

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

SHAQUANA (NICHOLE) WALKER  
SLACK, (EN 788406),  
a permanent certificated employee,

Respondent.

OAH No. 2014011065

DECISION

The Commission on Professional Competence (Commission) heard this matter on May 26-May 29, and June 1, 2015, in Los Angeles, California. The Commission members were Laurie R. Pearlman, Administrative Law Judge (ALJ) with the Office of Administrative Hearings (OAH), State of California, Gordon Brown, and Robert K. Lewis. ALJ Pearlman presided.

Lynn I. Ibara, Associate General Counsel, represented complainant Justo H. Avila, Interim Chief Human Resources Officer for the Los Angeles Unified School District (District).

No appearance was made by, or on behalf of, respondent Shaquana (Nichole) Walker Slack.

Oral and documentary evidence was received and argument was heard. The record was left open until June 22, 2015, to allow the District to file written closing argument and a request for a protective order sealing confidential records. Both were timely submitted on June 22, 2015. The District's closing argument was marked as Exhibit 97 for identification. Its request for a protective order was marked as Exhibit 98 for identification. Neither exhibit was admitted into evidence. A protective order sealing confidential records was issued. The record was closed and the matter was submitted for decision on June 22, 2015.

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## FACTUAL FINDINGS

### *Jurisdiction and Parties*

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.
3. On November 26, 2013, Vivian K. Ekchian, in her official capacity as the District's Chief Human Resources Officer, filed with the Board a Statement of Charges against respondent, alleging factual and legal grounds for respondent's immediate suspension without pay and termination of her employment with the District.
4. On or about January 31, 2014, the District filed an Accusation and Statement of Charges with OAH and served the same on respondent. Respondent timely filed a Notice of Defense, which contained a request for a hearing.
5. On February 27, 2014, the District filed an Amended Accusation and served it on respondent.
6. On March 28, 2014, a hearing commenced in this matter. ALJ Eric Sawyer presided. Ibara represented complainant. Respondent was present and represented herself. Because the parties and the Los Angeles County Office of Education were unable to designate a third Commission member, the matter was continued.
7. Respondent was timely provided with notice of all hearing dates before the Commission.
8. Respondent holds a multi-subject credential. Her most recent assignment was as an intervention teacher at Cimarron Elementary School (Cimarron). Prior to August, 2012, she was a fourth grade-teacher at Palisades Elementary Charter School (Palisades).

### *Complainant's Charges Against Respondent*

9. In the Amended Accusation and Statement of Charges against respondent, in 53 separate charging allegations, complainant alleges the following causes to dismiss respondent from her employment as a permanent certificated employee of the District:
  - a. Unprofessional conduct, under Education Code section 44932, subdivision (a)(1);<sup>1</sup>

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<sup>1</sup> All further statutory references are to the Education Code unless otherwise specified.

- b. Immoral conduct, under sections 44932, subdivision (a)(1), and 44939;<sup>2</sup>
- c. Unsatisfactory performance, under section 44932, subdivision (a)(4);
- d. Evident unfitness for service, under section 44932, subdivision (a)(5);
- e. Persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing her, under section 44932, subdivision (a)(7); and
- f. Willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939.

*Notices and Warnings Issued to Respondent*

10. From November 8, 2010, through December 20, 2013, respondent received 23 conference memoranda from either Joan Ingle or Cynthia William, the principals at Palisades and Cimarron, respectively. The memoranda addressed deficiencies in performance and classroom management. In the memoranda, both principals offered respondent professional support, materials, and training for her assignments. The memoranda also contained directives and warnings that disciplinary action might follow.

11. From December 2, 2011, through January 15, 2014, respondent received four Notices of Unsatisfactory Acts and Notices of Suspension for matters relating to classroom and behavior management. On April 29, 2013, respondent received a Below Standard Evaluation. The suspension notice and evaluation noted deficiencies in effective classroom and behavior management. It also noted deficiencies in support for student learning, planning and designing instruction, and classroom performance.

*Bases for Dismissal from Employment*

12. On December, 2010, respondent failed to provide the parents of her fourth-grade students with timely notices of students' unsatisfactory progress; failed to timely turn in report cards; and turned in seven report cards that needed corrections.

