ms. Hopp hit me." Ms. Gelfand also reported that the mother claimed Ms. Hopp was not "fit to teach."

³ Ms. Hopp testified that she had emergency gallbladder surgery and then took time off when one of her brothers unexpectedly died of cardiac arrest. She explained that the brother who died was the individual who helped her care for her special needs brother, so she needed time to find new help.

⁴ As written, "they" referred to the authorities with whom Ms. Gelfand filed her report.

20. On August 14, 2012, Ms. Gelfand completed a district incident report form documenting the call from Student #3's mother and her filing the child abuse report. The police officer who took the report told Ms. Gelfand not to perform an investigation at this point but to clarify the incident with general or generic questions.

21. Ms. Gelfand's August 15, 2012, handwritten note regarding her interview with Angela Engle, an aide in Ms. Hopp's KIT classroom, documented that Ms. Engle stated that Student #3's parent was upset and was talking to Ms. Hopp on the first day. The parent raised concerns regarding his son hitting his face with Play-Doh while playing. Ms. Engle reported that Ms. Hopp and Student #3 had gone "back and forth with playing with [Play-Doh] correctly." Ms. Hopp took the Play-Doh away from Student #3 and he was crying continually until his father came to pick him up. The father raised his voice, inquired why his son was upset, Ms. Hopp explained the situation, and the father and Student #3 left abruptly. Ms. Engle's explanation of how Ms. Hopp "went back and forth" demonstrated the kind of patience Ms. Hopp exhibited in the classroom and further corroborated Ms. Hopp's testimony about how she treated her students.

22. In an undated letter, the former principal at Shirley Avenue Elementary School wrote that she had been asked to investigate the allegations made against Ms. Hopp and, after interviewing all the staff, she determined that Ms. Hopp was not guilty of any misconduct. Additionally, the principal described Ms. Hopp as an energetic, caring teacher who ran a very organized, structured program for students.

23. E-mails exchanged between Ms. Hopp and Student #1's mother from September 2012, and January 2013, corroborated Ms. Hopp's testimony that she regularly communicated with Student #1's mother about Student #1's condition and things occurring at the center; specifically documenting in September 2012, that the "solution" they had agreed upon regarding dealing with snack time was successful. The e-mails also documented that Ms. Hopp regularly sent articles to help Student #1's parents address his behavioral issues at home and provided them with strategies to use with Student #1 at home. The e-mails corroborated witness testimony about Ms. Hopp's partnering with her students' parents so that 24-hour wrap-around care could be provided. Moreover, those e-mails cut against the district's witnesses' assertions that Ms. Hopp disliked Student #1. To the contrary, the e-mails demonstrated that Ms. Hopp took much time to assist him and his family. More importantly, the e-mails began months before the allegations were made; they were not written afterwards in an attempt to refute any of the charges; and, many were written during the time Ms. Hopp allegedly dragged and dropped Student #1, making that allegation seem unlikely. Furthermore, Student #1's mother described Student #1's "big boy shoes," demonstrating that Student #1's mother also used the terms in a non-demeaning way, lending further credence to Ms. Hopp's explanations that she used those words with the family's understanding.

24. On February 4, 2013, Ms. Hopp sent a letter to the scheduling department advising that one of her classroom assistants, Elizabeth Ramirez,⁵ was typically 10 to 20 minutes late for two-thirds of her shifts. Ms. Hopp noted that she is a “fantastic and pleasant person but that tardiness gives me stress at the beginning of each day.” Ms. Hopp stated that “we really like her interactions and everything else” and wanted to know what she could do. The director of Child and Adolescent Services sent Ms. Hopp a reply apologizing for Ms. Ramirez’s tardiness. The director wrote that the tardiness was not acceptable because it created added stress in the morning, and advised that the issue would be “addressed directly with [Ms. Ramirez].” The director asked Ms. Hopp to keep accurate logs of the time Ms. Ramirez arrived so they could keep track of Ms. Ramirez’s “ongoing timeliness.” Ms. Hopp introduced the documents she prepared keeping track of classroom aide Leticia Hernandez’s and Ms. Ramirez’s attendance and tardiness. Of note, the documents tracked this information from August 2012, through March 8, 2014, just three days before Ms. Hernandez made her complaint to the district.

Ms. Hopp testified that she reported Ms. Ramirez to her supervisor because Ms. Ramirez’s tardiness was negatively impacting the KIT center. Ms. Hopp never filed a report regarding Ms. Hernandez, but spoke with her supervisor regarding her tardiness. Neither Ms. Hernandez nor Ms. Ramirez voiced any concerns about Ms. Hopp at any time before Ms. Hopp complained about their attendance issues.

It was understandable that Ms. Hopp would make this complaint because the tardiness of these two women would greatly upset the well thought out and organized schedule of classroom activities that Ms. Hopp planned each day. Employee tardiness would cause chaos in the KIT classroom, a place where structure and routine are essential when working with autistic children. Moreover, given that the tardy employees were employed by a vendor that contracted with the district to provide behavioral services, it was understandable that the vendor would be upset upon receipt of Ms. Hopp’s report since it would not want to risk losing its district contract. As such, it would have great motivation to address the tardiness and absenteeism issues immediately with its employees; making it highly likely that those two women were concerned about their future employment; thereby giving them motivation to retaliate against Ms. Hopp and to deflect attention away from themselves and their poor attendance. It was troubling the district put such stock in these two women’s unsubstantiated claims.

25. Not surprisingly, within weeks of Ms. Hopp reporting the employees’ tardiness, on March 11, 2013, a handwritten note from Ms. Hernandez, one of Ms. Hopp’s classroom aides, documented three alleged incidents. The complaints were vague as to dates and times and were witnessed only by Ms. Hernandez and Ms. Ramirez. Ms. Hernandez wrote that in January 2013, Ms. Hopp attempted to remove Student #1 from one area to another. Ms. Hernandez claimed that from a sitting position, Ms. Hopp grabbed a hold of Student #1’s hands and pulled them above his head and began to pull his body by his hands

⁵ Elizabeth Ramirez is now known as Elizabeth Anievas. Since the district documents identified her as Elizabeth Ramirez, that name will be used in this decision.

and drag him. Student #1 fell from Ms. Hopp's hands and hit the back of his head on the floor and began crying; the crying lasted about 30 minutes. Ms. Hernandez claimed that Ms. Hopp refused to provide medical attention (ice pack) to his head and did not prepare an incident report. Ms. Hernandez wrote that the second incident was "ongoing" and involved Ms. Hopp telling Student #1 to "stop crying, you being a big baby [sic]." Ms. Hernandez claimed the third incident occurred in February 2013, when Student #1 was sitting at the sensory table playing and Ms. Hopp told him that he could not choose where he was supposed to be and that he "belonged at yellow airplane." According to Ms. Hernandez, Ms. Hopp "grabbed a hold of Student #1's left arm and yanked or pulled him forcefully out of the chair he was sitting at [sic]. Student #1 fell to the floor and his sweater and T-shirt he was wearing was [sic] pulled up over his head as a result of [Ms. Hopp] still holding onto his clothing. Student #1 began to cry. [Ms. Hopp] picked him up and took him to another area and he cried for about 30 minutes."

26. A March 11, 2013, district inter-office correspondence advised Ms. Hopp that she was being immediately reassigned to the Educational Service Center North operations. Ms. Hopp testified that she was not told why she was being reassigned and only learned about the allegations made against her several weeks later.

27. On March 13, 2013, Edward Rodezno, an aide in Ms. Hopp's classroom, sent an e-mail to the district advising that he never "experienced or witnessed any circumstances that he would deem to be worrisome or of concern in regards to the interaction the classroom staff provides to the students. On the contrary, the classroom staff seemed engaged and empathetic towards each child's individual needs."

28. A March 14, 2013, district memo indicated "will contact with follow-up with Angela [Ramirez] for written statement." The memo further noted: "Called Edward [Rodezno] to clarify and investigate." Thereafter, a series of questions and answers were written after Mr. Rodezno advised that he did not see or hear anything. When asked if Student #1 was injured, Edward advised that Student #1 was screaming with verbal protest for five minutes because the other students were lining up and Student #1 wanted water. The students went outdoors to class and Student #1 cried the whole way, but "no one did anything out of the ordinary." When asked how adults responded to Student #1's crying/tantrums, Mr. Rodezno replied that "Angela [Ramirez] swooped him up" and took him to the front of the line as the class needed to leave. Mr. Rodezno stated that he had never seen anything he considered unsafe for the kids and that "everyone is on top of their game."

29. On March 15, 2013, Mr. Rodezno sent an e-mail to Ms. Alina-Chambers, a district behavioral specialist who participated in the district's investigation; following on their earlier conversation. He wrote that the "questions you asked jogged my memory bank in a different manner than the questions [Ms. Gelfand] asked me on another day." He wrote that in "large part" the KIT staff was attentive towards all of the children's needs and that there was "no doubt in my mind the adults mean well but would like to see the children prosper in their respective ways." Mr. Rodezno detailed an incident where Student #1

refused to go with the class, and began to tantrum and Ms. Ramirez picked him up, told him it was time to go, carried him, and sat him down with the rest of the children. The episode lasted approximately five minutes; all the while Student #1 cried loudly and verbally demanded water. As the group was heading back to the classroom, Student #1 stopped walking, was still crying, and Ms. Ramirez again picked him up and carried him for several feet. After 10-plus minutes of continued crying and protesting, Student #1 finally started to calm down. Mr. Rodezno acknowledged that the incident “could have been handled better,” but he concluded there was no doubt that the actions Ms. Ramirez displayed “were not ill intent.” “Although she did pick him up (a no-no in my mind) she did not do so in a vicious manner. The stern voice she used was appropriate and she did not verbally attack the child.” Mr. Rodezno further noted that “perhaps having the classroom teacher present during the transition could have aided in defusing the situation.” However, Mr. Rodezno noted that “overall the staff does not render any attention to warning[s] or red flags of inappropriate classroom management behaviors.” Accordingly, when asked about any employees of whom he had concerns, the only employee that Mr. Rodezno identified as doing anything inappropriate was Ms. Ramirez; he never voiced any concerns about Ms. Hopp.

30. A March 15, 2013, district interoffice correspondence documented Ms. Hopp’s reassignment and noted that the reason for it was a staff member report of two incidents. In one, Ms. Hopp was reportedly “moving a child [Student #1] from one instructional area to another by grabbing his hand and pulling them above his head and dragging him while then [sic] student falling and hitting his head.” In the second incident, Ms. Hopp allegedly “grabbed a hold of the student’s arm and yanked or pulled him forcefully out of the chair.” The interoffice correspondence noted that the incident had been reported to police, the appropriate forms were completed, and an investigation was being conducted. The district’s decision to reassign Ms. Hopp was based on these two incidents and “two additional parents separately reporting that teacher injured their children. Both [prior] parent complaints reported and investigated, with inconclusive findings.” (This latter note referred to the 2012 complaints involving Student #3 and Student #2 that the district previously determined were unfounded.)

31. A March 15, 2013, handwritten note from classroom aide Angela Engle, responded to the inquiry regarding an alleged injury sustained by Student #1. Ms. Engle stated that she was not present during the morning session at the KIT center. As to a second incident involving a possible injury or mishandling of Student #1, Ms. Engle wrote that she heard Ms. Hopp “state to Student #1, who was crying and refusing to transition, that she was going to move him away from a center.” Ms. Engle wrote that she was fully engaged in the activities at her station and did not see the incident, but she “heard a thump” and Student #1 continued to cry. Since the alleged January incident was “the first incident” it was unclear to what incident Ms. Engle was referring, but she certainly did not report that Student #1 was dragged, dropped on his head and refused first aid.

32. A March 18, 2013, district interoffice correspondence advised Ms. Hopp that she had been reassigned from the Education Service Center North site to the Beaudrey Administrative office, effective March 19, 2013.

33. Ms. Rebecca Quevedo, an aide in Ms. Hopp's classroom, was interviewed and stated that she had no idea what the concerns were; that the physical prompting she observed was "a lot of handholding"; and that sometimes staff had to move students with their hands to a safe place to calm them down. Ms. Quevedo could not recall any incidents taking place in January or February 2013 where she felt uncomfortable with staff and student interaction. She did not remember a specific incident when Student #1 was upset when he was moved from one area of the classroom to another. She could not recall anything about Student #1 that made her feel uncomfortable, and she never heard any comments made to students that made her feel uncomfortable. She did not remember Student #1 being told to "stop crying, you are being a big baby" but recalled that the staff talked about "what babies do/what big kids do."

34. The notes from the district's interview with Lauren Eisner, another aide in the Ms. Hopp's classroom, documented that she stated that the physical contact with students involved holding hands. She had never seen Ms. Hopp interact with Student #1 and could not recall any time in January or February that she was uncomfortable with interactions between staff and students. She stated that Student #1 became upset during transition "lots of times" and he would generally "stand and cry and refuse to move until someone figures out what he wants to work for." She has heard people tell Student #1 to stop crying, but never heard anyone tell him that he was being a baby. She had never heard staff make any comments to students that made her uncomfortable.

35. During her interview, Ms. Engle remembered an incident in January or February when Student #1 was at one station and was not ready to transition. He was crying and was not finished with what he was doing. Ms. Engle could not recall Ms. Hopp's exact words, but Ms. Hopp intervened to get Student #1 to transition to the other station, however, Student #1 refused to move. She heard Ms. Hopp tell Student #1 that she was going to move him to the other station, but she did not see Ms. Hopp and Student #1's interaction because Ms. Engle's line of sight was obstructed. Ms. Engle heard Ms. Hopp tell Student #1 that she was going to move him to the break/library center. Throughout this time Student #1 was still crying and then Ms. Engle heard a thump and then more crying. The thump "sounded like a body." Ms. Engle recalled that Ms. Hernandez was present during the incident. Ms. Engle did not report that Ms. Hopp dragged Student #1, that he hit his head, that Ms. Hopp refused to give him ice, or that the incident required a report to be filed. During her interview, Ms. Engle also reported hearing Ms. Hopp tell Student #1 that she would not give him anything to eat when his parents did not send a snack. Ms. Hopp would tell Student #1 that she could not give him anything and that he should talk to his parents about it. Ms. Engle reported that her instinct was to feed the child and she would override Ms. Hopp and feed Student #1. Ms. Engle was never asked if she was aware of any communications between Ms. Hopp and Student #1's parents regarding a plan for his snack issues. Ms. Engle stated that she also heard Ms. Hopp tell Student #1 to "stop crying, you are being a big baby," but Ms. Engle acknowledged it was phrased more as a question, rather than an insult, more like asking him if that was what he was. She heard Ms. Hopp make this comment two to four times. Ms. Engle did not claim that Ms. Hopp used the term "big baby" in a demeaning way.

36. The district's notes of the interview of Amy Combs, a behavior specialist in Ms. Hopp's classroom, documented that she recalled one time when they were having difficulty transitioning Student #1 and Ms. Hopp held one of his hands and wanted Ms. Combs to hold the other, but Ms. Combs was not comfortable with this because it is possible to dislocate a child's shoulders when holding them in this manner. Ms. Combs modeled how to hold students under the armpits. Ms. Hopp was concerned that they were reinforcing Student #1 with the attention, but Ms. Combs told her it was more important to transition him safely. Ms. Combs acknowledged that this happened during her "very early interactions" with Ms. Hopp, and that she redirected Ms. Hopp to use different prompts. Ms. Combs advised that Ms. Hopp "has a hard time with Student #1." She explained that often students did not complete an activity and that staff would tell the students that they could possibly earn a token the next time, but Ms. Hopp felt it was appropriate to give Student #1 a time out for not earning his tokens, and he would not get to do a unique activity if he did not stay on task. Ms. Combs did not feel that that was an appropriate thing to do. Ms. Combs could not recall Ms. Hopp telling Student #1 he was a baby. Ms. Combs stated that Ms. Hopp had "difficulty avoiding a power struggle with transitions and Student #1," but it was nothing that was "reportable." Ms. Combs did not testify in this hearing and the comments she made at her interview were received as administrative hearsay, pursuant to Government Code section 11513.⁶ While her statements may have supplemented or explained other witnesses' testimony regarding transitions, no finding can be made that Ms. Hopp and Ms. Combs ever had a conversation regarding dislocating students' shoulders or that Ms. Hopp gave Student #1 time outs. Further, Ms. Hopp denied having this conversation with Ms. Combs and no admissible evidence contradicted Ms. Hopp's testimony.

