

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Immediate Suspension  
and Dismissal of:

OAH No. 2013120425

JEBBY WILLIAMS-WILKEY (EN 962388),  
a permanent certificated employee of the  
Los Angeles Unified School District,

Respondent.

**DECISION**

This matter was heard by the Commission on Professional Competence (Commission) in Los Angeles, California, on February 11, 12, 13, 14 and 19, 2014. The Commission consists of Kathleen Davis, Los Angeles County Office of Education; Kathy Jarvey, Hacienda La Puente Unified School District; and Administrative Law Judge Eric Sawyer, Office of Administrative Hearings (OAH), State of California, who presided.

Michele M. Goldsmith, Esq., Bergman Dacey Goldsmith, represented Complainant Los Angeles Unified School District (District).

Rosemary O. Ward, Esq., represented Jebby Williams-Wilkey (Respondent), who was present on each day of hearing.

The parties presented opening statements, testimonial and documentary evidence, and closing arguments. The case was deemed submitted for decision at the conclusion of the hearing on February 19, 2014. The Commission thereafter deliberated in executive session.

**FACTUAL FINDINGS**

*Parties and Jurisdiction*

1. The Board of Education (Board) is the duly elected, qualified and acting governing board of the District, organized, existing and operating pursuant to the provisions of the California Education Code and other laws of the State of California.

2. At all times relevant, Respondent was a permanent certificated employee of the District teaching Early Education (preschool) at Laurel Early Education Center (Laurel EEC).

3. On October 31, 2013, Vivian K. Ekchian, in her official capacity as the District's Chief Human Resources Officer, verified on information and belief a Statement of Charges against Respondent, alleging factual and legal grounds for Respondent's immediate suspension without pay and termination of her employment.

4. By a letter dated November 20, 2013, Respondent was advised by Ms. Ekchian that the Statement of Charges had been filed with the Board, and that during a closed session of a Board meeting held on November 19, 2013, the Board decided to dismiss Respondent within 30 days, unless she demanded a hearing. Respondent was also advised that she had been suspended without pay. Respondent timely requested a hearing.

5. On December 12, 2013, the District filed the Statement of Charges with OAH and served the same on Respondent. The District thereafter filed and served an Accusation against Respondent, alleging the same grounds for discipline as the Statement of Charges. Respondent timely filed a Notice of Defense, which contained a request for the hearing that ensued. Respondent was timely provided with notice of the hearing before the Commission.

#### *Respondent's Background Information*

6. Credential. Respondent possesses a Child Development Site Supervisor Permit, which authorizes her to supervise a child care and development program operating at a single site; provide service in the care, development, and instruction of children in a child care and development program; and serve as a coordinator of curriculum and staff development in a child care and development program.

7. Prior Teaching Experience. Respondent began her teaching career in or around 1993 with the Los Angeles County Office of Education, where she served in the Head Start program.

8. Employment with the District. Respondent began her employment with the District in 2007. She worked as a Head Teacher at Crescent Heights Early Education Center (CHEEC) from 2007 through 2010. In October 2010, she transferred to Laurel EEC as a Head Teacher, where she remained until she was removed from her classroom in 2012.

#### *The Michael G. Incident*

9. On a date not established in April 2011, Respondent and her class at Laurel EEC were outside the classroom on a break. One of Respondent's 4-year-old preschool students, M [REDACTED] G.,<sup>1</sup> was in the playground area, sitting next to Respondent, and he was

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<sup>1</sup> Students' and minors' last names are omitted to protect their privacy.

crying. As the break period ended, Respondent picked up M[REDACTED] G., who was not wearing his shoes, and carried him back towards the classroom. Respondent carried M[REDACTED] G. along her side, like one would carry a long and heavy package. Respondent was in a hurry to get back into her classroom and she walked with dispatch, with M[REDACTED] G. dangling from her side. The way in which Respondent carried M[REDACTED] G. was inappropriate. It was not done in a comforting manner; and it posed a safety hazard, in that M[REDACTED] G. may have fallen and landed head-first on the ground if he had slipped from Respondent's grasp. There are some instances when carrying a crying child of this age can be appropriate, e.g., to be comforting or to prevent them from harming themselves or others, but this was not such a situation. Much of this activity was caught on video by a cellphone camera used by M[REDACTED] G.'s cousin, who was visiting Laurel EEC at this time with other family members.