13. From January 2011 through February 2011, respondent misused instructional, collaboration, or planning time on personal correspondence and texting.

14. From January 2011 through March 2011, Respondent ignored directives to meet with Principal Ingle to collaborate on each new level of the Intervention Program, which was a new assignment for Respondent.

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<sup>2</sup> In its written closing argument, the District withdrew its cause of immoral conduct.

15. On February 1, 2011, Respondent was disrespectful towards Principal Ingle, interrupting her several times and raising her voice. This caused Principal Ingle to direct Respondent to stop or she would end the conference.

16. On March 1, 2011, Respondent was disrespectful to Principal Ingle by interrupting her while she was speaking to the faculty.

17. On May 9, 2011, Respondent ignored a sign on the library door which stated, "Do not enter, testing in progress." Respondent unlocked the door and entered at about 8:35 a.m., during the administration of the California Standards Testing. On May 9, 2011, respondent twice left California Standards Testing materials unsecured in room 28 at Palisades. Respondent's actions jeopardized the validity of the testing.

18a. On September 7, 2011, respondent parked her car so as to occupy two spaces in the Palisades parking lot, then willfully ignored an "all-school" page that she call the office immediately, causing Principal Ingle to have to search for Respondent.

18b. Respondent failed to comply with the Principal Ingle's directive to move her car for up to six minutes. During that time, respondent seated her students and began to hand out journals, even after Principal Ingle said that she would look after the students while Respondent freed up the second parking space to enable another staff member to park and report to work.

19. From September 8, 2011 through September 16, 2011, respondent failed to comply with District policies and failed to use age-appropriate instructional strategies. In particular, respondent had no lesson plans evident in the classroom; dismissed students late on the first eight days of school; did not leave one door unlocked for emergency access, and allowed students to leave backpacks in the aisles, creating safety hazards; failed to implement the California Treasures, Tribes, or Smart Start curriculum and instead, had posted the Character Education Series, which was not used at Palisades; failed to arrange appropriate seating in that two students sat with their backs to the Smart Board; directed second-grade students repeatedly during the first week of school to "respond to the prompt," not realizing or acknowledging that they did not know what it meant; and informed students of the "moral of the fable" without making any connection to prior learning or explaining what the phrase meant.

20. From October 1, 2011 through October 29, 2011, respondent failed to comply with District policy and procedure regarding field trips, and failed to exhibit competence in planning and executing a field trip to the Los Angeles County Museum of Art (LACMA) for second-graders. In particular, Respondent failed to insure that forms were completely filled out and handed in two days before the October 27 field trip; failed to familiarize herself with field trip rules or with the field trip schedule which would enable her to inform parents, including trip volunteers, of the field trip schedule; failed to plan for snacks or lunch for students on free or reduced lunch programs; and failed to plan for snack time during the field trip.

21. On October 27, 2011, respondent failed to provide supervision to her second-grade students and was derelict in her duties during the LACMA field trip. In particular, respondent left the management of student behavior to volunteer parents; failed to make herself known to the museum docent as the teacher in charge of the field trip; failed to insure that the students were following museum rules; took student W.M. to an establishment serving alcohol to buy him lunch during the lunch break, while abandoning the rest of the class and parent volunteers for about 40 minutes; was not available to prevent or stop a fight between students, thus requiring parents to intervene; failed to report the fight to the school principal and ignored the principal's request for a meeting about the field trip; reported to a parent that she would address behavioral issues once back at school, but failed to do so; and failed to implement the school's Tribes agreement to manage student behavior during and after the field trip.

22. From October 4, 2011 through November 17, 2011, respondent failed to comply with federal and state laws and with District policy. In particular, respondent failed to follow the Individualized Education Program (IEP) accommodations for student E.G., even though she had reviewed them on October 4; failed to adapt instructions and homework for special education students, including E.G.; failed to prepare and provide a tangible structure for instructional needs of special education students; and failed to provide the rating scales that had been requested to enable a particular student's IEP team to formulate the student's current levels of performance and assessment reports.

23. On October 17, 2011, respondent failed to follow an October 14, 2011 directive when she did not allow second-grade student J.P. to use the restroom.