37. The notes of the interview with Tina Valdez, a classroom aide, documented that she did not remember feeling uncomfortable about Ms. Hopp's interactions with students any time in January or February 2013. She noted that sometimes Ms. Hopp "talks to students in a babyish way that is not appropriate" and she stated that her "frustration working with [Ms. Hopp] is that [Ms. Hopp] doesn't use proactive strategies and uses more reactive strategies," examples of which are redirecting, ignoring, modeling, and complimenting others. Ms. Valdez believed that Student #1 was "so advanced," but Ms. Hopp had not tailored the curriculum to meet his needs and that was where the difficulties arose. Ms. Combs did not testify in this hearing and the comments she made at her interview were received as administrative hearsay pursuant to Government Code section 11513. While her statements may have supplemented or explained other witnesses' testimony regarding Ms. Hopp's use of the term "baby," no finding can be made that Ms. Hopp used incorrect strategies or failed to meet Student #1's needs.

⁶ The term "administrative hearsay" is a shorthand reference to the provisions of Government Code section 11513, subdivision (d), to the effect that hearsay evidence that is objected to, and is not otherwise admissible, may be used to supplement or explain other evidence but may not, by itself, support a factual finding. It may be combined with other evidence to provide substantial evidence sufficient to support a finding. (*Komizu v. Gourley* (2002) 103 Cal.App.4th 1001.)

38. On March 21, 2013, the district interviewed Ms. Hopp. She stated that one of the ways she responds to a child having a difficult time following the routine is the “child [is] removed to rest.” Ms. Hopp stated that she “escorts, walks the children, encourages them to move”; she will block their ability to escape; she will get behind them to make them move; she will pick them up calmly and move them to another spot; and she will herd them. When children are hurt, she takes care of them; gets an icepack; contacts the nurse; and writes a report to the parents. Ms. Hopp described the preventive strategies in place for Student #1 in the February 3, 2013, behavior plan that was developed for him. Ms. Hopp stated that “numerous times” she had suggested that Student #1 needed to be promoted from KIT because he had achieved his goals.

39. On April 16, 2013, Ms. Hopp was questioned more specifically about the incidents involving Student #1. She stated that nothing stood out about him, other than his frequent tantrums. She had no recollection of ever moving him and denied that there was an incident where he fell and hit his head; she stated that if that had happened, she would have provided him an icepack and filled out a report. If there had been such an incident, it would be documented in his file and she could not recall ever providing ice to him. Ms. Hopp also denied an incident where he slipped out of his clothes. When asked about allegations that she called Student #1 a “baby,” the district notes indicated that Ms. Hopp explained that what she told him was to not be a baby, that he is a capable child, and that he is five and should act like a five-year-old. However, when testifying, Ms. Hopp denied ever making this statement. She explained that Student #1 was not five years old while he was in her classroom, so she would never have told him to act like a five-year-old. Moreover, as Ms. Hopp credibly explained, since these children have special needs, they are not at the developmental milestones of children the same age without special needs, so telling them to act their stated age is something she never does, as it would be meaningless for these children. The district notes also documented that when Ms. Hopp was asked if there was any other information she wanted to share, Ms. Hopp reportedly stated that she hoped the district was interviewing others, as they were also concerned about Student #1 because he indicated that he was being spanked, he tried to spank other children, he has advised that he has been locked in the closet, and stated that food has been withheld. When asked if she had filed a report about these concerns, Ms. Hopp stated that she had not. Again, Ms. Hopp denied making these statements and testified that she told the district she hoped they were interviewing everyone about these allegations and that she explained her interactions with Student #1. As more fully described, below, Ms. Hopp’s explanations were credible and persuasive, and demonstrated, along with other credible evidence, that no violations had occurred.

40. Following Ms. Hopp’s interview, Teresa Martin, the district’s Director of Early Childhood Special Education, filed a suspected child abuse report on April 16, 2013, regarding Student #1’s alleged claims of abuse.

41. An April 23, 2013, interoffice correspondence advised Ms. Hopp of an upcoming meeting on April 25, 2013, at which she would have an “opportunity to answer questions and provide additional information regarding these incidents.”

42. The district's memo documenting the April 25, 2013, meeting, indicated that Ms. Hernandez, Ms. Ramirez and Ms. Engle reported that in January 2013, Ms. Hopp was observed grabbing Student #1 by the hands, pulling his hands and arms above his head when he was sitting, and dragging him, whereupon he fell and hit the back of his head. Ms. Hopp did not provide ice, first aid, or file a report concerning the incident. Ms. Hopp reportedly stated she did not remember the incident or the child hitting his head. The memo also asserted that Ms. Hernandez, Ms. Combs, and Mr. Rodezno reported that in February 2013, when Student #1 was sitting at a table, Ms. Hopp grabbed a hold of his left arm and pulled him forcibly out of his chair whereupon he dropped the floor while his shirt was pulled up over his head. The memo further documented that Ms. Engle, Ms. Hernandez, Ms. Combs, and Ms. Ramirez reported that during this time frame, Ms. Hopp was heard making disparaging comments to Student #1 such as, "Stop crying, you are being a baby." However, the evidence established that those witnesses did not make those assertions and Ms. Hopp's answers were understandable in light of the way the questions were posed to her. The district's memo also documented that during Ms. Hopp's April 16, 2013, interview she stated that she had no recollection of any of the incidents involving Student #1 and that Ms. Hopp raised concerns regarding Student #1's welfare. The memo further documented that Ms. Hopp later claimed her statements were taken out of context and that she had been told not to feed Student #1. The district memo noted that during the April 25, 2013, meeting Ms. Hopp had produced a photograph of a staff member that she reportedly said showed the staff member being frustrated with a child and that Ms. Hopp was concerned about the staff member's behavior. The district reminded Ms. Hopp that she met previously with the district regarding allegations of inappropriate physical contact made in April and August 2012, and the district provided assistance and guidance on that topic and directed her not to use physical means to manage students' behavior. Additionally, the district wrote that the services of Ms. Valdez, a behavior interventionist, had been provided to Ms. Hopp since August 2012, and she was given additional training regarding positive behavioral support and strategies. No documents or testimony identified what "assistance and guidance" the district provided Ms. Hopp and Ms. Hopp's testimony that Ms. Valdez worked only a few days per week in the classroom and was hired to satisfy teacher/student ratios was unrefuted. The district memo noted that the district reviewed and provided Ms. Hopp with several of its governing documents and directed her how to act in the classroom. The memo advised Ms. Hopp that her failure to follow the directive may lead to disciplinary action and that if Ms. Hopp were evaluated today, she would receive a "below standards" evaluation. Of note, these directives were given to Ms. Hopp at this meeting and she was afforded no opportunity to comply with them, as she was never returned to the KIT classroom after she was removed in March 2013. Thus, the causes of discipline for failure to follow these directives were unreasonable, at best.

43. The handwritten notes from the April 25, 2013, meeting, called a "conference to dismiss," purportedly documented Ms. Hopp's statements made at that meeting. The notes indicated Ms. Hopp had no recollection of any child hitting his head and she did not know why staff would say they saw that; Ms. Hopp discussed the steps she took to create and implement Student #1's behavior plan; Ms. Hopp said that Student #1 reported in January about being locked in the attic at Christmas time, his parents withheld food and failed to give

him additional food and he was “sent off as being naughty when he wanted food”; Ms. Hopp did not report Student #1’s comments because she knew his family; the child had food; and, the statements were taken out of context Ms. Hopp explained that when Student #1 made these statements his appearance was acceptable, they were discussing him being afraid of the attic and the closet, and Ms. Hopp did not feel his comments warranted filing a report; Ms. Hopp did not give Student #1 snacks because his parents told her not to feed him; if Student #1 did not have a snack Ms. Hopp would remove him from the snack table and tell him that his mother did not give him a snack, as instructed by his parents, but Ms. Hopp acknowledged there were no records of any of that in his file. Ms. Hopp also produced a picture of Ms. Engle that she stated showed Ms. Engle acting aggressively towards a child when Ms. Engle became frustrated. Ms. Hopp claimed that she was concerned about Ms. Engle’s actions but did not report the matter. The report noted that the district believed that Ms. Hopp submitted the picture of Ms. Engle because she was contesting Ms. Engle’s credibility. Ms. Hopp refuted all of these points when testifying. She credibly explained that the report was taken out of context and contained only “snippets” of much longer discussions. As noted in more detail in this decision, the Commission did not find Ms. Hernandez’s and Ms. Ramirez’s allegations regarding Ms. Hopp’s negative interactions with Student #1 to be credible, Ms. Hopp’s explanation of the lesson she was reviewing with Student #1 when he made his comments was believable, as was her explanation of the circumstances under which she produced the photograph of Ms. Engle and the student. The district’s summation of its meetings with Ms. Hopp appeared to be written in such a way as to cast Ms. Hopp in the worst light possible. The district’s investigation and its documentation did not appear to be fair or unbiased.

44. On April 25, 2013, Ms. Gelfand filed a suspected child abuse report indicating that Ms. Hopp brought a photo to the April 25, 2013, conference showing Ms. Engle holding a child under the arm with an open hand. Ms. Hopp was concerned that Ms. Engle was grabbing the child but she acknowledged that she had not reported the incident. The police advised the district that they would not take the report, as there was insufficient evidence; they instructed the district to move forward with an internal investigation.

45. A May 1, 2013, interoffice correspondence memo from Ms. Gelfand to Ms. Hopp summarized what took place at the April 25, 2013, conference. The document reiterated all that had been discussed, including what was discussed at the previous conferences. The memo noted that when Student #1’s comments about being spanked, locked in the closet, and having food withheld were discussed, Ms. Hopp advised that “the sentence was taken from a longer conversation and at the time, in [Ms. Hopp’s] perception, it did not cause a reasonable suspicion.” Further, Ms. Hopp spoke at length about her understanding that Student #1’s parents asked her to withhold food from him during snack time, stating that he ate his snack before he arrived at school or that there were days when his family did not send a snack and they told Ms. Hopp not to provide him with food. Ms. Hopp stated that on those occasions she gives him a preferred item to play with in another area of the classroom, rather than having him sit at the snack table. Ms. Hopp further stated that Student #1’s comment about being locked in the attic and the closet and having food withheld “did not stand out from the entire conversation” and Student #1 did not appear

“malnourished.” The memo also noted that Ms. Hopp provided a photo purportedly showing an aggressive staff member, but had not reported the incident, and was told that the district reported it after the April 25, 2013, meeting. Ms. Hopp had also provided a photo showing an airplane-sized bottle of liquor that had been found in the classroom that she reported on January 25, 2013. The memo noted that the district met with staff on January 29, 2013, and each staff person, including Ms. Hopp, stated that they did not believe any team member had placed the bottle in the classroom and that no team member ever appeared under the influence of alcohol during the work day. Ms. Hopp was reminded of the two prior allegations in 2012 regarding inappropriate physical contact with students. The district had provided her with “assistance and guidance” regarding appropriate treatment, positive behavior support strategies, and appropriate instructional strategies, and assigned a behavior interventionist to her classroom. However, no evidence was introduced regarding what “assistance and guidance” had been offered in 2012. Ms. Gelfand produced absolutely no documentation of any directives or instructions given to Ms. Hopp in the past and the absence of such evidence was very disconcerting and lent further credence to Ms. Hopp’s position. The May 1, 2013, memo further noted that “assistance and guidance” was offered to Ms. Hopp during the April 25, 2013, conference and she had been given directives. The memo ended by noting that Ms. Gelfand would be concluding her investigation, including reviewing any documentation Ms. Hopp submitted, and there may be disciplinary action. The memo advised Ms. Hopp that if she were evaluated today, she would receive a “below standard” evaluation.

46. Ms. Hopp’s May 7, 2013, evaluation noted that she had been observed on August 23, 2012, October 24, 2012, and January 29, 2013. Conferences with Ms. Hopp allegedly took place on April 29, and May 8, 2013, but no documentation of any such conferences was introduced, although Ms. Gelfand and Ms. Hopp each signed the May 7 evaluation on May 8, 2013. Moreover, the only meetings evidenced at this hearing were those involving this investigation and the dates of those meetings did not correspond to the dates identified in this evaluation. Be that as it may, the evaluation found that Ms. Hopp met district standards in all categories except for needing improvement in the area of guiding students to be self-directed; engaging them in problem solving, critical thinking and other activities; using a variety of instructional strategies to respond to their diverse needs; providing an effective classroom environment; and maintaining accurate and timely records. The evaluation noted that Ms. Hopp did not meet district standards for establishing and maintaining standards for student behavior; creating a climate that promotes fairness and respect; planning and implementing classroom procedures and routines that support student learning; communicating regularly with students and parents about instructional goals and student progress; following district and state policies, laws and regulations; and communicating and interacting with colleagues, staff, parents and students in an appropriate manner. Ms. Hopp’s overall evaluation was “below standard performance.” However, under the commendations section, the evaluation noted that Ms. Hopp’s “classroom environment and physical space reflects thoughtful planning,” “activities are developmentally appropriate,” and “instruction is individualized.” Attached documentation identified nine specific deficiencies, including the failure to use positive behavior support strategies, failure to follow protocols, failure to implement behavioral protocols, failure to use statements that

stress what students should be doing, failure to report concerns regarding child safety and welfare, failure to report concerns regarding staff, inconsistent planning to meet the individual needs of students, ineffective or inconsistent use of data collection tools, and overreliance on negative reinforcers. The evaluation contained six recommendations, noted that six types of assistance were provided, and that nine types of assistance were to be provided. Ms. Hopp testified that none of the Education Code requirements for teacher evaluations was followed before or during the time this evaluation was performed. Her testimony was not refuted by any of the district's witnesses and no documents demonstrated that the district complied with the Education Code requirements during her evaluation. The evaluation did not appear to have been properly conducted.

47. On May 10, 2013, Ms. Hopp filed a grievance appealing the district's proposed action. Ms. Hopp detailed her experience and positive results, explaining her teaching methods. Ms. Hopp denied ever grabbing a student, dragging a student, or making disparaging remarks. She asserted that she followed all district policies. She denied that Student #1 struck his head and pointed out that it was inconceivable that three assistants would witness such an incident and not report it or document it. Ms. Hopp denied failing to communicate with parents and pointed out documentation showing that she did so. Ms. Hopp asserted that no report was filed because the alleged incident did not occur. Ms. Hopp wrote that when Student #1 ate his snack at the wrong time, a strategy plan was created with behavior specialist Tina Valadez, and there were multiple conversations with other teachers regarding that behavior. Ms. Hopp wrote that Student #1's parents expressed concern about his eating habits and while Ms. Hopp did not agree with withholding snack, there was no indicated need to report suspected child abuse because of this matter. Ms. Hopp also denied the need to report the attic statements as they were made in reference to a discussion regarding feeling afraid.

48. During the investigation, the district received a June 7, 2013, handwritten note from Ms. Ramirez documenting her version of the events. Ms. Ramirez wrote that Ms. Hopp was at one of the stations with Student #1, who was having a hard time. Student #1 threw a toy at another child and when Ms. Hopp attempted to intervene, Student #1 hit her. Ms. Hopp then attempted to physically remove Student #1 to the library. Student #1 was crying and fighting, making it difficult for Ms. Hopp to physically prompt him. Halfway to the library, Ms. Hopp dropped him on the floor, "seemingly fed up with moving him." Student #1 fell to the ground and hit his head on the floor. "The sound was a very loud 'thump'" and "his cry went from upset to in pain." Ms. Hopp "remarked something to the effect of 'that's what happens when you don't listen' and sat him on the bench in the library, at which point she turned to [Ms. Ramirez] and said 'God is [smiting] [brackets in original] him for being ___, [Ms. Ramirez could not] remember the exact word, but for being disobedient/troublesome.'" Ms. Hopp next asked Student #1, "annoyingly," if he wanted ice. Student #1 was "crying strongly" and did not answer. Ms. Hopp "said something to the effect" that he needed to use his words if he wanted ice, but because he was crying he did not reply and Ms. Hopp "did not check in with his injury or give him ice." At this point, Ms. Hernandez intervened, gave him ice and checked on his injury. Ms. Ramirez identified the witnesses present during this incident. She also noted that Ms. Hopp seemed "to have a short

temper and is easily frustrated by the students who exhibit non-compliant/defiant behaviors,” noting that Student #1 was a particular student with whom Ms. Hopp had a difficult time. This report conflicted with Ms. Ramirez’s initial statements to the district and contained many more details, including new claims of statements made by Ms. Hopp regarding “God smiting Student #1.” These new details made Ms. Ramirez’s claims appear exaggerated and non-credible. It was hard to fathom that she would omit these details when she was initially interviewed by the district. Moreover, none of the other witnesses ever reported hearing Ms. Hopp make such memorable statements. Ms. Ramirez also wrote about a concern she had with Ms. Hopp withholding snacks from Student #1, claiming that many times he came to school without snacks and would ask for some at snack time but, Ms. Hopp would “almost always” tell him no, tell him he should ask his mother to bring him snack, and tell staff that his parents would not listen to her when staff asked if the matter had been discussed with Student #1’s parents. Ms. Ramirez wrote that she doubted the parents would act that way because when staff members brought it to the parents’ attention, they sent a large box of snacks to school. In light of the e-mails between Ms. Hopp and Student #1’s parents regarding the plan to address his snack issues, Ms. Ramirez’s claims in this regard seemed contrived. Ms. Ramirez expressed concern that Ms. Hopp’s physical prompts were “too strong/brash” and questioned Ms. Hopp’s “proper understanding to deal with children with special needs and provide the appropriate behavioral interventions.” Ms. Ramirez claimed that when staff discussed interventions, Ms. Hopp would reject staff suggestions or not follow through with them. Again; in light of the overwhelming documentation to the contrary, these claims, too, were not credible.

