

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
STATE OF CALIFORNIA

In the Matter of the Dismissal of:

OAH Case No. 2011110720

SONDRA SHORTER, A Permanent  
Certificated Employee,

Respondent.

**DECISION**

The Commission on Professional Competence heard the above-captioned matter in Los Angeles on November 29 and 30, and December 3 through 7, and 27, 2012. The Commission members were Kevin White, Teresa Velasco, and Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH). It should be noted that on November 28, 2012, Respondent moved to continue the hearing, which was denied by the Presiding Judge of the Los Angeles branch of OAH. That order was communicated by phone to the parties, and given the shortness of time was not reduced to writing, but noted on the record during the hearing, and is confirmed herein.

During the hearing on this matter, the Los Angeles Unified School District (District) was represented by Fagen, Friedman & Fulfroast, LLP, L. Carlos Villegas and Martha I. Casillas. Respondent Sondra Shorter (Respondent or Shorter) represented herself. She was assisted by Letia Shorter.<sup>1</sup>

At the end of testimony and argument on December 27, 2012, the record was held open so that the parties could offer further documentary evidence. The District submitted its Citations to the Deposition of Respondent, which was placed in that format to save time during the closing arguments. That document will be marked for identification as Exhibit 46.

On December 28, 2012, Respondent submitted a document identified as a student referral slip, marked as Exhibit CC, attached to a declaration executed by Respondent. Submission of that document—the referral slip--was timely.

On January 3, 2013, 2012, the District submitted its Rebuttal and Opposition to Respondent's Exhibit CC. That document is marked for identification as Exhibit 47.

---

<sup>1</sup> At the outset of the hearing, the ALJ was under the impression that Letia Shorter's name was Gina Clark. That misapprehension had arisen at an earlier pre-hearing conference, when she was so identified, and she did not clear the matter up until the court reporter at the hearing enquired about her identity. It also appears that she assisted Respondent at her deposition under the name Gina Clark.

The objection is overruled, and Exhibit CC—only the referral slip—will be received.

On January 9, 2013, Respondent filed written objections to the District's citations to the Respondent's deposition, which will be identified as Exhibit DD. The District submitted a response to those objections, dated January 10, but not received by the ALJ until January 14, 2013. That document will be identified as Exhibit 48. Although after the submission date, both documents have been considered so as to have a more complete record, there being no significant prejudice to the parties. The Respondent's objections to the deposition are overruled, and the deposition has been considered in this decision.<sup>2</sup>

The matter was deemed submitted for decision on January 16, 2013, in light of the objections to the deposition, the reply thereto, and the chance that Respondent might submit a rebuttal, something that could be expected in light of the parties' strenuous efforts.

The Commission hereby makes its factual findings, legal conclusions, and order.

## INTRODUCTION AND STATEMENT OF THE CASE

Respondent Shorter is a permanent teacher employed by the District, and she was assigned to Markham Middle School (Markham) from 2001 until October 15, 2009, when she was re-assigned. The District alleged that Respondent demonstrated immoral conduct (Education Code sections 44932, subdivision (a)(1) and 44939), evident unfitness for service (section 44932, subdivision (a)(5)), and willful refusal to obey reasonable regulations (section 44932, subdivision (a)(7)).<sup>3</sup> These allegations were based on allegations of misconduct in the classroom in the 2008-2009 school year, and during September and October 2009. Further, the District alleged that Respondent engaged in misconduct after she was transferred from Markham to the offices of The Partnership for Los Angeles Schools (PLAS), where she was assigned for nearly two years before this proceeding was initiated.

Respondent denied the charges, at times asserting that the claims were the product of a conspiracy by students, co-workers, and District administrators to remove an experienced and highly-paid teacher from the ranks, which would then allow younger teachers to remain in the employ of the District.

As detailed below, a substantial number of the District's factual allegations have been proven, establishing that Respondent has demonstrated evident unfitness to teach, and that under all of the circumstances, she should be dismissed from her permanent position. The

---

<sup>2</sup> Citations to the deposition shall be to the page or page numbers, a colon, and the line numbers.

<sup>3</sup> All statutory citations shall be to the Education Code. The District had also alleged unprofessional conduct (§44932, subd. (a)(1)) as a ground for termination, but that charge was dismissed pursuant to a pre-trial motion.

findings, legal conclusions, and order that follow were unanimously adopted by the Commission.

## FACTUAL FINDINGS

### *The Parties and Jurisdiction*

1. Vivian K. Ekchian, Chief Human Resources Officer of the District executed the Second Amended Accusation, and prior iterations of that Accusation while acting in her official capacity.