24. On December 15, 2011, respondent was derelict in her duties, failed to comply with District policies, and failed to comply with directives. In particular, respondent used at least an hour of instructional time to write a response to a conference memo and personal notes to teachers; did not return to the classroom after recess; left the school without authorization 65 minutes before the end of the work day; failed to turn in her computer and keys; and failed to follow the procedure for requesting "personal necessity days" absences.

25. On January 27, 2012, and for approximately five days thereafter, respondent failed to comply with District policy in that she did not inform Principal Ingle that she would be absent and did not notify the Substitute Unit of her absences.

26. From January 23, 2012 through February 17, 2012, respondent failed to demonstrate competency as a teacher. In particular, she failed to coordinate efforts with other teachers, thereby failing to co-teach; refused to plan or implement specific instructional strategies with students and instead, sat at her computer during the instructional period; refused to solicit responses or engage in interactions with students in various classes on at least nine separate occasions; and gave students homework independent of the co-teacher, despite having been directed not to do so.

27. From February 22, 2012 through February 27, 2012, respondent failed to implement co-teacher procedures for administering spelling and other tests.

28. On March 9, 2012, and March 15, 2012, Respondent failed to comply with District policy against providing candy and other food to students, even after she had been reminded not to do so.

29. From March 9, 2012 through March 28, 2012, respondent refused to undertake her co-teaching responsibilities; observed students, but did not assist them; worked at her computer during instructional time; and did not model lesson components or set clear and rigorous expectations for students.

30. On March 12, 2012, respondent called Palisades to say she would be arriving at 10 a.m., due to a family meeting. However, she did not arrive until 11:05 a.m., and failed to update the school as to her arrival time.

31. On March 15, 2012, respondent failed to demonstrate competency as a teacher when she administered a Foss science assessment that contained items that the students had not been taught; failed to provide adequate repetition, so that the students were unable to comprehend the material; and failed to adequately engage students.

32. On March 16, 2012, respondent exhibited unprofessional conduct and unfitness as a teacher. Respondent called a parent at 6:45 a.m., asking to ride with that parent for a field trip scheduled that day instead of going with her pre-arranged ride assignment; put on headphones and listened to music while the parent was left to drive and manage five students; failed to interact with or provide supervision of students; remained passive, unengaged and silent for the entire trip; did not assist in keeping students together or monitoring their safety; remained unengaged upon returning to the school; and had to be asked by other teachers to assist with student supervision.

33. From May 3, 2012 through May 9, 2012, respondent was unprofessional, discourteous, and defiant in her interactions with Palisades colleagues. In particular, respondent failed to follow testing support directions, jeopardizing mandatory state testing procedures; failed to allow second-graders to use the restroom, despite being issued prior directives to do so; failed to respond to questions with simple answers; failed to send home CST testing letters on time; failed to respectfully and professionally collaborate with a co-teacher; and was confrontational with Principal Ingle.

34. On May 7, 2012, respondent again failed to comply with District policy when she gave students food without regard for potential allergies, despite having been directed not to do so.

35. On May 9, 2012, and May 14, 2012, respondent abandoned students in classrooms, leaving them without appropriate supervision by certificated personnel.

36. From January 14, 2013 through June 1, 2013, respondent failed at least ten times to report to the principal at 8:05 a.m. to see if any classes needed a teacher.



37. On January 14, 2013, respondent failed to comply with District policies that teachers have their lesson plans available in the classroom, and that detailed lessons plans be provided to the administrator prior to the formal observation for Stull evaluations.

38. On January 14, 2013, respondent failed to maintain behavioral standards by not following through with consequences or reinforcement when she had to re-direct three of the five students in one group several times during a 30-minute lesson.

39. On February 21, 2013, respondent failed to comply with District policy in that her lesson plans were not visible or made available to the site administrator during an observation. In addition, the classroom did not reflect current lessons and accomplishments of students because no student work was displayed.

40. On February 21, 2013, respondent did not demonstrate evidence of plans to foster student learning and achievement of state standards because she failed to write the objective of the lesson on comparing and contrasting, and instead, wrote only "Compare and Contrast."