49. On August 19, 2013, Ms. Gelfand authored a note regarding her August and September 2012 meetings with Ms. Hopp after a second complaint of inappropriate physical contact with the student was raised. The incident was reported to police, whose investigation resulted in “inconclusive findings.” The district’s internal investigation revealed that the child was hitting himself with Play-Doh, Ms. Hopp repeatedly advised him not to hit himself or it would be taken away, the child continued hitting himself, and the child became further agitated until the class was dismissed. Because this was the second complaint during the 2012 year, a behavior support teacher, Ms. Valdez, provided weekly on-site consultation and coaching and, a behavior intervention provider was added full-time to the KIT team to assist daily with programming and instruction. Ms. Hopp was also advised to “employ strategies that state what a child should be doing in lieu of telling a child to stop, or giving a negative command.” Further, “reactive strategies to use when students become agitated such as redirection and employment of calming strategies” were discussed with Ms. Hopp. Given that Ms. Gelfand authored this note more than one year after the district determined that the 2012 complaints were “unfounded,” coupled with the fact that there were no documents supporting the statements Ms. Gelfand made in this note, its reliability and her assertions contained therein were highly doubtful.

50. A September 16, 2013, inter-office correspondence from Director Teresa Martin to Ms. Hopp advised that a meeting had been scheduled for September 23, 2013, to discuss the “tentative intention” to issue Ms. Hopp a notice of unsatisfactory acts with

suspension without pay because of inappropriate physical contact and verbal interactions with students and the failure to report suspected child abuse or neglect.

51. On September 23, 2013, the district issued Ms. Hopp a Notice of Unsatisfactory Service or Act of Certificated Employee alleging she committed immoral conduct and/or unprofessional conduct and persistently violated or refused to obey the school laws of the state or reasonable regulations. The attached charges were the same as those identified in the accusation. The district also served Ms. Hopp with a Notice of Suspension and copies of documents supporting the district's action.

52. On October 15, 2013, the district sent Ms. Hopp a letter advising her that an administrative review meeting had been scheduled for October 28, 2013, to permit her to present any statements or documents responding to the charges. A letter dated October 28, 2013, rescheduled the meeting, pursuant to Ms. Hopp's request, to November 8, 2013.

53. Notes from the November 8, 2013, administrative review documented the various arguments and statements made by Ms. Hopp's attorney, Mr. Schwab, who represented her at this hearing. Mr. Schwab indicated that Ms. Hopp denied the allegations of forcibly moving Student #1; that she communicated with Student #1's mother; that she did not have a reasonable suspicion to report child abuse; and that the district misconstrued or took out of context the comments Ms. Hopp made at her meetings with the district. Ms. Hopp produced a photograph to demonstrate the kinds of facial expressions used by staff when interacting with students. During the meeting Ms. Hopp was asked if she was NCI (Nonviolent Crisis Intervention) trained, and she replied that she had never heard of it, and did not have that training. However, Ms. Hopp testified that NCI training was originally offered to her and other staff; but the offer was later revoked because preschool teachers were not required to have that training so, the district elected not to send them to it. Additionally, while testifying, Ms. Gelfand admitted that pre-school teachers are not NCI trained because it is not a recommended practice for children under five years old, like the KIT students. At this hearing the district attempted to impeach Ms. Hopp with the statements contained in the document written after the meeting; but, because most of the statements were made by her attorney, not Ms. Hopp, they did not impeach Ms. Hopp's testimony. More importantly, the document was only a few pages long, yet there were numerous errors contained therein, including wrongly identifying speakers and failing to identify speakers. These errors further supported the Commission's concerns regarding the accuracy of the district's reports and investigation.

54. On December 3, 2013, Sharyn Howell, the Executive Director of the district's Special Education Program, advised that she had "reviewed and deliberated over all the documents presented," including documents Ms. Hopp submitted, and determined that:

There was more than one witness of the incidents regarding your physical contact with Student #1. I am also unconvinced by your explanation regarding the incidents of failure to report child abuse and have taken into consideration

the fact that you were the one who presented the evidence of possible abuse in two cases, one involving a child's parents and another with a classified employee to support your own innocence regarding interactions with students in your care. Your responses throughout the investigation lacked consistency. Therefore, I have decided to recommend that the District shall move forward with your dismissal, and if the board of education approves this recommendation, you will be suspended immediately from your duties without pay [and will be dismissed unless you request a hearing].

55. An undated district interoffice correspondence reassigned Ms. Hopp from the 17th to the 11th floor of the Beaudrey Building, effective immediately.

District Codes, Bulletins, Memorandums and Policies

56. The district's Employee Code of Ethics, adopted in September 1998, and last revised in February 2003, noted that the district's mission is to educate all students to their maximum potential and that the district is committed to three core ethical principles: commitment to excellence, district and personal integrity, and responsibility. The code of ethics "plays a central role" in the district's commitment to help district personnel "achieve the highest ethical standards in their professional activities and relationships. Our goal is to create a culture that fosters trust, commitment to excellence and responsibility, personal and institutional integrity, and avoids conflicts of interest and appearances of impropriety." The code of ethics applies to all district personnel. When making decisions, personnel must evaluate the situation and identify ethical issues, follow the rules, ask for guidance from supervisors, and make and carry out decisions that are consistent with the rules and develop excellence, integrity and responsibility. The Commitment to Excellence section noted that personnel are to set the example; create an environment of trust, respect and nondiscrimination; provide honest, accurate and timely information; identify problems and help create solutions; keep policies, procedures and rules; report improper conduct; and keep colleagues safe from retaliation.

57. The district's Ethics Policies, policy bulletin number BUL-4748.0, enacted May 18, 2009, stated that it was the responsibility of all personnel to be knowledgeable about the district ethics policies and "to take an active role in promoting an organizational culture that encourages ethical conduct." The bulletin referenced the four Board-approved ethics policies that all staff "should be familiar with." Those policies were identified as the employee code of ethics, the conflict of interest code, the contractor code of conduct, and the lobbying disclosure code. District employees were responsible to set a good example of ethical conduct, be familiar with the ethics' policies, contribute to proactive and transparent management of potential ethical concerns, seek guidance from supervisors, and know they are role models for peers and students.

58. The district's Code of Conduct with Students, enacted July 15, 2008, identified the district's "most important responsibility" as being "the safety of our students."

Employees were expected to use good judgment and were cautioned to avoid situations including, but not limited to, engaging in any behaviors that were unprofessional, unethical, illegal, immoral, or exploitative; making statements or comments which may be considered demeaning; and touching or having physical contact that was not within the scope of duties.

59. The district's Code of Conduct with Students, policy bulletin number BUL-5167.0, enacted July 1, 2010, identified students' safety as the district's "most important responsibility." Employees were to be provided with the Code of Conduct with Students on an annual basis at the beginning of each school year, and administrators/principals were required to stress the importance of the employees' legal obligations, as mandated reporters of suspected child abuse, to telephone the appropriate child protective agencies and to follow-up with written reports "anytime" they received information regarding incidents, behaviors, or conduct "that may be an indication of suspected child abuse."

60. On October 10, 1998, via a board resolution, the board reaffirmed its commitment to the respectful treatment of all persons, requiring students and adults at its schools to "treat all persons equally and respectfully and refrain from the willful or negligent use of slurs against any person"

61. The district's Abolition of Corporal Punishment, policy bulletin number BUL-5046.0, enacted February 23, 2010, stated that "corporal discipline, in any form, is not to be used within the District" and the "Superintendent encourages the use of positive approaches to discipline and classroom management"

62. The district's Child Abuse and Neglect Reporting Requirements, policy bulletin number BUL-1347.2, enacted July 1, 2011, documented the district's policy that all "employees shall report instances of suspected child abuse or neglect by telephone immediately, or as soon as practically possible, to an appropriate child protective agency and shall prepare and send a written report thereof to the same child protective agency called within 36 hours of receiving the information concerning the incident."

63. The district's Behavior Intervention Regulations for Students with Disabilities with Serious Behavior Problems, policy bulletin number BUL-5376.0, enacted January 17, 2011, set forth the district's "policy to implement legal requirements regarding behavior interventions for students with disabilities who have serious behavior problems." The bulletin noted that prohibited interventions included interventions designed to, or likely to, cause physical pain; interventions that deny adequate food; or interventions that are designed to subject the student to verbal abuse, ridicule, humiliation or other procedures expected to cause excessive emotional trauma. A Behavior Emergency Report must be completed when the behavioral emergency occurs, which was defined as a serious behavior problem which was not previously observed or for which the previously desired behavioral intervention was not effective. A serious behavior problem was defined as one which was self-injurious, assaultive or causes serious property damage, or other behavior problems that were pervasive

and maladaptive, for which behavior approaches in the student's Individualized Education Program (IEP) were ineffective.

Letters of Recommendation and Support

64. On June 30, 2010, Eileen Fiori, a district preschool program specialist, wrote a letter on Ms. Hopp's behalf noting that Ms. Hopp had been with the district for two years as a special education teacher at the preschool program at Elam and that Ms. Fiori had provided technical support during those two years. She wrote that Ms. Hopp was "an enthusiastic and dedicated teacher" and she had observed Ms. Hopp "influence the aggressive behaviors of at least three of her students." Ms. Hopp had decreased those students' time and frequency of meltdowns with her use of positive behavior techniques and had decreased or extinguished negative behaviors. For one child, Ms. Hopp had completely replaced his negative aggressive behaviors. "This was one of Mrs. Hopp's strengths." Ms. Fiori wrote that Ms. Hopp planned highly motivating lessons, while at the same time teaching the required skills to help children become successful in their transition to kindergarten. Ms. Hopp was well loved by her young students and, although the district requires paperwork that can be quite challenging, Ms. Hopp had progressively proved her skills in that regard.

65. On June 30, 2010, Ms. Tambalo, the principal at Elam, wrote that Ms. Hopp successfully collaborated with the general education teachers to include the special education students in the school process. Ms. Hopp supported the development of the special education children and modeled self-sufficiency, friendship, and group dynamics. She learned the strengths and preferences of each student and appropriately modified the curriculum and provided scaffolding for the children. Ms. Hopp demonstrated a strong ability to personalize the educational experience and focus on the students' needs. Facilitating interactions with non-disabled peers was one of Ms. Hopp's strengths. Ms. Hopp used positive discipline techniques to facilitate children's behavior and modeled appropriate interactions for all children. Ms. Hopp completed IEPs and communicated with parents and specialists as needed. She was a professionally responsible employee.

66. Ms. Hopp introduced several letters of recommendation written by parents, teachers, colleagues, social workers and individuals who provided instruction or assistance in Ms. Hopp's classroom. Ms. Hopp testified that the letters were written when one mother of a student in the KIT classroom, who was very distraught that Ms. Hopp was abruptly removed, "rallied the troops" and asked parents to write letters, copies of which she sent to Ms. Hopp. During the investigation Ms. Howell asked Ms. Hopp for copies of the letters, which Ms. Hopp provided. The letters introduced were written after the district removed Ms. Hopp from the KIT Center, but many of them did not specifically reference the allegations, making the extent of the authors' knowledge of the charges unclear. Be that as it may, the letters were extremely complimentary of Ms. Hopp and described her in glowing terms.

67. A social worker with the Department of Children and Family Services who worked with Ms. Hopp at Elam from 2009 through 2010, wrote that Ms. Hopp was an advocate, a compassionate special education teacher, versatile, and dedicated, with a solid

focus on the individual needs of the students.⁷ The social worker wrote that Ms. Hopp was skilled in addressing student needs and ensuring children will thrive and develop in an adaptable educational atmosphere. Ms. Hopp encouraged “firm behavioral management techniques, possessing excellent interpersonal and communication skills to develop an excellent rapport with all members of the school community.” She described Ms. Hopp as kindhearted and empathetic, flexible and accommodating, a teacher who was able to discuss specific child needs with caregivers to enable them to provide well-rounded structure at home and school.

The social worker also noted that Ms. Hopp facilitated each student’s IEP among the caregiver, social worker, and school professionals; provided useful information that included the strengths and weaknesses of the child; timely responded to all requests for records; and genuinely cared and provided educational site services for the children to assist them in obtaining stable lives. The social worker described Ms. Hopp as being a great role model; having great communication skills and trust with teachers, children, families and professionals; being generous in teaching children; and having a personal commitment that allowed all to work as a team. The social worker observed Ms. Hopp’s “character to be that of an excellent special education teacher.”

68. A licensed special education instructor, who worked collaboratively with Ms. Hopp for over five years, described her as being “more than instrumental in assisting fellow colleagues in the use of methodical and specific classroom strategies to help modify behavior and to guide students to exhibit more appropriate behavior.” The instructor visited the KIT Center on several occasions. She shared two students with Ms. Hopp, and observed her follow the KIT Transactional Behavior Support Strategies, determine the function of the students’ behavior, and extinguish negative, unwanted behavior. The instructor described Ms. Hopp’s strategies as allowing the students to self-regulate and engage in self-calming behaviors. Ms. Hopp welcomed many professionals into her classroom for observation on several occasions. Ms. Hopp was extremely organized, reliable, and creative; demonstrating leadership qualities.

69. Another letter was written by Ms. Hopp’s neighboring teacher for two years who shared students with her. She observed Ms. Hopp’s teaching methods, describing her as a well-planned and very thoughtful teacher whose classroom was set up for optimal success for students with autism. Ms. Hopp used visual schedules and supports, reinforcers and positive behavior techniques in every aspect of the class, with every student and aide. Ms. Hopp was kind to her students and accommodating of their needs. The two teachers shared

⁷ This letter was written in 2013 and, during Ms. Hopp’s cross-examination, the district introduced a 2010 letter written by the same social worker, in which the body of the letter was the same as the 2013 letter. However, because the social worker did not testify, there was no evidence refuting Ms. Hopp’s testimony that she received both letters from the social worker at two different points in time. Further, the addressee section of the two letters was different, which corroborated Ms. Hopp’s testimony about receiving both letters from the social worker at two different points in time.

Student #1, who was emotionally sensitive and protested during transition. Ms. Hopp utilized appropriate behavior techniques intended to calm, redirect and re-engage him. The teacher always observed Ms. Hopp addressing Student #1's needs in an appropriate manner. The wall between the two teacher's classes was a "paper thin" bungalow wall and Ms. Hopp never raised her voice to her students. She described Ms. Hopp as being an excellent teacher who cared greatly for her students and each and every day and used all of her expert abilities to meet their unique needs.

70. A general education preschool teacher wrote that working with Ms. Hopp was a very enlightening experience. They had a collaborative team approach that included working with many aides and they shared students and supplies. Ms. Hopp planned creative and fun lessons for the students, her lessons were age appropriate, and provided supportive behavior techniques. The teacher observed Ms. Hopp use gentle actions during every part of the day and she only used kind and positive words. She described Ms. Hopp as being a great example of patience in a very busy classroom. When the teacher would come to Ms. Hopp for help dealing with a child's challenging behavior, Ms. Hopp would offer guidance, suggestions or would "just jump in and do the right thing." The teacher wrote that the shared students learned a lot about expressing their feelings and managing their emotions from Ms. Hopp's life experiences and special education training. Ms. Hopp stayed calm in a chaotic classroom while children were tantrumming, and she would keep smiling as she comforted the students and adults. She praised Ms. Hopp for her excellence in teaching.

71. A student teacher mentor from Cal State Northridge, who has been Ms. Hopp's colleague and friend since 2004, had "watched her hone her teaching craft into an art form." The mentor's daughter was in Ms. Hopp's preschool class and he "has only the highest respect for Ms. Hopp as a professional, veteran educator." He described her as being among the most knowledgeable special education teachers in the profession. He noted that Ms. Hopp's adeptness at her craft and her accomplishments stood out among her peers. Ms. Hopp was always prepared completely for the instructional day, week and month ahead. She had her curricular plans mapped out and tailored to meet the needs of her students. Her lesson objectives were consistently clear to both students and parents. Ms. Hopp always showed an interest in meeting the developmental needs of her students. She was both analytical and compassionate; she had a knack and enthusiasm for integrating children's social needs and special development delays into instructional plans that allowed her to inculcate in them a motivation for personal interests. She had a reputation as being a relaxed professional who was confidently in control of her environment. He recommended that Ms. Hopp not only be reinstated, but promoted.