2. The District commenced this proceeding in December 2011, when it issued an Accusation and Statement of Charges against Respondent. Respondent filed a timely request for hearing, and later, a notice of defense, disputing the claims against her. Thereafter, on September 28, 2012, the District filed its First Amended Accusation and Statement Charges. Those new allegations were deemed controverted as a matter of law. (Govt. Code, § 11507.) The Second Amended Accusation (S.A.A.) was filed on December 7, 2012, adding one charge, paragraph 22, to conform to proof adduced during the hearing. All jurisdictional requirements have been met.

3. Respondent is a permanent certificated employee of the District. She holds an Early Childhood credential, and an Elementary Education credential, each being a Life Credential. She also holds a Preliminary Education Administration/Staff Development Credential.<sup>4</sup>

4. Respondent was assigned to Markham in approximately 2001. At the times relevant to this matter, she was teaching sixth grade students.

### *Findings on the Factual Allegations Made Against Respondent*

5. Paragraph number 1 of the S.A.A.<sup>5</sup> alleged that on October 15, 2009, Respondent pushed a child, A.M., out of her classroom, in front of students and parents. However, that allegation was not established by the evidence. The evidence established that the child in question had previously been sent from the classroom to the office, and she was to be sent from the office to another room to work on an assignment. However, she returned to Respondent's classroom, accompanied by her aunt; her parents were not present, and no other parents were present either. The child and her aunt were unhappy that the child's assignment was different than the one then being worked on by the rest of the class. Respondent made clear that A.M. had to leave the classroom. In the course of the incident, she may have touched the child's backpack, while the child was wearing it, but any such

---

<sup>4</sup> This is based on Respondent's resume, Exhibit B.

<sup>5</sup> For the balance of this decision, references to the allegations are to the S.A.A. unless otherwise noted.

contact was incidental and of minimal if any force, and in all the circumstances was not inappropriate.

6. It was established, as alleged in Paragraph 2, that on October 15, 2009, Respondent yelled at student A.M., "get out of my classroom!"

7. It was not established, as alleged in Paragraph 3, that Respondent, on October 15, 2009, walked over to the desk of a student named Juan and yelled at him, as there was no direct evidence on this point.

8. It was not established, as alleged in Paragraph 4, that on October 14, 2009, Respondent spanked two boys on the buttocks.

9. (A) It was established, as alleged in Paragraph 5, that at some time during the week of October 4 through 8, 2009, Respondent said to student A.N., "fuck your mother," or substantially similar words. This finding is supported by the testimony of student A.N., and by the testimony of students A.R. and N.R, as well as by Exhibits 4 and 6.

(B) Respondent testified that while she was at the front of the class, working at the board, a student said "fuck you," or words to that effect, and that in response she asked the students if it would be right to say that about their mother. That version of events finds slight corroboration in Exhibit 5. However, the Commission credits the testimony of A.N., who was an especially compelling witness, and of the other students, as well as Exhibits 4 and 6. The Commission further finds that even if Respondent's version of events was accepted, it would establish inappropriate behavior on her part, as her statements could be readily misconstrued by students who had just begun the sixth grade.

10. It was established, as alleged in Paragraph 6, that during the week of October 4 through 8, 2009, Respondent acted inappropriately when she leaned down, put her face close to that of student A.M., and yelled, "get out of my classroom!"

11. It was established, as alleged in Paragraph 7, that on or about September 4, 2008, Respondent engaged in an argument with her co-worker, Manual Alvarez, in the presence of children in Respondent's class. Essentially, Respondent believed that Mr. Alvarez, who was then distributing new lap top computers, had deliberately avoided giving her one of those devices. She therefore confronted him, from the open doorway of her classroom and while he was outside that room, asking if he had forgotten her, and she threatened to report him to the administration. During this interchange, Respondent's demeanor was confrontational, loud, and she appeared upset. Her statements to him on that occasion were unprofessional and harassing, especially because she acted that way in the presence of her students. Mr. Martinez perceived her statements as harassing, and he complained to Markham administrators about the incident. In a memorandum describing the incident, and prior problems with Respondent, he asked that she stop threatening him, and he asked for mediation.

12. (A) The material allegations of Paragraphs 8, 9, 10 were established. These parts of the S.A.A. pertain to Respondent's interaction with the Markham Attendance Office Clerk, Maribel De La Cruz, and the following are the facts of that matter.

(B) On October 22, 2008, at approximately 10:13 a.m., the mother of one of Respondent's students came to the school to pick up that student to take him to a medical appointment. Ms. De La Cruz called Respondent and asked her to send the boy to the office. Approximately 20 minutes later, the student had not come to the attendance office, so Ms. De La Cruz called Respondent again, asking after the child. Respondent at that point insisted the boy would not be released until he had completed some work he was doing, but Ms. De La Cruz pointed out that the student's parent was upset by the delay, and so Respondent relented and sent the child to the office as previously requested.