41. Also on February 21, 2013, respondent did not establish rigorous learning goals for her students because, despite writing "California State Standards" and "Strategies" on the board, she failed to identify any standards or strategies.

42. On February 21, 2013, respondent failed to model correct spelling, capitalization, and phonics. In particular, respondent spelled kindergarten as "KinderGarden" on a sentence strip at the top of two closet doors; and used vertical rather than slanted lines on a chart regarding phoneme segmentation, so that the written lines could be mistaken for a lower case "L".

43. On February 21, 2013, respondent's classroom failed to conform to safety standards in that a roll of butcher paper and a wall clock were stacked on top of a closet, and a plastic container and wire basket were precariously placed on top of a moveable cabinet.

44a. On February 28, 2013, respondent did not use instructional strategies and resources to respond to students' diverse needs, thereby failing to engage students. In particular, while reading Big Machines, a story in which one line repeats every one or two pages, respondent failed to directly answer students' questions, including, "What the heck is a block?" and "Why do you keep saying that: at the end of the block?"

44b. Respondent failed to take the opportunity presented from the questions students posed to engage them in an interactive exercise, such as reciting a repeating line.

44c. Respondent first responded to the question, "What is a block?" by saying, "Sit quietly." She answered only after a second student asked the question again two minutes later. When one student complained that it was a long book, Respondent's response was, "Only two more pages," to which the students responded, "Good!"

45a. On February 28, 2013, respondent failed to use instructional time effectively, failed to establish and maintain behavioral standards, and failed to effectively supervise students or to intervene when students were disruptive or created safety issues.

45b. In particular, respondent took two minutes to dismiss students one-by-one from their chairs to the carpet, and did not notice five students talking to each other, or five other students playing with their name tags while waiting to be called.

45c. Respondent failed to intervene during the story reading when one student said loudly to another student, "Will you quit?" and then complained to Respondent, "She won't stop talking to me!"

45d. Respondent failed to intervene when student D.T. kicked student C.R. at least twice under the table.

45e. Respondent failed to redirect student A.W., who made paper airplanes during a writing assignment.

45f. Respondent failed to engage nine students who did not participate when she instructed 24 students to show five fingers, four fingers, and three fingers.

45g. Respondent failed to respond when student A.L. pushed back her chair and fell onto the floor.

45h. Respondent failed to engage student J.R., who was constantly off-task in the back row on the carpet when he distracted a student next to him, and wrapped string around his pencil box.

45i. Respondent failed to redirect two students who repeatedly tossed a wad of paper into the air and to each other. Respondent failed to interact with or engage students who sucked their thumbs, or who had other objects in their mouths.

46. On March 6, 2013, respondent left campus at 1:35 p.m. without authorization, even though her work day did not end until 2:20 p.m.

47. On March 12, 2013, respondent failed to comply with District policy in that her lesson plans were not visible or made available to the site administrator upon request.

48. On March 12, 2013, respondent failed to use state subject matter content standards to establish rigorous goals for students. In particular, the state standard written on the board for first-graders (blend two to four phonemes into recognizable words) did not reflect the activity she had the first-graders engage in; and the state standard on the board for second-graders did not reflect the agenda she had on the board and did not reflect the activity she had the second-graders engage in.



49a. On March 12, 2013, Respondent also failed to use subject matter-appropriate instructional strategies, materials, resources and technologies to support standards-based objectives, and failed to provide all students with equal access to the respective curriculum.

49b. In particular, when working with the two students in her first-grade group, respondent worked with each student individually, but did not have a task or assignment for the other student awaiting individual instruction.

49c. Respondent had one first-grader read a passage three times over five minutes, but allowed the other only one reading over three minutes.

49d. When working with four students in the second-grade group, respondent read about how animals move about and move their bodies, a book that had no connection to the theme "Growing/Changing," which she had written on a chart.

49e. Upon asking students for examples of things that grow and change, the students' replies included a flower, a person, and apples, none of which came from the book about moving.

49f. As respondent solicited the responses from three of the four second-graders, respondent used ten minutes of instructional time to draw three pictures of their answers on a chart.

49g. Respondent failed to engage or attempt to elicit a response from the one second-grader who did not offer an example.