72. A special education teacher, who shared students with Ms. Hopp, enjoyed collaborating with her and observed her react calmly through any type of problem. Ms. Hopp always had a plan, used age-appropriate behavior methods of preparing a child for transitions, provided reinforcers, and consistently modified behavior. She praised Ms. Hopp's great patience, noting that she provided engaging activities for each child, purchasing or hand-making special items that motivated a child. Ms. Hopp provided positive experience each day, from which her students benefited greatly. The teacher noted that Student #1 was a

mutual student that the two teachers shared and his development greatly improved due to Ms. Hopp modifying his program, including creating social stories to express his emotions. Ms. Hopp created programs that decreased Student #1's emotional outbursts and used correct behavior techniques when he tantrumed. She properly intervened to restore calmness. She positively affected her students' numerous challenging behaviors by working collaboratively with aides, parents and teachers.

73. A district behavior therapist described Ms. Hopp as an excellent teacher, with whom she had worked numerous times at the KIT Center. Ms. Hopp was a confident teacher and supervisor, patient, fast-thinking, knowledgeable, organized, and well-planned. She provided a visually calm environment, limiting distracting noise. Ms. Hopp explained job requirements to her staff, demonstrating how the schedule worked and the proper ways to interact with children. Ms. Hopp was collaborative, concerned with student safety, worked in a composed, calm manner, even when children were noncompliant. The teacher observed Ms. Hopp interact very gently with children, allowing them time to calm down, guiding them to try again and using positive reinforcement. Ms. Hopp was involved with each child, supported their success, and had an advanced understanding of how to modify challenging behaviors and create a safe atmosphere that was engaging. Ms. Hopp used all types of behaviorally and emotionally supportive items to make the day easy and fun. The teacher described Ms. Hopp as having a positively energetic attitude, and wrote that working with Ms. Hopp "has always been a joy." Ms. Hopp emphasized collaboration, provided supplies to her staff, and was always kind in her actions and words with students. The teacher wrote that Ms. Hopp was an excellent advocate for education and an excellent resource for parents.

74. An aide who worked with Ms. Hopp wrote that she learned many techniques from Ms. Hopp for dealing with special needs children. Ms. Hopp always treated the children with respect, kindness, and compassion during every interaction. The aide observed Ms. Hopp calm down even the most upset students many times and she was always very patient, never raising her voice or losing her patience with children or adults. Ms. Hopp was very generous with her supplies and experience, and she made the classroom very interesting and entertaining. Students learned a lot and improved very much as a result of Ms. Hopp's kind and gentle ways. Her interactions with students were very effective.

75. A special education assistant who worked with Ms. Hopp for four years noted that Ms. Hopp always had the utmost respect for children. She spoke to them in a low voice to calm them down when they were having a meltdown. She answered questions from her staff and was very knowledgeable of the students and their disabilities. Staff learned much from Ms. Hopp.

76. Another staff member, who worked with Ms. Hopp at Elam, fondly recalled their time together at that school, because of Ms. Hopp's dedication and kindness that exceeded that demonstrated by other teachers and staff. She described Ms. Hopp as being a well-qualified, capable teacher who focused on teaching self-help skills and modified challenging behaviors of preschoolers with disabilities. She praised Ms. Hopp's expertise and dedication, noting that because of student improvement, some students no longer

required special education classroom placement. Ms. Hopp taught staff about special education and behavior management teaching techniques, and was very experienced with special needs children. She had engaging lessons and taught age-appropriate skills. Students improved their independence and self-esteem due to Ms. Hopp's thorough leadership and advice. She wrote that Ms. Hopp was an extremely competent and effective teacher who interacted in the best interests of her students, only displaying age-appropriate, best practices in all of her words and actions.

77. A district speech-language pathologist who worked with Ms. Hopp at Elam, and has remained in contact with her since then, noted that Ms. Hopp demonstrated an outstanding knowledge and experience of the needs of her special education students, early childhood development, and preschool students. She collaborated with Ms. Hopp on various age appropriate activities designed for the student's speech, language, and overall development. She described Ms. Hopp as being creative, thoughtful, and an educator who developed fun, age-appropriate and engaging activities. Ms. Hopp incorporated positive behavior techniques into her lessons that were well received by students, parents, teachers, and administration. Ms. Hopp maintained a positive and caring outlook that was evident in the way she approached any situation. Ms. Hopp affected student development in a child friendly, caring and professional manner.

78. A district transition services facilitator at Shirley Avenue Elementary School interacted and observed Ms. Hopp. She wrote that the progress children made in Ms. Hopp's KIT program was very impressive. Students went from lacking social and communication skills to being able to interact with peers, using interactive play, and demonstrating strong verbal skills. She described Ms. Hopp as a very caring, creative, and hard-working teacher who continued to improve her knowledge about autism and classroom strategies. Ms. Hopp remained enthusiastic; her love of teaching was always evident. Ms. Hopp was willing to share her knowledge with parents and visitors to the classroom. Ms. Hopp could always be counted on to make very anxious parents feel comfortable and excited about placing their child in the KIT program. The facilitator believed Ms. Hopp would be an asset for any for any school.

79. A teacher from a district middle school wrote a letter praising Ms. Hopp's support for their program and requested that the district facilitate Ms. Hopp being able to work at the middle school because of the positive experiences they had with her.

80. A speech language pathologist who worked with Ms. Hopp at the KIT program noted that Ms. Hopp easily built rapport with students and welcomed them into a caring, yet effective, classroom environment. Ms. Hopp redirected behaviors with positive support and knew how to make children smile. She brought out the best in all of her students. She described Ms. Hopp as a dedicated and forward thinking teacher, one who positively interacted and taught both students and parents. Ms. Hopp helped the parents learn, so they could reinforce the behavior at home, and kept parents updated as to what was taking place in the classroom; she made herself available on a daily basis to communicate with parents. Ms. Hopp also sent home daily notes to keep parents informed, interacted with

parents with ease, and always offered encouraging words to support the students and families. Ms. Hopp easily worked with others in a professional and respectful manner, consistently demonstrating her knowledge of educating special-needs children and their families.

81. A special education teacher from Shirley Avenue Elementary School, who shared students with Ms. Hopp, including Student #1, noted that Ms. Hopp worked collaboratively towards the success of the students with autism. She described Ms. Hopp as an enthusiastic teacher who really cared about her students and consistently worked towards helping her students progress both socially and academically. The teacher observed Ms. Hopp being kind to her students and never observed any malicious or unprofessional behavior. Ms. Hopp provided input on ways to promote Student #1 to do his work, which seemed to benefit him greatly. Ms. Hopp was very kind to Student #1, and she never observed Ms. Hopp react negatively towards Student #1 or any other student. She described Ms. Hopp as a good teacher and an asset to the KIT program and the district.

82. There were numerous letters from parents. The letters described the kind and gentle way Ms. Hopp spoke with their children and the positive, fun instruction she provided. Parents described how they used Ms. Hopp's techniques at home with great success. Parents described the strong bond that existed between their children and Ms. Hopp and how their children were negatively impacted when Ms. Hopp was removed from the classroom. Parents described the amazing progress children experienced with Ms. Hopp and how Ms. Hopp was always available at drop off or pick up to answer parents' questions and provide support and advice regarding any challenges the children might be experiencing. Parents described Ms. Hopp as always providing information regarding the children's progress.

83. Ms. Hopp also introduced several thank you letters that parents had written over the years that attested to the positive influence she had on her students and commended her for her dedication, caring, and skills in the classroom. The letters also referenced Ms. Hopp's upbeat attitude and dedication to children with special needs.

84. A letter from Ms. Hopp's friend for over 20 years mentioned that Ms. Hopp's work with special needs individuals began because of Ms. Hopp's brother's condition. The friend described Ms. Hopp as always being caring, kind, compassionate, and highly entertaining with children. She described Ms. Hopp's skill at using distraction and redirection as "awe-inspiring." She was highly complimentary of Ms. Hopp's positive attitude and passion for helping children succeed. She described Ms. Hopp as a gifted teacher, claiming the allegations against her were completely unfounded and out of character. She wrote about always observing Ms. Hopp in every situation being respectful, kind and thoroughly engaging with children in every situation.

85. The UCLA Center for Autism Research and Treatment assessed the KIT program and observed Ms. Hopp, as well as other teachers at the other five KIT centers. The UCLA team came to Ms. Hopp's center on six different occasions and noted that the strategies Ms. Hopp used had a highly positive effect; that her students were incredibly

excited with lots of smiles and giggles; that it was a collaborative venture; and that students demonstrated a high rate and range of social communication, in part because of their interaction with Ms. Hopp.

Other Documents

86. Ms. Hopp sent the district a list of her personal belongings that she would like returned, noting that it had been 31 days and she still had not been given an explanation for her reassignment and removal from the KIT classroom. The letter demonstrated that Ms. Hopp had spent much money and time providing supplies and tools for her KIT classroom, and it corroborated her responses given during the district's investigation that she had no recollection of doing anything inappropriate.

87. Ms. Hopp introduced photographs and diagrams depicting the physical layout of her KIT center. These showed that a lot of thought and care had gone into creating her KIT classroom environment. The photos depicted a warm and engaging classroom with lots of visual stimulation and aides for autistic children.

88. The list of students and the students' schedule, as well as photographs of their cubbies and visual prompts, were introduced. These documents further corroborated Ms. Hopp's testimony about her dedication to her students.

89. Visual prompts that Ms. Hopp used to help children calm down and her strategies for intervening when a child threw himself or herself to the ground were introduced. Ms. Hopp explained that these were documents she created to assist her, staff and parents in dealing with the child's behaviors. These documents also showed the care and detail Ms. Hopp had put into her classroom.

90. The flashcards used to depict emotions were introduced. These corroborated Ms. Hopp's testimony about the visual prompts she used to assist her students and staff.

91. The district's forms to be completed for first aid and head injuries were introduced.

92. Documents showing the client schedule for the Institute for Applied Behavior Analysis and a behavior intervention plan were introduced.

93. The photograph of Ms. Engle using a hand over hand method to guide a student was provided by Ms. Hopp when she was interviewed by the district. She testified that when explaining her techniques, one of the women interviewing her had no knowledge of dealing with children with autism and did not know what a hand over hand technique looked like. Ms. Hopp testified that she pulled up this photograph from her cell phone to show the interviewer a hand over hand technique with exaggerated facial features. Ms. Hopp testified that she never intended her statements to imply that she had concerns about how Ms. Engle treated children; this was the reason she never filed an abuse report against Ms. Engle.

Ms. Hopp explained that Ms. Engle's actions depicted in the photograph did not concern her and she never stated at her interview that they did. Ms. Hopp denied the allegation that she should have reported the behavior and denied that she claimed the photograph showed frustration; Ms. Hopp testified that she used the terms "exaggerated facial features" when explaining the photograph. Ms. Hopp also testified that the district's documents misconstrued and took out of context the statements she made at that meeting. Given the other inaccurate district documents, her explanation was plausible. Further, the word "exaggerated" sounds like the word "exasperated" so it was easy to understand how the word could have been lost in translation and how Ms. Hopp's statement was misunderstood or misconstrued over time.

Witness Testimony

Elizabeth Ramirez

94. Elizabeth Ramirez, an employee of the Institute of Applied Behavioral analysis, an independent vendor that contracted with the district to provide behavioral and respite services for students. Ms. Ramirez ran the behavior station in Ms. Hopp's classroom, called the independent skills center, one of the four stations at the KIT Center. Ms. Ramirez has no credentials, no license, and no graduate degrees. She is a behaviorist, which is not a licensed position. Ms. Ramirez took long pauses before answering questions, appearing unsure of her answers and her perceptions.

Ms. Ramirez could not recall where on the spectrum Student #1 fell, and could not recall his accommodations. She never read Ms. Hopp's lesson plans or goals for Student #1 and never talked to Student #1's parents. Ms. Ramirez did remember that noncompliance was a behavior they were trying to extinguish. She recalled that Student #1 would tantrum, throw himself on the floor, stomp and kick his feet, and hit other students. He initially had tantrums two to three times per week, but they diminished over time. However, Student #1 was very verbal, he could carry on conversations "very well," and could follow verbal instructions. Ms. Ramirez claimed that Ms. Hopp did not consistently implement Ms. Ramirez's behavior plans. She could not recall that Ms. Hopp disagreed with them, she would just not follow through on them, especially, the non-edible rewards part, such as candy, for behavior compliance. There were no documents that supported this testimony, and the many letters of support contradicted it.

Ms. Ramirez testified about an incident involving Student #1. She could not recall the exact date, testifying that her best estimate was "maybe in January 2013." Ms. Ramirez identified the witness statement she was asked to write as part of the district's investigation. Ms. Ramirez testified that Ms. Hopp was in the play skills area with Student #1 when he began protesting and physically throwing things at the other students. Ms. Ramirez observed Student #1 behave this way before. Ms. Ramirez could not recall Student #1's mood before the incident, but recalled he was having a particularly difficult time, was being very physical with the other students, and was throwing objects at them. Ms. Ramirez acknowledged that she had an obstructed view of Ms. Hopp and Student #1 because there were cubbies and a

filing cabinet in her line of sight. Due to her obstructed view, Ms. Ramirez did not see if Student #1 struck Ms. Hopp. Ms. Ramirez heard Student #1 protesting, at one point he was crying. She heard Ms. Hopp trying to get him to calm down. Ms. Hopp wanted Student #1 to move to a bench in the library. Ms. Ramirez did not recall whether Student #1 stood up or whether Ms. Hopp helped him up before guiding him to the library. Ms. Ramirez saw them moving together. Ms. Hopp had her hands on Student #1 and he was resisting going to the library. Ms. Ramirez saw Ms. Hopp physically guiding Student #1; no one else intervened.

Ms. Ramirez then heard a “thump,” the sound of something hitting the floor, but did not hear either Ms. Hopp or Student #1 say anything after the thump. Because of the bookcase, Ms. Ramirez could not see the floor, but could see that Ms. Hopp had her arms behind Student #1 and was guiding him; she could see Ms. Hopp let go of Student #1. Ms. Ramirez testified that “you could tell” that he had not dropped to the ground; Ms. Hopp had let go of him. Ms. Ramirez heard Student #1 crying. She testified that he was crying throughout the whole situation, and the thump only made his crying louder. Ms. Ramirez heard Ms. Hopp say something to the effect of “that’s what he gets” or “that’s God smiting him.” Ms. Ramirez could not recall Ms. Hopp’s exact words, but she did recall her using the word “God.” Ms. Hopp was looking at Ms. Ramirez when she made that comment. After the thump, Ms. Ramirez “glanced over to see if he was okay” and offered to help, but she did not go over to check on Student #1. Ms. Ramirez claimed that she offered to help when Student #1 was having bad behaviors, but Ms. Hopp never accepted Ms. Ramirez’s offers. Ms. Hernandez provided medical aid to Student #1, giving him an ice pack that he put on the back of his head. Ms. Hernandez did not ask if Student #1 wanted ice, she just grabbed it and brought it to him. Ms. Hopp was asking Student #1 if he wanted ice, but he was crying and did not respond.

Ms. Ramirez did not know what happened after Student #1 calmed down because she was involved in an activity at her own station, but she was “glancing over periodically.” Ms. Ramirez admitted that she did not ask whether Student #1 needed to see the nurse and did not recall anyone asking about the nurse. Student #1 did not say that Ms. Hopp had hurt him. Ms. Ramirez had never heard of the district bulletin regarding reporting incidents, had never been trained about such a requirement, and did not recall anyone filling out a form after this incident. It was difficult to fathom that Ms. Ramirez was unaware of her obligations to report this incident, if it did occur.

When asked why she waited until March 2013 to report the alleged January 2013 incident, Ms. Ramirez testified, “I don’t recall.” She also could not recall whether or not she ever made reference to Ms. Hopp using the words “God was smiting” before making that claim in her June 2013 handwritten note. Ms. Ramirez admitted that she never referenced those words in her other reports or during her two interviews with the district.

Ms. Ramirez testified that approximately five to ten times, she could not be specific, she heard Ms. Hopp tell Student #1, “Don’t be a baby,” or “You are being a baby.” Ms. Ramirez testified that Ms. Hopp used those words “all the time” with Student #1 and that her tone of voice was “not nice.” Ms. Ramirez did not have a “particular, specific recollection”

of Ms. Hopp using the word “baby.” She admitted that she did not mention that issue in her report because, “I guess at that time I did not think it was important.” She acknowledged she did not raise that allegation until much later in the investigation.