(C) Later during October 22, 2008, Respondent went to the Attendance Office at Markham, and spoke to De La Cruz, accusing the latter of threatening Respondent's life over the telephone. De La Cruz did not make such a threat.

(D) On several occasions over several weeks, Respondent came to the Attendance Office, and stood near De La Cruz, staring at her without saying anything. However, her manner was such that De La Cruz was concerned for her own welfare, and took the matter to her supervisors.

13. (A) It was established, as is alleged in Paragraph 11, that Respondent engaged in an angry and unprofessional confrontation with Mr. Alvarez, in her classroom, while students were present. Alvarez came to Respondent's classroom on November 21, 2008, to inventory computer equipment there. She told him she was having trouble logging into the computer-based attendance system, and he assisted her. When she could not input information into the system, he offered some information about why that was happening, though he was not in a position to remedy the problem.

(B) Respondent began complaining to Alvarez about the fact she did not have a laptop computer like other teachers had, and about how she had seniority over other teachers, and stated that one teacher had a laptop and that he had been in high school when Respondent started teaching. Alvarez told her the teacher she mentioned did not have a laptop. Respondent was getting louder and louder while complaining, and said she would go to the newspapers, and make it public that she did not have a laptop computer. Her statements to Alvarez included personal attacks upon him, in the presence of her students.

(C) Based on all the evidence pertaining to this incident, it was established that Respondent acted in an inappropriate, angry, and temperamental manner with another teacher, in the presence of students.

14. (A) As alleged in Paragraph 12, it was established that on November 21, 2008, Respondent became embroiled in a dispute with one of the school counselors, Ms. Gandy, regarding the placement of a student, G.O., in Respondent's class. That dispute played out before the student, G.O., and before the other students in Respondent's class in a

manner that, it is reasonably inferred, caused embarrassment and humiliation to G.O., and possibly other students.

(B) The student in question, G.O., had at one point been assigned to Respondent's class. She did not want G.O. back in her class, in part because he was a special education student who, in her opinion, was not able to keep up with the class, and in part because she deemed his behavior to be a distraction for the other students, especially one of the girls, as Respondent perceived that G.O. had a crush on the girl.

(C) On November 21, 2008, Ms. Gandy took G.O. to Respondent's classroom, because Respondent would not have him in the class. When Ms. Gandy did so, Respondent argued with her, stating words to the effect that G.O. was not going to be in her class, that he was a special education student and she was teaching magnet students and that a special education student did not belong in her class. She stated the boy just wanted to sit near the girl who was allegedly the object of his affections so he could make eyes at her, and that he did not do any work.

(D) The conversation described above took place before the entire sixth grade class that Respondent was then teaching, as well as in G.O.'s presence. It is inappropriate to discuss one student in this way in front of any other students, and it was improper to discuss the boy's status as a special education student in the presence of other students. It was also improper for Respondent to talk in such a negative manner about G.O. when he was standing there with Respondent.<sup>6</sup>

15. In November 2008, Respondent sent a student, A.B., from her class. Respondent described him, during the hearing, as a bully. While he was out of the classroom, she allowed the other students in the class to write letters to him that were negative. When he returned, she allowed the other students to share those letters with A.B. During the hearing Respondent attempted to justify this as a means of changing A.B.'s bullying behavior, but that explanation is not accepted by the Commission. Instead, it is found that the conduct was improper.

16. The allegations of Paragraph 14 are sustained, in that it was established that on numerous occasions during the 2008-2009 school year, Respondent angrily struck her student's desks with a long stick, either a yardstick or a broom handle. She did so in a

---

<sup>6</sup> Respondent, during her August 2012 deposition, confirmed parts of the story of the dispute with Ms. Gandy. Hence, she testified that G.O. liked one of the girls in the class, and had been taken out of the class, but wanted to get back in the class because of the girl. (Depo., p. 48: 14-23.) She did recall "discussing" the student with Ms. Gandy during class time. (*Id.*, pp. 48: 24 to 49: 1-11.) Thereafter, Respondent demonstrated a lack of recall, or argued with counsel about whether she had to answer questions about the incident. (See pp. 49-57.) But, during the hearing, she admitted that the discussion about the boy's return to the class took place at the doorway to her classroom.

manner that startled and frightened the students, making them apprehensive that they would be struck by the stick, because it landed near their hands.