50. On March 12, 2013, respondent failed to demonstrate professional competency when she told the group of second-graders that they were going to "choral read a story" from a "simplified picture book." In fact, she read to the students a non-fiction resource book entitled "Moving", which had photographs of various animals and included the words joints, spine, bones, bending, and muscles.

51. On March 7, 2013, respondent entered her daughter's kindergarten classroom at Cimarron and began yelling loudly at teacher Martha Sanchez, "I don't appreciate you isolating my child, treating her like a guinea pig!" Respondent's conduct was observed by her daughter. Her comments were heard by a neighboring teacher and other parents. By her actions, respondent intimidated Sanchez.

52. On April 4, 2013, respondent moved her daughter from Sanchez's classroom to another class without authorization. When respondent's daughter was returned to Sanchez's classroom, respondent left her work station to again take her child to the other class, engaging in an argument with the principal.

53. On April 4, 2013, respondent failed to provide supervision or instruction to her own class for at least 30 minutes and failed to comply with the principal's directive to return

to work. She disrupted at least two other classes at the school while she was engaged in moving her daughter twice from her assigned classroom and arguing with the principal.

54. On April 5, 2013, respondent failed to comply with District policies in that her lesson plans were not visible or made available to the site administrator upon request, no student work was displayed anywhere in the classroom, and no state standards or strategies were describe on the board.

55. On April 5, 2013, respondent failed to use instructional time effectively, failed to provide effective supervision, failed to respond to students' needs, and failed to demonstrate professional competency. In particular, respondent allowed seven students to sit idly for about five minutes after they finished a worksheet, even after two students said aloud that they were done; in response to a student's question, what does infer mean, respondent replies that it "means something is between the lines and it causes you to draw conclusions," but when the student asked what conclusions means, respondent said she was not going to address that now, and never did answer the question; nine minutes into one assignment, respondent first noticed that one student was doing the wrong page; and respondent failed to address or acknowledge two students talking among themselves in front of her about her cursive handwriting on their papers and the difficulty they had in reading cursive writing.

56. From April 27, 2013 through May 1, 2013, respondent approached Sanchez at least four times to pick up her daughter, despite having been directed not to do so.

57. On June 7, 2013, respondent entered Sanchez's classroom despite having been directed not to do so.

58. On June 7, 2013, respondent accessed Dynamic Indicators of Basic Early Literacy Skills (DIBELS) assessment results for students who were not assigned to her, and used the confidential information to correspond with others.

59. Respondent failed to attend Cimarron's mandatory professional development meetings on August 20, 2013, October 1, 2013, October 15, 2013, and November 19, 2013.

60. After being directed to submit weekly lesson plans to her site administrator at the beginning of every week beginning November 4, 2013, respondent failed to do so on November 4, 2013, November 12, 2013, November 18, 2013, December 2, 2013, December 9, 2013, and December 16, 2013.

61. On December 11, 2013, respondent abandoned her assigned teaching post from 8:05 a.m. through 9:00 a.m., and failed to respond to a school-wide announcement, made over the public-address system, that she account for her presence during that time.

62. On December 17, 2013, respondent failed to meet with her peer-assistance and review coach at the scheduled time of 8:30 a.m. Instead, respondent was seen sitting in her car, which was parked on the street.

63. On December 19, 2013, Respondent failed to attend a conference with Cimarron's principal Dana Rivers, despite having been directed to do so.

64. The evidence presented supported each of the charges contained in the Amended Accusation. Respondent was not present or represented at the hearing. She called no witnesses to testify and proffered no documentary evidence on her behalf, thus leaving the District's evidence uncontroverted. Three principals, one former principal, two parents, a Local District superintendent, a teacher, and a representative from the District's Human Resources Division testified credibly on behalf of the District. Principals Ingle and Williams made efforts to provide respondent with professional support, materials, and training for her assignments. Parents Lisa P. and Shara M. were frustrated and puzzled by respondent's lack of engagement with her students and their parents.