10. As Respondent neared the classroom, she yelled at M[REDACTED] G. to "stop crying." This activity was witnessed by M[REDACTED] G.'s sister, J[REDACTED] E.; her testimony was corroborated by that of Laurel EEC Principal Carol Collins and Plant Manager Loretter Carter, who both credibly testified that they had heard Respondent yell at students in the past, including to "shut up!" However, it was not established that Respondent shook M[REDACTED] G. during this incident. J[REDACTED]'s testimony that Respondent had done so was not credible, and there was not sufficient evidence presented which corroborated her testimony. For example, it is unlikely that Respondent had the strength to pick up M[REDACTED] G. to her level and shake him as vigorously as J[REDACTED] had described it.

11. M[REDACTED] G. was suffering from severe separation anxiety from his mother, which in turn created issues requiring Respondent's frequently response. However, Respondent did not adequately request assistance or resources from Principal Collins or school staff to deal with this situation. She provided inadequate information to the family concerning available social service resources to respond to this problem. In any event, yelling at M[REDACTED] G. to stop crying was not an appropriate response.

#### *The D[REDACTED] A. Incident*

12. On a date not established during the week of March 5, 2012, Respondent yelled in a loud and harsh voice to her preschool student, D[REDACTED] A., "D[REDACTED] sit down!" Neither D[REDACTED] A. nor her parents testified, but Principal Collins persuasively testified that D[REDACTED]'s parents met with her to complain about this incident at or about the time it happened. Principal Collins' testimony was corroborated by the note concerning this incident written by D[REDACTED]'s mother. Moreover, Principal Collins had witnessed Respondent raise her voice to D[REDACTED] once before, and Plant Manager Carter persuasively testified that she had heard Respondent yell "shut up" several times to children in her classroom.

13. The underlying circumstances explaining why Respondent behaved as she did were not established. When discussing this incident with school administrators, Respondent simply denied the incident happened, but offered no justification. During the hearing,

Respondent offered no testimony about this incident. Thus, Respondent established no reasonable justification for yelling at a young child.

#### *The D■■■■H. Incident*

14. On or about March 7, 2012, toward the end of the school day, 4-year-old preschool student D■■■■H. was running in Respondent's classroom. D■■■■H. frequently ran in Respondent's classroom, so this was not unusual. Respondent put out one or both of her hands to get him to stop. D■■■■H. ran into one of Respondent's out-stretched hands, and physical contact was made on D■■■■'s throat area. Respondent did not intend to grab D■■■■ by his throat. However, Respondent's hand slid up from D■■■■'s throat to his cheeks. At this time, Respondent squeezed D■■■■'s cheeks with that hand and sternly told him to stop running. It was not established that Respondent attempted or intended to choke D■■■■H., but she did intend to squeeze his cheeks.

15. D■■■■H. reported the incident to his mother when she picked him up after school that day. At the time, D■■■■H. had no visible marks or injuries. D■■■■'s mother waited until the following day to report this incident to Principal Collins, who in turn submitted an unusual incident report to the California Department of Social Services (DSS).

16. D■■■■H. gave Principal Collins and the DSS investigator a consistent account of the incident. He credibly testified during the hearing about the incident. However, D■■■■'s testimony that Respondent "choked" him was not credible, as that part of his testimony seemed coached and D■■■■ appeared to be prone to exaggeration. Nonetheless, the remainder of his testimony about this incident was credible. D■■■■'s testimony was amply corroborated by his mother; his friend from school I■■■■T., who witnessed the incident and told her mother about it soon after she was picked up from school on the day of the incident; and ■■■■'s mother, who independently reported to D■■■■'s mother what I■■■■ had told her soon after she picked up I■■■■ from school that day.

#### *The Citation Issued by the Department of Social Services*

17. As a result of the above-described incident with D■■■■H., Licensing Program Analyst (LPA) Victoria Majarian of the DSS investigated the matter. LPA Majarian issued a Type A Citation to Laurel EEC on March 15, 2012, finding that Respondent's conduct toward D■■■■H. violated his personal rights, and thereby violated California Code of Regulations, title 16, section 101223. The District did not appeal the Citation and it became final.

18. Although LPA Majarian was a poor witness during the hearing, her findings comport with our Factual Findings described above, and so the Commission believes the Citation was warranted. The Type A Citation issued to Laurel EEC is the most serious of citations that can be issued by DSS to a licensed facility. Although LPA Majarian had the discretion to recommend removing Respondent from the classroom and any other facility

licensed by DSS, she instead recommended that Respondent receive more training. The District was required to post the Citation for one year and to demonstrate to DSS that parents of children enrolled at Laurel EEC, or about to be enrolled, were made aware of it.