Ms. Ramirez testified that parents provided snacks; they were not meals, and not all the students had snacks every day. Student #1 rarely had a snack, but other children did not have snacks either. She estimated that 90 percent of the time Student #1 did not have a snack and would ask teachers for a snack. There were times Ms. Hopp provided snacks and times that she did not. Ms. Ramirez did not recall anything Ms. Hopp said to Student #1, but she did not give him snacks more than 70 percent of the time. Student #1 would cry when he did not have a snack. Ms. Ramirez observed that when he was having a more difficult day or was being noncompliant, it was more likely that he would not receive a snack. Ms. Ramirez recalled “a specific incident” when snack was not given to Student #1, but could not recall what happened before or after that incident.

Ms. Ramirez assumed that Ms. Hopp spoke with Student #1’s parents about the snack issue, although Ms. Hopp never mentioned such a discussion. When asked whether she knew about Student #1’s parents not wanting him to have snack, Ms. Ramirez replied that she did not understand why they would send a large box of goldfish if they did not want him to have snack, but admitted she knew nothing about any discussions between Ms. Hopp and the parents regarding snacks. Ms. Ramirez was aware that Ms. Hopp was in regular contact with Student #1’s parents. Ms. Ramirez agreed that Student #1 was being taught to follow rules and protocols and she agreed that the purpose of snack was to train the children to know when to eat. She admitted that there was nothing inappropriate about teaching Student #1 that if he wanted to eat snack with the rest of the students, he had to wait until snack time. She also admitted that Student #1 received breakfast and lunch at school.

When asked why she did not talk to Student #1’s parents about her snack concerns, Ms. Ramirez responded, “It is not my position to speak to parents, only the teacher could,” and that she was “not supposed to do that.” When asked whether she ever called Student #1’s parents about her concerns or about having witnessed the “thump” incident, Ms. Ramirez testified that this “was not my position.”

Ms. Ramirez testified that Ms. Hopp was more easily frustrated with Student #1. She was short with him and her tone of voice sounded like she was fed up or tired of dealing with Student #1. Her words were more curt and she was quicker to say that something was Student #1’s fault if he was misbehaving or crying. Ms. Ramirez testified that Ms. Hopp would say that that was just how he was; rather than trying to find ways to help him.

Leticia Hernandez

95. Leticia Hernandez, a speech language pathology assistant in the KIT classroom, testified about her work in the classroom and with Ms. Hopp. She does not hold a speech pathology license or credential. Ms. Hernandez used to be a behavioral therapist, the type of position Ms. Ramirez held. Ms. Hernandez did not read Student #1’s IEP and did not

know his disabilities. She recalled that he had “a lot of behaviors” but she could not recall whether he was louder than other students. Student #1 had a hard time transitioning when it was not a preferred activity. Student #1 cried a lot, typically because he did not want to follow through with requests made to him, and he had difficulty following direction. Ms. Hernandez did not recall that Student #1 would tantrum, but recalled “we had a hard time with him.”

Ms. Hernandez had a clear, unobstructed view of the incident when Ms. Hopp tried to move Student #1 across the room, but admitted that there were cubbies between her station and Ms. Hopp’s station. Ms. Hernandez did not recall the date the incident occurred and did not see what happened in the play area beforehand. She first saw Ms. Hopp walking out of the play area. Student #1 was sitting; Ms. Hopp was standing, she was angry, and Ms. Hernandez heard Ms. Hopp say, “He bit me.” After that, Ms. Hopp tried to move Student #1 from one station to the bench in the library. Ms. Hopp was holding Student #1 by the wrists, dragging him across the room. His feet were on the ground and Student #1 was walking backwards. Ms. Hernandez could not recall whether his buttocks were off the ground but his hands were “up above his head,” as Ms. Hopp was walking backwards and dragging him.⁸ Ms. Hernandez testified that Ms. Hopp was between Ms. Hernandez and Student #1. Ms. Hernandez was not sure whether Student #1 slipped out of Ms. Hopp’s hands, but she saw him hit his head on the floor and cry in pain. Ms. Hernandez described his head hitting the ground as a “thud.” After that, Student #1’s crying became louder.

Ms. Hernandez did not go to Student #1’s aid during the incident because Ms. Hernandez was working at her own station. Ms. Hernandez heard Ms. Hopp using the “big baby” statements as she tried to remove Student #1 and, when he was crying. Ms. Hernandez asked Ms. Hopp if he needed an icepack for his head. Ms. Hopp said that Student #1 said he did not want it. Student #1 was holding the back of his head and looked to be in pain. After a few minutes Ms. Hernandez got Student #1 an icepack that he did not hold on his head for very long. She did not check to see if he needed the nurse or check to see whether he had a bump. No one else left their stations. When Ms. Hopp returned to her station to be with her other children, Student #1 remained sitting on the bench crying. Student #1 cried long enough for the team to do another rotation (15 to 20 minutes) and after approximately 20 minutes, he calmed down and “we all walked over to the door” to go outside. Ms. Hernandez spoke with Ms. Engle and Ms. Ramirez because she felt uncomfortable and wanted to know whether they felt the same way. Ms. Engle told her that she did not see anything. However, Ms. Engle never stated in any of her district interviews that she spoke with Ms. Hernandez about this alleged incident.

Ms. Hernandez admitted that she did not fill out an incident report and did not refer Student #1 to the nurse because “typically it is the teacher’s job to do that, not the assistant’s.” Ms. Hernandez did not report the incident to Student #1’s parents. Ms.

⁸ This description of how Ms. Hopp transitioned Student #1 differed from what Ms. Ramirez claimed she saw. Moreover, it was hard to understand how Ms. Hopp could “drag” Student #1 if she was walking behind him.

Hernandez spoke to the “overseer of the KIT Center” after Student #1 fell and hit his head, telling the overseer about her concerns. Ms. Hernandez testified that she spoke to the KIT Center manager a few days later and reported the incident to CPS and the police, but could not recall the officer’s name and when pressed during questioning, could not recall whether she contacted CPS or the police department. Ms. Hernandez claimed that she told her supervisor that she “had to do something that I never thought I would have to do and I would not wish it on anyone.” Ms. Hernandez testified that “my supervisor is very ‘by the book’” and that she did not know whether she “had to tell her supervisor or not, but I did.” She identified her supervisor and testified that she e-mailed her about the incident “probably the same day.” Her supervisor e-mailed back thanking her for letting her know about the incident, but she did not say whether she was going to meet with Ms. Hopp. This alleged e-mail was never produced at this hearing and no witnesses or documents corroborated Ms. Hernandez’s testimony that she made any reports before writing her March 2013 note. It was hard to imagine that she reported this incident to her “by the book supervisor” but the district did nothing for two months. Moreover, in her statement to the district, Ms. Hernandez used the word “hands” but testified she meant “wrists.” She testified that the school years that were referenced in the statement she provided to the district are also incorrect. Thus, her testimony was at odds with her notes and the district’s summary of her interviews, further calling her testimony and her claims into question.

Ms. Hernandez testified that she heard Ms. Hopp use the words “baby” or “big baby” when Student #1 was crying. Ms. Hopp would tell him, “Don’t be a baby,” or “Don’t be a big baby,” when he was crying. She heard Ms. Hopp say this “maybe two times.” She described Ms. Hopp’s tone of voice as harsh, the statement was not made in a playful way; it was not said matter-of-factly. However, when shown her written reports and her interview answers, Ms. Hernandez acknowledged that there was nothing in them about Ms. Hopp using that phrase. Upon further questioning, Ms. Hernandez recanted her testimony and claimed that Ms. Hopp said, “You are a big boy, you do not need to act like a baby,” and she admitted she did not know whether Ms. Hopp used the words “big baby.”

When asked whether she had other concerns regarding Ms. Hopp and Student #1, Ms. Hernandez testified that there was a time when Student #1 was in a chair at the art station and Ms. Hopp told him he was “not in the right area” and tried to move him to his correct station by pulling him out of the chair. Student #1 was wearing long sleeves and Ms. Hopp was holding onto his arms. As Ms. Hopp held Student #1 by one arm, he fell over the chair; she told him he was “out of the right area” and “did not have a happy tone.” Student #1 “sort of fell out of the chair” with Ms. Hopp still holding on to him, “so his clothing was partially above his head and partially still on him.” When he dropped to the ground, Ms. Hopp was holding his clothing and it came up over his head. Student #1 was crying during the incident. Ms. Hernandez recalled that there was an aide present who did not know what to do. Ms. Hernandez did not file a report. No evidence of any other witness observing this incident was introduced, raising doubts about Ms. Hernandez’s claim. Further, it was difficult to understand how Ms. Hopp could hold onto Student #1’s wrists and yank him up, yet somehow his shirt came up over his head, casting more doubt on Ms. Hernandez’s testimony about this incident.

Ms. Hernandez also claimed that Ms. Hopp told the staff that Student #1's parents did not want him to have a snack, "so we followed her 'orders.'" However, Ms. Ramirez "was sure" that Student #1 got food after he left the KIT Center so it was "not like he was starving." Ms. Ramirez did not refute Ms. Hopp's testimony about her discussions with Student #1's parents about the snack issue.

Ms. Hernandez never reported these incidents until March 2013, when she spoke to the KIT administrator. Ms. Hernandez testified that "it was something that sort of bothered me. [The administrator] said it was up to me to do what I need to do, but if I felt uncomfortable I should say something." After that, Ms. Hernandez reported the incidents. She called child protective services and told them what happened. They told her that they did not deal with such incidents and directed her to call the police. Ms. Hernandez testified that "as a mandated reporter" she was taught to give the facts and law enforcement would decide how to proceed. She contacted police, testifying that she did so because "as a mom, who has a son, I feel if that were to happen to my son, I'd want someone to report it." She claimed, "As a mom it hurt me to see that, the child could not protect himself and someone in the class needed to say something." Ms. Hernandez was tearful while giving this testimony, but her tears seemed disingenuous. Moreover, given her admission that she was a "mandated reporter" it was difficult to accept that she waited several months to report these alleged incidents to the district and that she did so only after Ms. Hopp complained about Ms. Hernandez's and Ms. Ramirez's tardiness and absenteeism.

Ms. Hernandez testified about the liquor bottle that was found in the classroom and the staff meeting regarding it. She made a self-deprecating joke that, "Of course everyone will think the Mexican did it." She admitted that Ms. Hopp never accused her of bringing the alcohol to the classroom and no one was disciplined because of it. Although this testimony was offered to demonstrate that Ms. Hernandez thought nothing of the liquor bottle incident and was not fabricating her testimony as retribution against Ms. Hopp, it was unpersuasive because the Commission determined that the impetus behind Ms. Hernandez's allegations was Ms. Hopp's complaint to her employer.

Carolyn Gelfand

96. Carolyn (Cara) Gelfand, the KIT Center Program Administrator, was the lead investigator in this matter, but because she was transitioning to a different program, the new administrator, Amy Alina-Chambers, jointly investigated the matter. Ms. Gelfand testified about her investigation, the KIT center philosophy, the training provided employees, and district policies and procedures. She explained that all district employees were mandated reporters and were required to report a "reasonable suspicion of child abuse." Ms. Gelfand testified about the appropriate ways to treat children and the issues that can occur if they are grabbed or improperly held. Ms. Gelfand testified about the aides who worked in Ms. Hopp's KIT classroom and the additional supports she provided during the 2012-13 school year, which included adding a behavior specialist, Tina Valdez, to assist in the classroom one or two days per week. Ms. Gelfand admitted that she often discussed with Ms. Hopp behavioral supports for children in the KIT center.

Ms. Gelfand knows Ms. Hopp well. She met her professionally in 2010, and recommended her for the KIT program. Ms. Gelfand evaluated Ms. Hopp in 2011, giving her “outstanding” and “strong” ratings. Ms. Gelfand testified that the 2012 allegations against Ms. Hopp were “unfounded.” The Spring 2012 parent concern happened during a transition between classes. Ms. Hopp was holding a student’s hand and when the child saw his mother, he became excited and wanted to run across the school yard, but Ms. Hopp held onto his hand so he would not stumble and fall. Ms. Gelfand talked to Ms. Hopp about the transition process. Another parent complained in 2012 that his child claimed that Ms. Hopp hit him. That complaint was determined to be “unsubstantiated” because the child was actually hitting himself with Play-Doh. Ms. Gelfand testified that although the complaints were determined to be unfounded, and even though they did not result in any discipline, she “still had concerns.” Because of those allegations, Ms. Gelfand discussed with Ms. Hopp appropriate behavior with children, ways to redirect them, and the language that staff should use with children. There were no complaints of Ms. Hopp using physical prompting to move students before Ms. Hernandez’s March 2013 complaint.

Ms. Gelfand testified that the first person to report any concerns regarding Student #1 was Ms. Hernandez in early March of 2013. Ms. Hernandez reported three incidents that had occurred in January and February with Student #1. The first incident happened when Student #1 was upset and Ms. Hopp held both of his hands to move him from one area to another. He was crying and she maneuvered him by his hands to calm him down. He fell and hit his head, there was a thump on the ground and it made him cry more. He asked for ice but Ms. Hopp did not respond, so Ms. Hernandez got him ice. The second incident occurred in February 2013 when Student #1 was in an area he was not supposed to be. He protested leaving and Ms. Hopp took him by the arm to physically move him. He slipped out of his shirt, fell to the ground, and he cried for a period of time. The third incident occurred when Ms. Hopp used disparaging comments, telling Student #1 that he was “being a baby,” “to stop crying like a baby,” “to stop being a baby.” Ms. Hernandez felt Student #1 was being picked on or targeted by Ms. Hopp. Ms. Gelfand admitted that any staff member can file a suspected child abuse report and that Ms. Hernandez could have reported each of these alleged incidents. Ms. Gelfand offered no explanation for Ms. Hernandez’s failure to file a report, especially since she was a “mandated reporter.”

During the investigation, Ms. Hopp was assigned to an alternate location. Ms. Gelfand interviewed individuals working in the KIT center, at first asking general questions, then conducting follow-up interviews with specific questions. After the oral interviews, she obtained written statements. When they interviewed Ms. Hopp for the first time, they asked her questions that were “more generic in nature,” they did not ask her questions regarding the specific charges. At the second interview in April 2013, they asked her specific questions regarding Student #1. Ms. Hopp had no recollection of the incidents. However, Ms. Hopp said that if a child was injured, she would have provided first aid, completed a report, and notified the child’s parents. Also, since the team worked collaboratively, it would not be unusual for assistants to get ice if a child was injured. When asked about the use of the word “baby,” Ms. Hopp explained that she did not use it in the context they were claiming; she

was trying to label feelings or emotions in a factual way and would point out to Student #1 during an emotional state that he was “a big boy” to get him to use his words.

Ms. Hopp told the district officials that she hoped they were interviewing others about what happened because she had concerns regarding Student #1’s life outside of school. Ms. Hopp purportedly stated that she was worried about what was going on at home because he was spanking other children, came to school disheveled, claimed he was locked in a closet, and said his family was not providing him food. Ms. Gelfand testified that she was “taken aback and a bit shocked” by those statements and asked Ms. Hopp if she had filed a report but Ms. Hopp said she had not done so because she was sharing the information to “speak to Student #1’s profile and person,” and was “not as concerned about whether or not the instances were occurring.” After this meeting, Ms. Gelfand filed a suspected child abuse report because Student #1’s statements provided a “reasonable suspicion of suspected child abuse.” Ms. Gelfand admitted that she never spoke with Student #1’s parents and they never complained that Ms. Hopp hurt their son or failed to communicate with them. Ms. Gelfand acknowledged that Ms. Hopp had regular contact with Student #1’s parents.

After the second interview, there was a conference with Ms. Hopp in which she was notified of the charges. Ms. Hopp could not recall the incidents and said that Student #1’s parents told her not to give him any more snacks. Ms. Gelfand testified that during this meeting, Ms. Hopp produced a photograph of the alcohol bottle allegedly to question the credibility of the reporting witnesses. Ms. Gelfand was “perplexed” as to why Ms. Hopp produced the photograph because previously when it was discovered in the KIT Center, Ms. Gelfand met with staff and Ms. Hopp did not think it came from any of her staff. Ms. Hopp also produced a photo of Ms. Engle that she said demonstrated another assistant exhibiting frustration and using typical classroom behavior to deal with students. Ms. Hopp admitted that she had not reported Ms. Engle. Ms. Gelfand was also perplexed about the photograph of Ms. Engle and was not certain why it was being offered other than to question Ms. Engle’s credibility.