## LEGAL CONCLUSIONS

### *Jurisdiction*

1. The Commission has jurisdiction to proceed in this matter under section 44944. (Factual Findings 1 through 8.)

### *Burden of Proof*

2. The District has the burden of proof in this matter, since it is seeking to dismiss respondent from employment as a certificated employee. The District must prove its case by a preponderance of the evidence. (*Gardiner v. Commission on Prof. Competence* (1985) 164 Cal.App.3d 1035, 1040.)

### *Statutory Grounds for Dismissal*

3. 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), or section 44939 are established. In the Amended Accusation and Statement of Charges, the District alleged six of those causes: unprofessional conduct, immoral conduct, unsatisfactory performance, evident unfitness for service, persistent violation of school laws or regulations, and willful refusal to perform regular assignments without reasonable cause. (Factual Finding 9.)

4. The District's Amended Accusation and Statement of Charges charged respondent with various acts to support the six statutory grounds for dismissal. The District later withdrew the immoral conduct charge. The Commission examined each charged act to determine whether it was proven. For each charged act that was proven, the Commission considered whether the charged acts violated one or more of the alleged statutory bases for dismissal.

5. The Commission determined that the District established by a preponderance of the evidence that the acts in each of the charges occurred as alleged. (Factual Findings 10-64.)

6. Cause for dismissal of respondent exists under section 44932, subdivision (a)(1), based on unprofessional conduct, as set forth in Factual Findings 10 through 64 and Legal Conclusions 3 through 5.

7. Cause for dismissal of respondent exists under section 44932, subdivision (a)(4), based on unsatisfactory performance, as set forth in Factual Findings 10 through 64 and Legal Conclusions 3 through 5.

8. Cause for dismissal of respondent exists under section 44932, subdivision (a)(5), based on evident unfitness for service, as set forth in Factual Findings 10 through 64 and Legal Conclusions 3 through 5.

9. Cause for dismissal of respondent exists under section 44932, subdivision (a)(7), based on 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, as set forth in Factual Findings 10 through 64 and Legal Conclusions 3 through 5.

10. Cause for dismissal of respondent exists under section 44939, based on willful refusal to perform regular assignments without reasonable cause, as set forth in Factual Findings 10 through 64 and Legal Conclusions 3 through 5.

#### *Unprofessional Conduct and Evident Unfitness for Service*

11. It was established by a preponderance of the evidence that Respondent engaged in unprofessional conduct within the meaning of section 44932, subdivision (a)(1). The established misconduct demonstrates specific instances when Respondent acted unprofessionally, as set forth in Factual Findings 10-64.

12. It was established by a preponderance of the evidence that Respondent is evidently unfit for service as a teacher, pursuant to section 44932, subdivision (a)(5), as set forth in Factual Findings 10-64.

13. Section 44932, subdivision (a)(5), permits dismissal of a permanent employee for "evident unfitness for service." "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.*)

### *Analysis of the Morrison Factors*

14. Dismissal for unprofessional conduct and for evident unfitness for service is assessed utilizing criteria enunciated by the Supreme Court in *Morrison v. State Board of Education* (1969) 1 Cal.3d 214 (*Morrison*): the likelihood that the conduct may have adversely affected students or fellow teachers; the degree of such adversity anticipated; the proximity or remoteness in time of the conduct; the type of teaching certificate held by the party involved; the extenuating or aggravating circumstances, if any, surrounding the conduct; the praiseworthiness or blameworthiness of the motives resulting in the conduct; the likelihood of the recurrence of the questioned conduct; and the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers. These criteria are commonly referred to as “the *Morrison* factors.”<sup>3</sup> The *Morrison* court held that “an individual can be removed from the teaching profession only upon a showing that his retention in the profession poses a significant danger of harm to either students, school employees, or others who might be affected by his actions as a teacher.” (*Id.* at p. 235.)

15. It is settled that not all “*Morrison* factors” need be present for the *Morrison* test to be satisfied. (*Governing Board of ABC School District v. Haar* (1994) 28 Cal.App.4th 369.) 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, supra*, 2 Cal.App.4th at p. 1457.)

16. Applying the *Morrison* factors, respondent’s acts, as established by the evidence, constituted unprofessional conduct and the evidence established evident unfitness for service or grounds for dismissal. (See, e.g., *Bd. of Ed. v. Swan* (1953) 41 Cal.2d 546, 553 (unprofessional conduct); *Woodland Joint Unified School Dist., supra*, 2 Cal.App.4th 1429 (evident unfitness).)