#### *Other Relevant Facts*

19. For the period of four years before the Statement of Charges was filed with and approved by the Board, Respondent had no prior disciplinary history with the District.

20. In 2010, Respondent was given a positive Stull evaluation by her principal at CHEEC, Jacqueline Williams, who testified that Respondent met District standards, was a good teacher, and had no tendency toward physical violence or yelling at students. After Ms. Williams retired from the District, she has maintained a social relationship with Respondent and appears to be a friend. Ms. Williams' credibility with the Commission was also undercut by her testimony that she saw nothing wrong after watching the video of Respondent carrying M█████G.

21. Respondent's most recent District Stull evaluation was in 2011, by Principal Collins. That evaluation indicated that Respondent met District expectations, and was generally favorable. However, Ms. Collins clearly had reservations with Respondent's performance as a teacher, including raising her voice and yelling at other students, and yet she did not properly document the same. She issued her 2011 Stull evaluation after the events underlying the M█████G. incident, and yet she did not make reference to it. Principal Collins had been on vacation when that incident occurred; she believed the woman filling in for her at the time would handle the requisite paperwork. In these respects, Principal Collins simply "dropped the ball."

22. The evidence presented generally indicates that Respondent is a good teacher, in terms of the technical skills necessary to appropriately teach the District's curriculum.

23. Parents of some of Respondent's former students testified on her behalf. These parents generally testified that they liked and supported Respondent, that she was a good teacher, and that they never witnessed Respondent yell at or physically abuse their children or other students. These parents' testimony was essentially off-set by the parents of M█████G., D█████A., and D█████H., who had different points of view regarding Respondent's behavior. Moreover, the Commission recognizes that different parents appreciate different teaching styles and respond to teachers in different ways. Some of the parents presented by Respondent testified that they had no concern with the video depicting how Respondent carried M█████G., which undercut their credibility with the Commission.

24. Some of Respondent's former teaching assistants also testified. They uniformly stated that Respondent was a good teacher who did not yell at or physically abuse her students. Their testimony did not dissuade the Commission from the findings above for various reasons. For example, they generally worked with Respondent for short periods of time. Although required to be in Respondent's proximity for purposes of maintaining the

proper adult-child ratio required by DSS, they could not have seen everything Respondent did at all times. Finally, they uniformly testified that they never saw Respondent yell at or carry a student. However, the evidence was clear that Respondent was loud, yelled at students, and even by her own testimony, Respondent carried M [REDACTED] G. almost daily.

25. When she initially discussed with school administrators the incidents involving M [REDACTED] G., D [REDACTED] A., and M [REDACTED] H., Respondent simply denied doing anything to the students, but she provided no elaboration or justification. During the hearing, Respondent denied all the allegations concerning the students, with the exception that she admitted carrying M [REDACTED] G. from the playground area to the classroom (which had been caught on video). At no time during the hearing did Respondent concede or admit that she did anything wrong. She did not appear remorseful for any of her actions.

### LEGAL CONCLUSIONS

1. The District has the burden of proving cause for discipline by a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

2. The governing board of a school district may dismiss a permanent certificated employee if one or more of the causes enumerated in section 44932, subdivision (a), are established. In addition, a governing board may immediately suspend a certificated employee without pay pursuant to section 44939 upon the filing of a statement of charges alleging immoral conduct and/or willful refusal to perform regular assignments without reasonable cause.

3A. Cause exists for Respondent's dismissal for unprofessional conduct pursuant to section 44932, subdivision (a)(1). (Factual Findings 1-18.)

3B. Unprofessional conduct as used in section 44932, subdivision (a)(1), may be defined as conduct that violates the rules or ethical code of a profession or is unbecoming a member of a profession in good standing. (*Board of Ed. v. Swan* (1953) 41 Cal.2d 546, 553, overruled in part, on another ground, in *Bekiaris v. Board of Ed.* (1972) 6 Cal.3d 575, 588, fn. 7.)

3C. In this case, Respondent touched D [REDACTED] H. in a negative way by squeezing his cheeks while sternly telling him not to run. In fact, that conduct was deemed by a state agency to have violated D [REDACTED] H.'s personal rights. In addition, Respondent yelled at D [REDACTED] A., and yelled at and carried M [REDACTED] G., under circumstances where her behavior was not warranted. That conduct was unbecoming of a teacher in good standing and thus unprofessional.