Ms. Gelfand testified that Ms. Hopp’s actions violated several district policies. Ms. Gelfand lost confidence in Ms. Hopp as a teacher and role model. According to Ms. Gelfand, retaining Ms. Hopp would have an adverse impact on employees and would adversely affect students and parents. Ms. Gelfand testified about the likelihood that the behavior would reoccur because even though the district provided Ms. Hopp with additional classroom support, there were still issues with how Ms. Hopp treated Student #1. Ms. Gelfand had serious reservations about Ms. Hopp remaining in the classroom, and she would give Ms. Hopp an overall rating of “below standard.”

Ms. Gelfand observed Ms. Hopp three times for the 2013 evaluation, but admitted she had no documentation of scheduling those observations or discussing her findings with Ms. Hopp. There was no initial planning sheet and Ms. Hopp did not fill one out even though one must be completed by the teacher before an evaluation is conducted. Ms. Gelfand was “not certain” and “not sure” whether there was any correspondence with Ms. Hopp regarding the 2013 evaluation. There was no conference memo and no documentation that comports

with Education Code requirements for evaluations. In fact, Ms. Gelfand had absolutely nothing in writing regarding the 2013 evaluation process. She was not aware that Ms. Hopp had filed a grievance.

Ms. Gelfand was asked about the inconsistencies in her 2013 evaluation. She explained that she gave Ms. Hopp good reviews because of her ability to engage students in a way that positively affected the classroom. Ms. Gelfand testified that the commendations related to the physical environment, whereas she gave Ms. Hopp deficiencies in instructional areas as there continued to be struggles between Ms. Hopp and Student #1 regarding his behavioral challenges. Ms. Gelfand's explanations were not persuasive and appeared contrived. When asked about the inconsistencies between the witnesses to the three incidents involving Student #1, Ms. Gelfand testified that there was "enough consistency" to raise concerns. Ms. Gelfand explained that "a number of people were aware of the incident, that something happened, and for Ms. Hopp to say nothing happened and she did not remember, seemed inappropriate."

Ms. Gelfand admitted that Mr. Rodezno stated that nothing happened, even though in her letter to Ms. Hopp she had claimed he observed the incidents. Ms. Gelfand's incorrect assertion that Mr. Rodezno had witnessed the incidents raised concerns about her impartiality and fairness when investigating this matter. Moreover, Ms. Gelfand admitted that she did not rely on Mr. Rodezno's statement; she relied on Ms. Hernandez's and Ms. Ramirez's, which was troubling because, unlike those two women, Mr. Rodezno had no reason to be biased against Ms. Hopp. Additionally, Mr. Rodezno only mentioned Ms. Ramirez physically moving Student #1; he had no criticisms of Ms. Hopp. The omission of this vital evidence raised further concerns about the fairness and impartiality of the district's investigation.

Ms. Gelfand acknowledged that the district reports containing what Ms. Hernandez and Ms. Ramirez allegedly claimed had occurred were inconsistent with their sworn testimony; agreeing that contrary to the reports, Ms. Hernandez did not leave her station to assist, she only gave ice, and that Ms. Engle only heard, but did not see, the incident. Neither witness gave any dates or times and the reports were filed after the alcohol and tardy incidents was reported. Ms. Gelfand acknowledged that she and Ms. Hopp discussed Ms. Hopp's concerns regarding Ms. Hernandez's tardiness, stating that they had discussions regarding multiple staff members not being on time.

Ms. Hopp told Ms. Gelfand that she discussed the snack issue with Student #1's parents, asking them how to handle the issue. Ms. Hopp told her Student #1 ate breakfast and lunch at school, full meals; he was excessively eating; and there were concerns regarding his weight gain. Ms. Gelfand did not know what snacks Student #1 ate. Ms. Hopp and Student #1's parents had agreed on a plan. That plan required Student #1 to sit at a preferred activity during snack time if he had eaten his snack already. Ms. Gelfand testified that the snack issue "emotionally caused difficulty." She said if it were up to her, she would have figured out the best way for the child to eat snack at snack time. She testified that she would have talked with the parents about the best way to handle it. Ms. Gelfand was aware that Ms.

Hopp had been in contact with Student #1's parents, but she did not know there were e-mails between Ms. Hopp and Student #1's parents about snacks and she admitted that Student #1's parents never complained that Ms. Hopp was depriving their child of a snack.

Ms. Gelfand claimed that what Ms. Hopp wrote in her May 7, 2013, statement was different and contained more information than what she said when they met. Ms. Gelfand said that Ms. Hopp said Student #1 was modeling spanking on students, which made Ms. Hopp believe he was being spanked at home. She also told them that Student #1 was locked in a closet and was having food withheld. Ms. Gelfand stated that this was enough of a "reasonable suspicion" to file a report. Ms. Gelfand testified that Ms. Hopp did not say she was giving a lesson on emotions when Student #1 made his comments about the attic, although she admitted that Ms. Hopp said she was "going through the emotions of the children" when that discussion took place. Ms. Gelfand testified that Ms. Hopp stated that the photograph of Ms. Engle showed Ms. Engle with a look of frustration, grabbing the child's arm, "words to that effect." Ms. Gelfand testified that what Ms. Hopp later wrote about the photograph was not what she stated at the April 25, 2013, conference. Ms. Gelfand filed a report about Ms. Engle because of the photograph.

Ms. Gelfand testified that the letters of support did not change her opinion and that she did not receive any positive feedback or e-mails from parents. Given the voluminous letters written, Ms. Gelfand's testimony was difficult to believe. More importantly, the fact that these letters of support, written by so many education specialists and parents, attesting to Ms. Hopp's excellent teaching skills, did not sway Ms. Gelfand's opinions called her objectivity into question.

Teresa Martin

97. Teresa Martin, the district's Director of Early Childhood Special Education, testified that her understanding of the allegations was that Ms. Hopp pulled a child by the arms from a sitting position and he hit his head; the child was pulled by the arms and his clothes were lifted over his head and that Ms. Hopp made disparaging remarks to students. There were two interviews of Ms. Hopp, and Ms. Martin was the note-taker. At the first interview, no specific incidents were discussed; at the second interview the interviewers asked Ms. Hopp specific questions. Ms. Hopp said nothing about the incidents charged in the accusation at the first interview; at the second interview, she had no recollection of such incidents and answered "no" when asked if they occurred. Ms. Hopp explained that she used the word "baby" in a factual context, telling the students, "Don't be a baby, you are five, don't be a baby."

At the end of the second interview the district representatives asked Ms. Hopp whether there was anything else she wished to add and she said that she hoped they were interviewing others, as she was concerned that Student #1 was locked in a closet, spanked, and had food withheld. Ms. Hopp had not reported the incidents; however, Ms. Martin did so after the interview. Ms. Martin testified that Ms. Hopp did not state that she was having a discussion with students about emotions when Student #1 shared his story of being locked in

a closet, and Ms. Hopp told them the picture of Ms. Engle showed that “the assistant was angry.” Ms. Martin filed a suspected child abuse report after the picture of Ms. Engle was produced. Ms. Martin testified that what Ms. Hopp wrote in her written response was not what she said during her interview.

After reviewing all the documents obtained as part of the investigation, Ms. Martin recommended that Ms. Hopp be dismissed. Ms. Martin testified that Ms. Hopp was a role model for staff and students who observe her behaviors. Ms. Martin was concerned that there would be a risk of recurrence because Ms. Hopp was given assistance and guidance before the incidents occurred. No testimony about what the “assistance and guidance” entailed was offered by Ms. Martin.

On cross examination, Ms. Martin admitted that no dates or times for the incidents were provided and the incidents were reported two months after they allegedly occurred. Ms. Martin did not know any of the antecedent events. She could not recall who witnessed what “specifically,” but “could identify the witnesses globally.” Ms. Martin was not aware that Ms. Hopp had reported Ms. Hernandez and Ms. Ramirez as being tardy before those two women reported the alleged incidents, but she testified that would not have made a difference to her. This testimony raised concerns regarding Ms. Martin’s impartiality. Ms. Martin admitted that the assistants could have written an incident report about either event. Ms. Martin testified that Ms. Hopp should meet with Student #1’s parents to create a plan if there were snack issues taking place and she “presumed” no such discussion with Student #1’s parents took place. Ms. Martin testified that she never contacted Student #1’s parents and never interviewed them as part of her investigation. Ms. Martin was unaware that Ms. Hopp filed a grievance and did not know whether proper Education Code provisions had been followed.

Sharyn Howell

98. Sharyn Howell, the district’s Executive Director of Special Education, conducted the Skelly meeting. A document was prepared following the Skelly meeting, but as Ms. Hopp’s attorney made most of the statements at the meeting, the district’s attempts to impeach Ms. Hopp’s testimony with that document were unsuccessful. Moreover, a review of that document indicated that the statements allegedly made were incorrectly attributed to different speakers and were incomplete. The reliability of that document was questionable. Moreover, the document did not contain statements that Ms. Howell claimed Ms. Hopp made during the Skelly meeting, further raising doubt as to its accuracy.

Ms. Howell relied entirely on the documents she reviewed; she did not independently talk to any witnesses. She never saw Mr. Rodezno’s e-mail, even though it was dated before the Skelly hearing, but it would not have changed her mind. This testimony raised concerns regarding her impartiality. Ms. Howell admitted that the district never received any complaints from Student #1’s parents and that all the other letters she received from parents praised Ms. Hopp. Ms. Howell did not interview any of the students’ parents because she did not think it was significant to do so. She did not know whether Ms. Gelfand spoke with

any parents. If parents had given positive feedback, it would not have changed her opinion because the parents would have needed to be present in the classroom on a consistent basis to provide an informed opinion. Given that the parents who testified and who wrote letters were present on a consistent basis, this testimony cast doubt on Ms. Howell's objectivity. Ms. Howell testified that Ms. Hopp's failure to file reports "weighed heavily" in her decision. Ms. Howell testified about how Ms. Hopp's actions violated district policies. Further, Ms. Howell did not observe anything in the documentation that indicated Ms. Hopp was remorseful or would do anything differently. This testimony was only persuasive if one believed the alleged incidents occurred, and, as noted, the Commission did not believe these incidents took place.

Ms. Howell was shown many of the letters of recommendation produced in this hearing but she could not recall reviewing any of them. She testified that if she did review any letters, she did not rely upon them. Ms. Howell admitted that "it is extraordinary when parents write recommendations for teachers," but her initial reaction to the letters was to wonder who was soliciting them, which was the reason she did not consider them when making her determination. However, she admitted that she asked Ms. Hopp to submit any documentation to support her position during the investigation. It was disconcerting that Ms. Howell would ask Ms. Hopp to submit documents and then not review or consider them.

When interviewed, Ms. Hopp could not recall an incident where Student #1 fell and hit his head. Ms. Hopp said that she did nothing wrong and that, if she had engaged in wrongdoing, there were so many people in the classroom that someone would have intervened and/or reported the incident in a timely manner. Ms. Howell admitted that she did not know the date when the first incident occurred and does not know when it was first reported. However, it would not make a difference to her if it was reported two and one half months later. No one provided a date when the second incident occurred and only one witness observed that alleged incident. Ms. Howell believed that using the word "baby" is demeaning. She was not sure who alleged that incident, but it was not one of the charges she "used the most" in recommending Ms. Hopp's dismissal. Ms. Howell testified about appropriate ways to handle the snack issue, including discussions with the parents about it. Her testimony was not contrary to the steps Ms. Hopp took regarding Student #1's snack issue.

Ms. Hopp stated she was "role playing" with the children when Student #1 made his comments about the closet. Ms. Hopp admitted she did not report the incident, telling Ms. Howell that she knew his family, that they were a very nice family, and that there were no problems. Ms. Howell testified that that explanation that Ms. Hopp provided was insufficient, as it has nothing to do with the family or one's perception of the family; if there is reasonable suspicion, child abuse must be reported. Ms. Howell claimed that Ms. Hopp provided three different responses related to Student #1's comments about the closet. In one version Ms. Hopp said the family was nice, she knew them, and Student #1 did not always have a truthful story; in another version Ms. Hopp said the comments were made during a social story discussing "fears" and that Student #1's statements may have been taken out of context; and in the third version Ms. Hopp said the statement was a childish protest.

However, in one of the district's documents that Ms. Howell reviewed, Ms. Hopp said she and the staff were concerned about Student #1 being spanked, locked in a closet and deprived food, so that would have led to a reasonable suspicion requiring a report to be filed. Ms. Howell accepted these documents as being accurate and, as noted, the Commission had grave concerns regarding the accuracy of these documents. Moreover, Ms. Howell admitted that the context in which statements are made goes into the determination as to whether there is a reasonable suspicion that supports the filing of a child abuse report. Further, Ms. Howell agreed that Ms. Hopp said she was using cards with children to discuss their emotions when Student #1 made his comments.

Another time that Ms. Hopp should have filed a report was regarding the photograph of Ms. Engle. Ms. Hopp showed a picture of Ms. Engle grabbing a child and making a mean face as an example of how the staff handled the students and said it was not unusual to place hands on children. Ms. Hopp stated it showed Ms. Engle making an angry face. However, Ms. Howell admitted that someone said Ms. Hopp had shown the photograph to demonstrate the use of exaggerated facial features used with students. After Ms. Hopp provided that photograph, the district filed a suspected child abuse report.

Amy Alina-Chambers

99. Amy Alina-Chambers, a board certified behavior analyst, worked as a preschool autism support teacher for the district from September 2008 to October 2012. She was the district's behavior specialist for charter schools beginning in October 2012, and the district's specialist for early childhood special education beginning in March 2013. She previously taught in the Glendale Unified School District. She has a Bachelor of Arts degree from the University of California, Davis. She holds a clear credential in early childhood special education; a Master's degree in early childhood special education; a certificate in autism from California State University, Los Angeles; and she completed the Behavioral Analyst Certification Board program at California State University, Northridge.

Ms. Alina-Chambers testified about the escalation cycle of behavior and appropriate interventions. Teachers are required to use the least restrictive interventions to address behaviors. The wrist is one of the most fragile parts of the body, so grabbing a child by the wrists would be improper. She testified about approved and non-approved district behavior interventions and the paperwork that must be completed if a student is injured or injures a teacher. She stated that calling a child a "baby" or "big baby" would violate district policy because it is an intervention that could cause humiliation. Denying a child a snack "could be" a prohibited restraint "in certain circumstances."

Ms. Alina-Chambers was involved in the creation of the KIT program, working with teachers to develop protocols and supports. She knows Ms. Hopp, having collaborated with her at the KIT center. In fact, Ms. Alina-Chambers recommended Ms. Hopp for the KIT Center, having observed her at the Elam collaborative pre-K program. At that program she observed Ms. Hopp acting "very appropriately" and having "developmentally appropriate instruction" for the students. Ms. Alina-Chambers visited Ms. Hopp's KIT classroom a

number of times and Ms. Hopp invited Ms. Alina-Chambers to do an in-service training for Ms. Hopp's classroom.

Ms. Alina-Chambers prepared the questions for the district interviews in this investigation. She admitted on cross-examination that her opinions would change if the facts were different than as she understood them to be. She was not present during any of the alleged incidents. She admitted that there were many people present when the incidents allegedly took place, but only a few had information regarding them.

K M

100. K M had a child in Ms. Hopp's KIT program and visited the classroom daily. Ms. M comes "from a psychology-based background" and was concerned about how teachers would interact with her son. However, she was very satisfied with Ms. Hopp's interactions and observed Ms. Hopp use behavioral, psychology-based techniques with her son and the other students. Ms. M observed very clear, positive changes in her son after being in Ms. Hopp's classroom.

Ms. M's son does not like to get up in the morning, that is one of his behavior issues, so he was "notoriously late" to the classroom, which caused her to have to go into the classroom each day. Because of this, she was able to observe Ms. Hopp with the students almost daily. She never observed Ms. Hopp lose her patience, raise her voice, grab a child, use inappropriate language, or be physical with any of the students. She described Ms. Hopp's demeanor as being "extremely professional." She observed that when children became louder and more excited, Ms. Hopp would do the opposite, lowering her voice to calm the children. She observed Ms. Hopp treat all students equally; Ms. Hopp never treated any student differently. Ms. M referred to Ms. Hopp as the "Mary Poppins of the Los Angeles Unified School District."

Ms. Hopp sent home notes to parents on a daily basis and provided comprehensive reports on how the students were doing. Ms. Hopp respected the parents, keeping them very informed and she assisted them with utilizing techniques at home so they could provide 24 hour wrap-around service to their child. Ms. M spoke with other parents who also expressed the same experiences with Ms. Hopp. She recommended Ms. Hopp to other parents and would still do so today.