17. In this case, we find as follows:

(A) The likelihood the conduct may adversely affect students or fellow teachers: respondent’s misconduct adversely impacted students, parents, school and District administrators, and a fellow teacher.

(B) The degree of such adversity: respondent’s conduct had a significant adverse impact on students, parents, school and District administrators, and a fellow teacher.

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<sup>3</sup> The *Morrison* analysis only applies to causes for dismissal for unprofessional conduct and for evident unfitness for service. It does not apply to causes for dismissal for unsatisfactory performance or for persistent violation of laws and regulations (*Morrison, supra*, 1 Cal.3d at pp. 227-230); it is presumed that such conduct is related to fitness to teach.



(C) The proximity or remoteness in time of the conduct: respondent's conduct was proximate in time, beginning in late 2010, and continuing until early 2014, when she was removed from Cimarron.

(D) The type of teaching certificate held by the party involved: because respondent holds a multi-subject credential, her conduct had particular impact on younger students who are just beginning their education.

(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's motives for her conduct are unknown.

(G) The likelihood of recurrence of the questioned conduct: it is highly likely that Respondent will engage in the same activity if put back in the classroom. When she was moved from Palisades to Cimarron, her troubling conduct continued in the new setting. Moreover, respondent's failure to appear and defend might be indicative of recalcitrance.

(H) The extent discipline may cause adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers: no evidence was presented to establish that any disciplinary action against respondent would have an adverse impact or chilling effect upon her constitutional rights or upon the rights of other teachers.

*Unsatisfactory Performance, Persistent Violation of Laws, and Willful Refusal to Perform*

18a. It was established by a preponderance of the evidence that respondent engaged in unsatisfactory performance within the meaning of section 44932, subdivision (a)(4), as set forth in Factual Findings 10 through 64.

18b. 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.

18c. 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 establish 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 her employing school district.

18d. However, it has been observed that 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.

19. It was established by a preponderance of the evidence that Respondent persistently violated or refused 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 Board of the District, within the meaning of section 44932, subdivision (a)(7).

20. 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.)

21. Respondent's acts constituted persistent violation of or refusal to obey the school laws of the state or reasonable regulations prescribed for the government of public schools by the State Board of Education or by the governing board of the school district employing her, or willful refusal to perform regular assignments without reasonable cause, as set out in Factual Findings 10-64.

22. It was established by a preponderance of the evidence that respondent willfully refused to perform regular assignments without reasonable cause, as prescribed by the rules and regulations of the District, within the meaning of section 44939, as set out in Factual Findings 10-64.

#### *Disposition*

23. Even where cause for dismissal has been established, the Commission has broad discretion to determine whether discipline is warranted. (*Fontana Unified School Dist. v. Burman (Fontana)* (1988) 45 Cal.3d 208, 220-222.) "The Commission has broad discretion in determining what constitutes unfitness to teach . . . , and whether dismissal or suspension is the appropriate sanction. [Citing *Fontana, supra*, 45 Cal.3d at pp. 220-222.] '[A] disciplinary discharge often involves complex facts and may require a sensitive evaluation of the nature and seriousness of the misconduct and whether it warrants the grave sanction of dismissal.' [Citation]." (*Cal. Teachers Assn. v. State of Cal.* (1999) 20 Cal.4th 327, 343-344.)

24. The Commission unanimously agreed that dismissal is necessary to protect students, school employees, or others or to further deter respondent from engaging in similar conduct in the future.

ORDER

Shaquana (Nichole) Walker Slack is dismissed from employment with the Los Angeles Unified School District.

DATED: September 30, 2015

DocuSigned by:  
*Laurie Pearlman*  
1695B779ECE34B2  
LAURIE R. PEARLMAN  
Administrative Law Judge  
Office of Administrative Hearings

I concur with the Decision and Order set forth above:

DATED:

*Gordon Brown*  
GORDON BROWN  
Commission Member

I concur with the Decision and Order set forth above:

DATED:

*Robert K. Lewis*  
ROBERT K. LEWIS  
Commission Member