4A. Cause exists for Respondent's dismissal for unsatisfactory performance pursuant to section 44932, subdivision (a)(4). (Factual Findings 1-18.)

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

4C. While unprofessional conduct can be determined by analyzing a teacher's conduct relative to the broader educational community, unsatisfactory performance must be analyzed with an eye toward the teacher's performance as evaluated by his or her employing school district. Section 44938 supports this proposition. Section 44938 requires a charge of unsatisfactory performance to be preceded by a written notice of unsatisfactory performance, and refers to section 44660 et seq., which in turn establishes guidelines for how school districts should evaluate and assess the performance of their certificated employees. Thus, cause for discipline may be established if a certificated employee performs unsatisfactorily to his employing school district.

4D. However, the purpose of the statute giving tenure to teachers is to insure an efficient permanent staff of teachers whose members are not dependent on caprice for their positions as long as they conduct themselves properly and perform their duties efficiently and well. (*Bakersfield Elementary Teachers Ass'n v. Bakersfield City School Dist.* (2006) 145 Cal.App.4th 1260, 1293, fn 20, citing 56 Cal.Jur.3d (2003) Schools, § 411, p. 757.) Therefore, a reasonable limitation is that an employing school district cannot be arbitrary or capricious in making decisions regarding whether a certificated employee has performed unsatisfactorily.

4E. In this case, Respondent performed her duties in a way unsatisfactory to the District. She inappropriately touched M [REDACTED] G. and D [REDACTED] H., and in ways contrary to District policies and expectations. She yelled at D [REDACTED] A. and M [REDACTED] G. inappropriately and, again, in ways contrary to District policies and expectations. She failed to request or utilize District resources in dealing with issues created by M [REDACTED]'s separation anxiety and D [REDACTED]'s physical activity, contrary to District expectations.

5A. It was not established by a preponderance of the evidence that cause exists for the immediate suspension and/or dismissal of Respondent for immoral conduct pursuant to sections 44932, subdivision (a)(1), or 44939. (Factual Findings 1-18.)

5B. The term "immoral conduct" has been defined to include conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. (*Board of Ed. of San Francisco Unified School Dist. v. Weiland* (1960) 179 Cal.App.2d 808, 811.)

5C. In this case, Respondent made inappropriate choices and exercised poor judgment on occasion, usually in situations involving split-second reactions. But her conduct does not meet the definition of immorality provided by the *Weiland* case, in that her actions were not corrupt, indecent, shameless, or morally indifferent.

6A. Cause exists for Respondent's dismissal for evident unfitness for service as a teacher pursuant to section 44932, subdivision (a)(5). (Factual Findings 1-18.)

6B. "Evident unfitness for service" means clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444.) "'Evident unfitness for service' connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.*)

6C. In this case, Respondent inappropriately touched and yelled at students. Those events usually involved Respondent's split-second reactions to a student's poor behavior. She never provided a justification for her actions to school administrators or expressed any remorse during the hearing. We are left with the impression that, to this day, Respondent still does not believe she engaged in any misconduct, which demonstrates a lack of understanding how a teacher should interact with young students. Under these circumstances, it was established that Respondent was, and is, suffering from a temperamental defect or is otherwise unfit to serve as a teacher in these respects.

7A. It was not established by a preponderance of the evidence that cause exists for the dismissal of Respondent pursuant to section 44932, subdivision (a)(7), for persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing her. (Factual Findings 1-18.)

7B. Cases interpreting section 44932, subdivision (a)(7), require a "showing of intentional and continual refusal to cooperate." (*San Dieguito Union High School District v. Commission on Professional Competence* (1985) 174 Cal.App.3d 1176, 1196.) In this case, Respondent was not insubordinate and she did not willfully and continually refuse to cooperate with the District.

8. It was not established by a preponderance of the evidence that cause exists for the immediate suspension and/or dismissal of Respondent for willful refusal to perform regular assignments without reasonable cause, as described by reasonable rules and regulations of her employing district, pursuant to section 44939. In this case, it was not established that Respondent engaged in such conduct.