Ms. M testified that Ms. Hopp was removed so quickly from the classroom, that parents were not even aware that had taken place. She immediately reached out to Ms. Hopp when she learned of her removal, asking what she could do to help. The letter of support she wrote was written after another parent asked her to write a letter on Ms. Hopp's behalf, and she was happy to do so. She did not know the charges before she agreed to testify on Ms. Hopp's behalf and met with Ms. Hopp and another parent after Ms. Hopp was dismissed from the classroom. Based on their discussions, it was her understanding that Ms. Hopp was alleged to have touched a child when she was moving the child and that Ms. Hopp moved one way when the child moved the other way. Ms. M testified

that this type of contact happens with her son. Ms. Hopp said she did not make the “baby” statement and that what was being alleged did not happen. Ms. Nady testified that she was “shocked” that Ms. Hopp had been accused of these things because was it “very much out of her nature.”

Ms. M [REDACTED] was shown the charges and admitted that she was unaware of most of them. She agreed that if they were true, it would change her opinion and that she would not want that teacher in a classroom. However, the charges were inconsistent with what she observed, what she has heard from other parents, and what she has been told by her son. She was in the classroom many times, asked a lot of questions, and never saw any evidence of this behavior alleged. Moreover, the “baby” allegation would depend on the context and, in the special needs world, a lot depends on the context of what happened. In this environment, what you see and what is happening are often two very different things. That being said, Ms. M [REDACTED] had never observed any sort of the conduct alleged and had never heard any negative feedback from any parents. Additionally, her son, who is verbal, never had anything negative to say about Ms. Hopp. He cries and throws tantrums, but he never claimed Ms. Hopp called him a baby. Ms. M [REDACTED] also testified that the student in the photograph with Ms. Engle was her son and she was not concerned about what she observed in the picture because it was “ABA training taking place.”

G [REDACTED] G [REDACTED]

101. G [REDACTED] G [REDACTED]’s son was in Ms. Hopp’s KIT classroom. He observed Ms. Hopp in the classroom on numerous occasions because he and his son often arrived late. Due to their arriving late, the instruction had often already begun and so he would have to wait with his son for the rotation to end, giving him lots of time to observe Mrs. Hopp. He also was able to talk to Ms. Hopp on many occasions and he would stay in the classroom to observe how his son was doing. Everything he saw in the classroom was positive. There was encouragement, praise, rewards, “the typical things that you do with children with special needs.” He saw improvements in his son because of Ms. Hopp. He never saw Ms. Hopp lose her patience, raise her voice, grab a student, or become physical with a student. He never observed Ms. Hopp treat students differently or show dislike for any student. Mr. G [REDACTED] described Ms. Hopp as very calm, very supportive, “just great,” he “never met anyone else like her” and “the whole program was nothing like I have ever experienced.”

Ms. Hopp always wanted to show him the progress his son was making. She provided parents with “regular progress notes” through notes, text messages, and other means. There was an incident where his son fell. Ms. Hopp photographed the injury, sent it to him, wrote a “boo boo” note, and sent a text message about the incident. Thus, he found the allegation that she failed to report an injury to another student hard to believe, although he acknowledged that in his son’s case, the injury was not caused by Ms. Hopp.

The KIT program with Ms. Hopp was fantastic. He described it as “a wow factor.” He stated that the whole program, the feedback and the encouragement their son received was wonderful. His son never said anything negative about Ms. Hopp, his son liked Ms.

Hopp, and everything he ever heard about Ms. Hopp from his son and from other parents was positive. Mr. G■■ testified that after Ms. Hopp was removed from the classroom, “the heart and soul of the program” was gone; they never got the 1:1, the daily notes, the encouragement, the texts, or the feedback that they received from Ms. Hopp. No one seemed to care about the KIT program after Ms. Hopp was removed.

Mr. G■■ and his wife wrote a letter of support that was introduced at this hearing. He explained that he was shocked by “the whole process of Ms. Hopp disappearing,” getting no answers from the district about what had happened, and the dramatic difference in how the KIT program was run after Ms. Hopp was removed. He and his wife wrote their letter to the district because of their concerns; no one told him to write that letter. He did not know how Ms. Hopp came into possession of that letter.

Mr. G■■ voluntarily agreed to be a witness on Ms. Hopp’s behalf because he believed it was important to do so. Mr. G■■ met with Ms. Hopp and Ms. M■■■■■■■■■■ for breakfast when she contacted him and asked him to testify in this matter. They did not discuss the substance of the case, just whether he would be willing to testify for Ms. Hopp. He admitted that he did not know the specific charges against Ms. Hopp. At this hearing he was shown the accusation and testified that all the charges were “completely inconsistent” with what he observed. It would surprise him if Ms. Hopp had called a child a “baby” or “a big baby.” He testified that he was “stunned, shocked, by those charges” and he appeared to be shocked. Mr. G■■ admitted that if the allegations were true, he would not want his child in that classroom with such a teacher. However, based upon his knowledge and observations, “the charges are highly inconsistent with Ms. Hopp.” He testified that when he reads the charges, “It stuns me” because “that is not the Ms. Hopp that I know.”

Elizabeth Leone

102. Elizabeth Leone has been employed by the district since 2011 as an early childhood special education teacher. She has a teaching credential in early childhood special education and a Master’s degree in the same field. She worked with Ms. Hopp in the classroom in 2009 and took classes with her in their graduate school program in 2011.

In the 2009 school year she observed Ms. Hopp daily in the classroom for four hours per day. She never observed Ms. Hopp grab a student, lose patience with a student, or do anything that made her feel uncomfortable. In fact, Ms. Hopp was “exceedingly patient with children.” Ms. Leone never saw Ms. Hopp raise her voice or use inappropriate language. She described Ms. Hopp as very calm, very caring and very patient. The students had a lot of aggressive behaviors that could escalate very quickly. Ms. Hopp always modelled good behavior for the students and staff. According to Ms. Leone, Ms. Hopp “researches the latest, innovative behavioral implementations” and she admires Ms. Hopp greatly for that. She described Ms. Hopp as “a role model and a colleague I look up to greatly.” When asked about her opinion regarding Ms. Hopp’s professionalism, she testified “I think she has an amazing way with students, she is very supportive, not just with the students but also the family in terms of using positive support and reinforcement.”

Ms. Leone admitted that she did not know a lot of the details related to the charges, other than another employee in the classroom claimed that Ms. Hopp inappropriately moved a child. Ms. Hopp told Ms. Leone that the allegations made against her did not occur. Ms. Leone admitted that if the charges were true, it would change her opinions; however, the charges were inconsistent with her knowledge of Ms. Hopp.

Catherine Hopp

103. Catherine Hopp received a bachelor of psychology degree from UC Irvine in 1987. She received an Associate's degree from the Fashion Institute in interior design and management. She received a teaching credential in early childhood education and a Master's degree in special education, both from Cal State Northridge. She received a certificate in applied behavior analysis from the Florida Institute of Technology and sat for her board certification examination, but did not pass it. She was hired by the district as a special education teacher in a collaborative program in August 2008, and thereafter recruited to run the KIT program.

Ms. Hopp became interested in special education because her older brother has multiple disabilities and was a special education student. Growing up, she attended all of his therapy and special education programs. She volunteered for over 20 years as a coach with the Special Olympics and continues to work with that program. She also worked as a preschool teacher at her church for two and one-half years and was drawn to children with disability and speech issues. She went back to school to learn the latest strategies because of her interest in this area. When Ms. Hopp was taking classes at Cal State Northridge, she was regularly observed. Ms. Hopp worked at the Shirley Avenue Elementary KIT center, a pilot program for pre-K special education students. The program provided mixed special education classes and the KIT program for pre-K students. It was an evidence-based program that had been very thoroughly researched.

Ms. Hopp testified about all the time, effort and expense she put into creating the classroom, explaining that there was nothing in the room when she was assigned to it and how she brought in her own supplies, and crafted her own teaching implements to help address students' needs. Her background in design aided her in creating a very well designed classroom setting. She testified about the many photographs of the students she took to teach them how to address their emotions. Ms. Hopp laminated pictures on cardboard to help students learn positive behaviors. She purchased supplies to help with instruction. The KIT center was designed with stations and had scheduled consistent routines that made the classroom "as consistent as possible" to address the students' autism and behavioral issues. There was a "hierarchy of prompts" the staff used to redirect behaviors.

Ms. Hopp explained the classroom routine. She arrived 15 to 20 minutes early every day to make sure each station was set up completely with the appropriate documentation and supplies. She checked the students' schedules to determine whether she needed to make any last-minute changes. When her assistants arrived they discussed the stations, the supplies, and any questions they had. They then walked to the far end of campus to retrieve their

students off the bus. They went to the restroom and then to the classroom to begin the rotations. The classroom was designed for students to work in pairs and in a sequence. Ms. Hopp spent a lot of time pairing appropriate students together. During rotations there was a time for snacks which were provided by the parents. At the end of the rotations, she and the assistants helped students get their backpacks. Ms. Hopp provided notes for all the parents regarding the daily activities, provided copies of any photographs taken, and then took the students to their afternoon classroom where she received the afternoon students; and, the rotations would begin again with those students.

Ms. Hopp testified that consistency and routines were essential to the program. She explained how important it was to know the students to help them implement the routines. She explained that if a child refused to leave a station, the stations were large enough to permit the child to remain at the station when new students came to that rotation. There were only eight students in each session, two per rotation, so there was plenty of room to do an activity when a student refused to transition to the next station. It was pretty common for students to have tantrums and Ms. Hopp allowed them to sit wherever they wanted as long as they were calm and not hurting anyone. Ms. Hopp described the various techniques she used with students to redirect their behaviors and the hierarchy of prompts; a set of techniques to address behaviors in an orderly fashion.

Ms. Hopp testified about one of the previous unfounded charges in 2012. There was a student who repeatedly hit himself in the head; she redirected him with another activity; she thought the incident was over until the parents filed a complaint. The district investigated the incident and determined that it was unfounded. Ms. Hopp refuted Ms. Gelfand's testimony that a behavioral specialist was provided because of the 2012 incident. Ms. Hopp testified that the additional behavior specialist was added to the KIT classroom to satisfy the 2:1 ratio mandated by the students' IEPs. Ms. Hopp was never informed that the staff member was added because of the 2012 claimed incident and no documents refuted Ms. Hopp's testimony. Given the fact that there were never any "surplus teachers" in the KIT classroom, Ms. Hopp's testimony about why a behavior specialist was added was more persuasive and credible than Ms. Gelfand's testimony.

Ms. Hopp testified about Student #1's disabilities, the behaviors being addressed, and the progress he was making. His primary targeted behavior was complying with requests. He had preferred and non-preferred activities. Having tantrums was a normal occurrence for Student #1 and many steps were taken to facilitate transitions and good behavior. Ms. Hopp had a number of students who did not comply with requests, but she referred consistently to the hierarchy of prompts to redirect them and alter their behavior. Ms. Hopp was struck by children numerous times; "it's part of the job." As she explained, this is the field she chose to enter and she understands that it is "a behavior thing by the child, not intentional." Ms. Hopp denied disliking Student #1. She worked with his parents, created a booklet for them to use at home and provided them with articles regarding behavioral supports they could implement at home. Ms. Hopp never received any complaints from Student #1's parents or any other parents; other than the two unfounded complaints occurring in 2012. Ms. Hopp denied having any animosity towards Student #1 or trying to get him removed from the KIT

program. As she credibly and persuasively testified, Ms. Hopp had multiple discussions with administrators about promoting many of her students. Given that the KIT program was for pre-K students, graduation was both routine and expected.

Ms. Hopp denied ever dragging or forcing Student #1 to change stations. She denied lifting him out of a chair. She denied dragging him or causing him to hit his head. There was never a time when he needed ice nor was there a time when she failed to give ice or failed to file a report. Ms. Hopp testified that she consistently followed the appropriate behavioral strategies, and she never grabbed or dragged a student, and she never would. Ms. Hopp denied stating that Student #1 deserved to fall, that God was smiting him or that she refused to provide him ice. Ms. Hopp denied this alleged incident occurred, and, if it had, she noted that her classroom assistants were also mandated reporters and that they would have been required to intervene and file reports.

Ms. Hopp testified that she answered the questions the district asked in the manner the district asked them; the district asked whether she “remembered a time when she dragged a child and he fell and hit his head” and she answered that she “did not remember” such a time. Ms. Hopp testified that she thought she was answering no, because no such incident happened, and she simply used the words the district used in her answer; Ms. Hopp never intended her answers to imply that these alleged incidents actually occurred and now she could no longer recall them. Ms. Hopp’s explanation was credible and it appeared that unsubstantiated and improper conclusions were drawn. Moreover, Ms. Hopp testified that she was not told which student she allegedly struck or hit; making it even more difficult for her to answer the questions posed to her. The district knew which student it was talking about, but did not inform Ms. Hopp.

Ms. Hopp testified that if a student was injured, she would immediately inspect to determine the nature and extent of any injury, apply ice, contact the nurse, complete the appropriate documentation, and notify the student’s parents via a text message or phone call. Ms. Hopp would also send a report home to the parent and prepare reports for the classroom and nurse files. These were the protocols Ms. Hopp always followed when a student was injured. Ms. Hopp and her assistants worked in close proximity in the classroom, helped each other out, and worked as a team; if the charged incidents actually occurred, her assistants “would have told her and they never did.”

Ms. Hopp admitted she used the word “baby” with Student #1 because he had a baby sister of whom he was very proud. She used the word to help explain to him that he was a big boy, he was not a baby, and he could use his words to express his needs; he did not need to scream and tantrum. She denied using the word “baby” in a demeaning way. Ms. Hopp testified that she tried to motivate Student #1 because he was one of the older, bigger students; and she never used the word baby in a harsh, frustrated or curt tone. She testified that she used the words in a loving manner to help calm him down; she admitted she now understands how those words might be misperceived. While her use of the word “baby” was perhaps not the best choice of words, nothing about how Ms. Hopp used those words was inappropriate. More importantly, Ms. Hopp’s acknowledgment that her words could be

misinterpreted demonstrated that she is capable of change and redirection, for this reason it cannot be concluded that Ms. Hopp has a “temperamental defect or inadequacy” that would make her evidently unfit to teach. Further, the district reports and witness testimony alleging that Ms. Hopp stated at her interviews that she told Student #1 that he was “five and should act like a five-year-old” was clearly erroneous because Ms. Hopp knew Student #1 was less than five years old, so Ms. Hopp never would have made that statement. Additionally, as Ms. Hopp credibly explained, she would never tell a student to act a certain chronological age because the students’ ages and their abilities were not the same, making such a statement both derogatory and ineffective.

Ms. Hopp explained that Student #1 had a very strong interest in food and would eat his snack at inappropriate times. She denied telling him that his parents did not give him food. She frequently discussed his snack behavior with his parents and asked them what they would like her to do. The parents’ decision was to send one snack with Student #1 and if he chose to eat it at the wrong time, he would have nothing to eat at snack time. Student #1’s parents asked Ms. Hopp to do a preferred activity with him instead. Ms. Hopp explained that she had known Student #1 for several years and his parents were very consistent with their parenting. Student #1 was fed a breakfast and a lunch at the district, so Ms. Hopp was not overly concerned if he did not have snack at snack time. Ms. Hopp’s e-mails to Student #1’s parents corroborated her testimony.

As to Ms. Hopp’s alleged failure to report the attic, spanking, and locked in a closet incidents, Ms. Hopp testified that her statements were taken out of context. She explained that she did not file a report because she did not have a reasonable suspicion that these events actually occurred. Ms. Hopp was reading a book about emotions and explaining those emotions to the students. She asked them to look at the pictures of emotions and to view their faces in a mirror to see what they looked like when experiencing those emotions. In order to see whether the students understood the concept, she asked of them for examples of when they would be afraid. Student #1 said he would be afraid if he was locked in the attic. It was Ms. Hopp’s understanding that he was not claiming he had been locked in an attic, spanked or had food withheld. He was expressing what kinds of things would make him feel various emotions. Thus, Student #1’s statements were made in the context of the lessons and were not reported as events that had actually happened. Moreover, Student #1 was a very verbal child and if those things were taking place, he would have told staff. Student #1 would have talked about food being withheld at home because he perseverated on food due to his autism. In fact, he told staff when his mother would not give him more ice cream, but he never claimed that food had been withheld. Because of his food issues, his parents monitored his food.

Ms. Hopp never observed any bruising on Student #1, never witnessed him being fearful of his parents, and he never displayed any indicators that would cause her to be suspicious of parental abuse. Ms. Hopp had filed suspected child abuse reports on two other occasions regarding other students. She was aware of her reporting obligations, but she did not file a report concerning Student #1 because she saw no need to do so. Moreover, in support of Ms. Hopp’s claim, it is noteworthy that when Ms. Hopp found the small vodka

bottle in her classroom, she immediately reported it to her supervisor; doing so demonstrated that Ms. Hopp followed district reporting requirements. Moreover, as Ms. Hopp repeatedly asserted, the district's documentation of what she said merely contained "part of the conversation" that Ms. Hopp actually had with district officials, "the rest of the conversation" was not in the reports, thereby making them unreliable.

Ms. Hopp testified that her comments regarding her concerns for Student #1 were misconstrued. Ms. Hopp testified that she told the district that she hoped they were talking to everybody because of their concern; "their" meaning the district, not the other staff members. Ms. Hopp intended her comment to mean that because Student #1 had multiple district employees participating in his care, she hoped that all of them were being asked about this incident. Ms. Hopp was never concerned about Student #1's health, safety or welfare, and she never said that he was spanked, locked in a closet or had food withheld at home. The statements in the report asserting Ms. Hopp made those statements are inaccurate, as they were taken from a long discussion with investigators regarding the emotional story she had read with the class, and only snippets of that entire discussion are contained in the report. The district asserted that Ms. Hopp made allegations against Student #1's parents at this interview because she thought they were the ones who complained, but when she learned it was staff, Ms. Hopp changed tactics and made allegations against staff members. However, the evidence did not support that argument; instead, the evidence supported Ms. Hopp's position.

As to the photograph of Ms. Engle that she produced at her interview, Ms. Hopp also disagreed with how that exchange was documented in the district reports. During questioning, Ms. Hopp was asked whether there was ever a need to touch students and she explained that she and the staff do so during hand over hand techniques. The woman asking the questions did not understand what Ms. Hopp meant, so Ms. Hopp opened her phone and found a picture depicting Ms. Engle doing hand over hand technique. When she produced the picture, Ms. Hopp stated that it was an example of staff using an "exaggerated face" to communicate with the student. Ms. Hopp testified that special education teachers are encouraged to use animated or exaggerated facial expressions or gestures when teaching autistic children because these children do not recognize emotions as well as other children. Ms. Hopp denied stating that the photograph showed a "frustrated face," and testified that if she had ever observed inappropriate physical contact by staff, she would have intervened and reported it.

Ms. Hopp's employee evaluations were excellent until the investigation in this matter began; her supervisors repeatedly praised her work as "excellent." The only criticism she received before 2013 pertained to her absences, which were due to emergency gallbladder surgery and the sudden, unexpected death of one of her brothers who helped her care for their other, disabled brother. Ms. Hopp testified that the negative 2013 performance evaluation was the only negative evaluation she ever received. Most concerning was that, unlike her other evaluations, before this 2013 evaluation, Ms. Hopp was not given a preplanning sheet, there were no pre-conferences held about the evaluation, there were no meetings with administrators either before or during the evaluation, there were no

memorandum contemporaneous with any of the dates set forth as the observation dates, there were no notes about the evaluation or any information regarding any weaknesses Ms. Hopp allegedly demonstrated on observation, and no discussions regarding any needs for improvement. The deficiencies identified in the 2013 evaluation were never discussed with Ms. Hopp before she received the evaluation. During the May 7, 2013, meeting, Ms. Hopp received a number of compliments regarding how her classroom was run, how clean it was, and she was told that her class “was nicely run under her direction.” In fact, Ms. Hopp received commendations for her classroom that were at odds with the “needs to improve” section of the 2013 evaluation. Lastly, Ms. Hopp testified that Ms. Gelfand told her it was “a very challenging report to give knowing how much effort was put into how the classroom was set up and it was hard to put something negative in the evaluation when observing how nicely designed, organized and prepared the classroom appeared.” Ms. Gelfand never refuted Ms. Hopp’s testimony on this point.

Ms. Hopp was “appalled” by the charges. The fact that “someone as open and obviously interested in learning” was not given an opportunity to discuss or remedy these alleged problems, whatever had occurred, was “repulsive” to her. She was tremendously hurt and felt that she can never again be as dedicated as she once was. Ms. Hopp did not feel she did anything wrong. She did not feel she violated any district policy. She admitted that if the incidents charged in the accusation had occurred, she would have had to file reports, but these incidents never took place. When Ms. Hopp was interviewed she did not know the charges against her. Sometime later, “vague, ambiguous information came out,” but she did not find out the specific charges until May of 2013. Ms. Hopp was removed in March 2013, and spent “weeks and weeks” not knowing the reason for her removal.

Ms. Hopp made a very credible, personable, and forthcoming witness. She could have easily denied making the baby statements, but, instead, acknowledged making them and explained the context in which she made them. Her admissions and her explanations were believable. Her testimony was supported by the reliable documentation. The tremendous outpouring of support from parents and educators, alike, spoke volumes about Ms. Hopp’s character, ability to teach, and positive impact on her classroom and her students. It was wholly inconsistent with Ms. Hopp having engaged in the conduct alleged in the accusation.

LEGAL CONCLUSIONS

Applicable Code Sections

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

2. Education Code section 44932 provides the grounds for dismissing a permanent employee. Subdivision (1) authorizes dismissal for immoral or unprofessional conduct. Subdivision (5) authorizes dismissal for evident unfitness for service. Subdivision

(7) authorizes dismissal for the persistent violation of or refusal to obey the school laws or reasonable regulations.

3. Education Code section 44944 establishes the right to a hearing, the process for selecting the three-member Commission on Professional Competence, and sets forth the Commissions' authority regarding its final decision.

4. Education Code section 44938 outlines the procedures the governing board must follow before acting on any charges brought against a teacher.

5. Education Code section 44939 authorizes the dismissal of an employee who willfully refuses to perform regular assignments without reasonable cause as described by the district's reasonable rules and regulations.

Burden and Standard of Proof

6. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.) This standard requires a party to convince the trier of fact that the existence of a fact is more probable than its nonexistence. (*Redevelopment Agency v. Norm's Slauson* (1985) 173 Cal.App.3d 1121, 1128.)

Relevant Judicial Authority

Unprofessional Conduct

7. The seminal case for teacher dismissals is *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. There the Supreme Court held that where charges of unprofessional conduct are raised in teacher dismissal cases, the applicable standard is whether the person is fit to teach. The criteria must be analyzed to determine, as a threshold matter, whether the cited conduct indicates unfitness for service. (*Id.*, at p.229.)

8. Unprofessional conduct has been defined as conduct, measured by the *Morrison* factors, which indicates unfitness to teach. (*Board of Education v. Jack M.* (1970) 19 Cal.3d 691, 696-697; *Perez v. Commission on Professional Competence* (1983) 149 Cal.App.3d 1167, 1173-1174.)

Evident Unfitness to Teach

9. The applicable standard or determinative test in teacher dismissal cases is whether the person is fit to teach. "Fitness to teach" is probably a question of ultimate fact. (*Board of Education v. Commission on Professional Competence* (1980) 102 Cal.App.3d 555, 560-561.)

10. Evident unfitness for service under Education Code section 44932, subdivision (a)(5), is established by conduct demonstrating that the teacher is “clearly not fit, not adapted or suitable for teaching, ordinarily by reason of temperamental defects or inadequacies.” (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) As a threshold matter, the *Morrison* criteria must be examined to ascertain whether the conduct in question indicates unfitness for service. “If the *Morrison* criteria are satisfied, the next step is to determine whether the ‘unfitness’ is ‘evident,’ i.e., whether the offensive conduct is caused by a defect in temperament.” (*Id.*, at p.1445.)

11. In *Board of Education v. Jack M.*, *supra*, the court delineated the process to be considered when determining fitness to teach. This opinion upheld the standard established in *Morrison* that a discharged teacher is entitled to a fitness hearing in which not only his alleged conduct but the following factors must be analyzed: (1) likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teachers’ and students’ relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct.

Persistent Violation of or Refusal to Obey Laws

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

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

Evaluation of the Charges

14. A preponderance of the evidence did not establish that in January 2013 Ms. Hopp grabbed Student #1 by both hands and pulled his hands above his head while he was seated; dragged him towards a different learning/play center causing him to fall and hit the back of his head; failed to provide ice or other first aid; failed to complete an incident form; and failed to complete the district bulletin regarding physical actions taken with students. To begin with, it was difficult to believe that this event occurred in January 2013 yet was not reported it until March 2013. It was hard to imagine that other employees in the same classroom did not

observe this incident taking place, or if they did, failed to intervene and/or report it. The two witnesses who claimed they observed the event, Ms. Hernandez and Ms. Ramirez, had extremely strong motives to fabricate the incident because Ms. Hopp had notified their employer that they were absent and tardy to work. Their employer was an outside vendor who had contracted with the district to provide behavior services. The vendor had ample cause to be concerned about this complaint, as tardy employees could potentially risk the vendor losing its contract with the district. The vendor/employer apologized to Ms. Hopp for Ms. Hernandez's and Ms. Ramirez's unprofessional conduct and promised to address it with them. A short time thereafter, these women notified the district of the alleged January 2013 incident with Student #1. The timing of their complaint made the validity of their claims dubious, at best. Moreover, Ms. Hernandez and Ms. Ramirez changed and expounded on their versions of the January 2013 event, with Ms. Ramirez even claiming that Ms. Hopp made "God is smiting him" and Student #1 "deserved it" comments. That testimony appeared contrived and overreaching. The testimony of these two witnesses, coupled with their varying versions of events, as well as their statements, was not credible and was not persuasive. Additionally, others in the classroom did not witness this event.

15. A preponderance of the evidence did not establish that in February 2013 Ms. Hopp grabbed Student #1's left arm and pulled him forcefully out of his chair, causing him to drop to the floor and causing his shirt to be pulled up over his head. Again, the only "witness" to this incident was Ms. Hernandez whose credibility was highly doubtful, for the reasons noted above. Moreover, Ms. Hernandez's explanation of what occurred, and how it occurred, made little sense, casting further doubt on her credibility.

16. A preponderance of the evidence did not establish that during the period commencing in December 2012 through April 16, 2013, Ms. Hopp told Student #1 to stop crying and that he was being a "baby" or "big baby" on no less than two occasions. Ms. Hopp's explanation for how she used the word "baby" with Student #1 and why she used that word was reasonable and persuasive. There was no ill intent and, given that Student #1 had a baby sister, using the word "baby" as a point of reference made sense. Furthermore, other witnesses corroborated Ms. Hopp's testimony that she did not use the word in a malicious way, and, again, the testimony of Ms. Hernandez and Ms. Ramirez concerning Ms. Hopp's use of the word "baby" was not credible. More importantly, the use of the word must be viewed in the context of how it was used. As Ms. Hopp credibly testified, the context in which she used the word was appropriate.

17. A preponderance of the evidence did not establish that between January and April 2013, Ms. Hopp commented to Student #1 during snack time that his parents did not give him a snack saying: "We can't give you anything. Go talk to your parents about that," and "No your mom did not give it to you." The evidence clearly established that Ms. Hopp devised a plan with Student #1's mother to address his snack-eating issue as early as September 2012, long before these allegations were made. If a parent reasonably directs a teacher how to address a student's particular issue, the teacher should comply with the parent's reasonable wishes. Again, the testimony of Ms. Hernandez and Ms. Ramirez was not credible and was refuted by the documentary evidence introduced at hearing.

18. A preponderance of the evidence did not establish that during the period commencing January 2, 2013, through April 16, 2013, Ms. Hopp failed to report that Student #1 was being spanked, locked in a closet and/or attic, and food was withheld at home. Ms. Hopp's explanation of what she said during her district interviews was logical, credible, and supported by other evidence. The district reports allegedly summarizing the statements Ms. Hopp made during the interviews were incomplete, omitted key points, and appeared contrived to place Ms. Hopp in the worst light possible. It was difficult to believe that Ms. Hopp, knowing she was a mandated reporter, would make the statements the district attributed to her; she would have been aware of the trouble she would cause herself by failing to report those incidents if she believed them to be true. Ms. Hopp's explanation of the statements she made during her discussions with the district made much more sense than the version ascribed by the district. The district's witnesses' conclusions about what was said at the meetings were unpersuasive, especially given the incomplete and inaccurate documents prepared following those meetings.

19. A preponderance of the evidence did not establish that during the period commencing in December 2012 through April 16, 2013, Ms. Hopp failed to report child abuse when she observed and photographed another employee using what Ms. Hopp allegedly stated was inappropriate physical means to manage student behavior and frustration. To begin with, a preponderance of the evidence did not establish that Ms. Hopp ever said the photograph depicted an employee who was actually frustrated. As Ms. Hopp credibly explained, during her interview, when she was trying to describe hand over hand technique, she produced this photograph to visually depict that technique; she did not produce the photograph to show frustration, she produced it to show that an "exaggerated expression" was used when performing hand over hand technique. Again, it was hard to believe that Ms. Hopp, a mandated reporter, would say what the district alleged she said at the meeting. Ms. Hopp's explanation was much more reasonable and believable.

20. A preponderance of the evidence failed to establish that Ms. Hopp, despite repeated assistance, guidance, counseling and warnings, failed to comport herself to the acceptable level of professional conduct and failed to obey district guidelines, procedures, laws and regulations. Since the evidence did not establish that any of the alleged incidents occurred, there were no district policies that Ms. Hopp disobeyed. Moreover, it would be impossible for her to comply with the notice of unsatisfactory service and claims of below standard performance evaluation, because those documents were not prepared until after she had been removed from the classroom and after the investigation began. As noted above, those two documents were based on statements and testimony that were unreliable and non-credible. Furthermore, a teacher must be given an opportunity to participate in the evaluation process and demonstrate an ability to comport with directives. Ms. Hopp was not given that opportunity. However, the Commission found it noteworthy that even though Ms. Hopp's use of the word "baby" was not inappropriate under the circumstances, Ms. Hopp testified that she would refrain from using that word in the future, thereby demonstrating that she is capable of following directives and learning from her alleged mistakes.

21. In all, the evidence substantially established that the district's investigation relied on incorrect information, that the charges were unfounded, and that Ms. Hopp was not given an

opportunity to correct alleged deficiencies in her classroom. The letters of support explained and supplemented credible testimony that established that Ms. Hopp was a professional, caring, dedicated, well-loved, and well-respected teacher. Because of her outstanding qualities, she was recruited to be a KIT teacher. Given her excellent performance evaluations and the letters of recommendation introduced at hearing, it was extremely disconcerting that charges were brought against her. It was all the more troubling that the two witnesses who claimed to have observed the alleged incidents were the very same witnesses against whom Ms. Hopp had made a complaint about their absences and tardiness, and that the district had relied on their testimony despite the existence of evidence to the contrary.

Cause Does Not Exist to Dismiss Ms. Hopp

22. Cause does not exist to dismiss Ms. Hopp pursuant to Education Code section 44932, subdivision (a), subsection (1), because the evidence did not establish that Ms. Hopp engaged in unprofessional conduct.

23. Cause does not exist to dismiss Ms. Hopp pursuant to Education Code sections 44932, subdivision (a), subsection (1), and 44939, because the evidence did not establish that Ms. Hopp engaged in immoral conduct.

24. Cause does not exist to dismiss Ms. Hopp pursuant to Education Code section 44932, subdivision (a), subsection (5), because the evidence did not establish that Ms. Hopp was evidently unfit for service.

25. Cause does not exist to dismiss Ms. Hopp pursuant to Education Code section 44932, subdivision (a), subsection (7), because the evidence did not establish that Ms. Hopp persistently violated laws, rules, regulations and/or policies related to education.

26. Cause does not exist to dismiss Ms. Hopp pursuant to Education Code section 44939, because the evidence did not establish that Ms. Hopp willfully refused to perform regular assignments without reasonable cause as described by the district's reasonable rules and regulations.

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ORDER

Ms. Hopp's appeal of her dismissal from employment with the Los Angeles Unified School District is granted. Ms. Hopp shall not be dismissed from her employment with the district. The charges and accusation filed against Ms. Hopp are hereby dismissed.

Dated: 12-1-15


Mary Agnes Matyszewski
Administrative Law Judge
Office of Administrative Hearings

Dated: _____

Ms. Teresa Behnke
Commission Member

Dated: _____

Mr. Fernando Robles
Commission Member

ORDER

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Dated:

Mary Agnes Matyszewski
Administrative Law Judge
Office of Administrative Hearings

Dated: *Nov. 30. 2015*

Ms. Teresa Behnke

Ms. Teresa Behnke
Commission Member

Dated:

Mr. Fernando Robles
Commission Member

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Dated:

Mary Agnes Matyszewski
Administrative Law Judge
Office of Administrative Hearings

Dated:

Ms. Teresa Behnke
Commission Member

Dated: 12.1.15


Mr. Fernando Robles
Commission Member