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*The Morrison factors*

9. Cause for discipline against a teacher must relate to her fitness to teach within the meaning of the factors enumerated in the case of *Morrison v. State Board of Education* (1969) 1 Cal.3d 214. Here, the Commission has found cause exists to dismiss Respondent based on unprofessional conduct, unsatisfactory performance and evident unfitness. The *Morrison* analysis applies only to the causes of dismissal for unprofessional conduct and evident unfitness, but not unsatisfactory performance. (*Id.*, at pp. 227-230.) With regard to those causes for dismissal, we considered all the factors suggested by *Morrison* and compared them to the facts established above. Not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) Moreover, the *Morrison* analysis need not be conducted on each individual fact established, but rather can be applied to the accumulated facts established collectively. (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1457.) In this case, we find the factors clearly demonstrate that Respondent’s misconduct related to teaching as follows:

(A) The likelihood the conduct may adversely affect students or fellow teachers. Respondent’s misconduct adversely affected the students involved. Respondent’s misconduct also resulted in the issuance of a Type A Citation and the public posting of the same, which affected Respondent’s colleagues, in that their school was subjected to increased scrutiny by the DSS and parents of current or prospective students.

(B) The degree of such adversity. Respondent’s misconduct caused little or no physical harm to the students involved, but due to their age it probably caused some emotional turmoil and erosion of their trust in teachers and authority figures. The Type A Citation posed a moderate level of adversity, in that the citation had to be posted and read by parents, which may have led some to not enroll their children at the school.

(C) The proximity or remoteness in time of the conduct. The misconduct was recent.

(D) The type of teaching certificate held by the party involved. Respondent has a permit to work with young children. Her misconduct was more likely to adversely impact those students due to their age, as explained above.

(E) The existence of extenuating or aggravating circumstances, if any, surrounding the conduct. Neither aggravating nor extenuating circumstances were proven.

(F) The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent offered no adequate justification for her actions.

(G) The likelihood of recurrence of the questioned conduct. It is highly likely that Respondent will continue to use a raised voice or yell at students. Warnings from Principal Collins had not helped before. Respondent apparently is not concerned with the

way she carried M [REDACTED] G. and has not accepted responsibility for squeezing D [REDACTED] H.'s cheeks. Under these circumstances, there is more than a remote possibility that Respondent will engage in that sort of activity again.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. We do not foresee this happening.

### *Disposition*

10A. "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction." (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327, 343-344.) Thus, even where cause for dismissal has been established, the Commission still has broad discretion to determine whether such discipline is actually warranted. (*Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208, 222.)

10B. In this case, Respondent accepted no responsibility for her misconduct, and has given no sign that she understands her actions were wrong. She failed to request or use resources available to her in dealing with the involved students. If those students' behavior was problematic, Respondent failed to demonstrate that she was equipped to deal with such. The young children in the classes she teaches are generally unable to advocate for themselves, which is of great concern. It is likely that Respondent will engage in similar misconduct in the future. She offered no mitigation.

10C. We are mindful that Respondent otherwise appears to be a technically proficient teacher in terms of the curriculum. But that cannot excuse misconduct toward her students. We are also mindful that Respondent had no prior record of discipline with the District. However, her prior principal at CHEEC, Ms. Williams, is her friend, so we are wary of her testimony. Principal Collins did a poor job of documenting her concerns with Respondent; though she may have been a poor administrator, that does not mean Respondent did not engage in misconduct. In addition, the lack of prior discipline against Respondent may simply be a function of her gradually losing her patience with young children at this stage of her career. Thus, the lack of prior discipline does not sway us.

10D. Under these circumstances, Respondent's dismissal from the District is warranted. (Factual Findings 1-25.)

10E. However, Respondent's immediate suspension without pay was not warranted. The District failed to establish that Respondent engaged in conduct that was immoral or which constituted a willful refusal to perform regular assignments without reasonable cause, which are the only theories pleaded against her that would have supported such drastic action. Thus, Respondent's immediate suspension without pay should be overruled. (Factual Findings 1-18, Legal Conclusions 5 and 8.)

ORDER

The immediate suspension without pay of Respondent Jebby Williams-Wilkey is overruled. However, Respondent's dismissal from employment with the Los Angeles Unified School District is affirmed.

DATED: April 2, 2014

A handwritten signature in black ink, appearing to read 'ES', is written over a horizontal line.

ERIC SAWYER

Administrative Law Judge

Office of Administrative Hearings

I concur.

DATED: 4.8.14

Kathy Jarvey  
Kathy Jarvey, Commissioner

I concur.

DATED: 4/1/14

Kathleen M. Davis  
Kathleen Davis, Commissioner