17. In December 2008 Respondent was involved in an argument with student V.A. The child wanted the class to go to the computer lab, but Respondent told the student that the lab was closed that day. The student disputed this, as V.A. had seen the lab was empty, and Respondent tried to explain that notwithstanding that fact, Respondent had been told the lab was unavailable. V.A. was upset, and turned suddenly to leave the classroom, and Respondent reached out to stop her from leaving. In doing so, Respondent's hand became entangled in the girl's long hair, which had swung as the child turned suddenly. It was not established that Respondent set out to pull V.A.'s hair, nor did she firmly grab that child's hair.

18. The allegations of Paragraph 16, subparts (a) to (g), and (i) were established. Thus, it was proven that during the 2008-2009 school year Respondent verbally abused and bullied students in her classroom, and she did so repeatedly. Such improper behavior included, but was not limited to: yelling at students to get out of her class; telling them to shut up; sending the students outside the classroom without proper notices; assigning work without proper instructions; criticizing students for their poor reading skills; arguing with co-workers in front of students; lecturing the students regarding her religious views; and assigning excessive standards to copy.

19. The allegations of Paragraph 17 are sustained, in that it was established that on numerous occasions during September and October 2009, Respondent angrily struck student's desks with a long stick, such as a yardstick. She did so in a manner that startled and frightened the students, and made them apprehensive that they would be struck by the stick, because it landed near their hands.

20. It was not established, as alleged in Paragraph 18, that Respondent detained students during the lunch period causing them to be unable to eat lunch. Nor were the other allegations of that paragraph established, to the effect that she taunted students.

21. The allegations of Paragraph 19, subparts (a) to (g), (i), and (l), were established. Hence, it was proven that during September and October 2009, Respondent repeatedly verbally abused and bullied students in her classroom, through behavior that included, but was not limited to: yelling at students to get out of her classroom, or words to that effect; telling them to shut up; calling them stupid; yelling at students to "sit your butt down" or words to that effect; sending the students outside the classroom without proper notices; assigning work without proper instructions; assigning excessive standards to copy; cursing in front of students; and punishing the entire class when a single student misbehaved.

22. (A) As alleged in Paragraph 20, after being removed from Markham on October 15, 2009, Respondent was assigned to the PLAS offices. During that time, and until November 2011, she was being paid her full salary, but was obligated to do very little at the PLAS offices in return for her salary. The evidence establishes that she had to report on time, and could read while at the PLAS office. She had to account for her presence there, by

signing in and out. She was entitled to use her sick time and vacation time as otherwise warranted; i.e., to use sick time if she was ill, and if she had sick time in her account.

(B) While Respondent was assigned to the PLAS offices, she at times became embroiled in confrontations or arguments with her supervisors. During some of those confrontations she pointed her finger at Ms. Bradford, then Senior Director of Human Resources, telling her in a loud voice that she (Bradford) was rude, or the devil, or words to that effect. However, it was not established that Respondent failed to arrive to work on time, or that she failed to meet with Mr. Ervin.

23. (A) On or about August 30, 2012, Respondent telephoned the offices of the City Year organization, which is a non-profit firm which had previously placed volunteers in Markham, and in Respondent's classroom. She spoke to Mr. Jeff Hitchcock, a senior manager of that firm. Respondent demanded contact information for two volunteers that had been placed by City Year and who had served in her classroom in October 2009. She wanted the contact information because the two volunteers had previously provided written statements to the District, and declarations to the District's counsel. At the time, Respondent was aware that the District wanted to offer the declarations and statements of the two volunteers in evidence.

(B) Mr. Hitchcock told Respondent that he could not release any information to her, and Respondent became angry and agitated. She told him the two volunteers were not good, and that they had wrongfully accused her of pushing a student. She threatened to sue City Year, and said something about bringing out "the guns" or "the big guns." While it appears that she was trying to imply that she would get top notch attorneys on the matter, her statements and the manner in which she made them caused concern at the City Year organization, such that they filed a police report about the incident.

24. It was not established, as alleged in Paragraph 22, that Respondent struck student M.T. on the wrist with a yardstick, nor was it established that she refused to allow him to see the nurse.

#### *Other Findings Necessary for Resolution of the Case*

25. The previous factual findings are specific to the allegations of the case. However, other findings relevant to resolution of this matter follow, as in some cases they supplement and explain the findings above.

26. (A) Factual Findings 18 and 21 were more than supported by the testimony in this case, and by some of the student statements. At the hearing virtually every student testified that Respondent routinely yelled at the students in a very loud voice. Plainly, a teacher may have to raise his or her voice to obtain order and attention from a group of sixth graders. However, the weight of the evidence was that such conduct by Respondent was excessive. Respondent asserts that as the school year would wind on, she had less misconduct from the children, and less need for yelling, writing standards, and so forth, but that is not borne out by the other testimony. As one student, N.R., credibly put it,



Respondent was always grumpy and in a bad mood, yelling almost every day, and that while the days would usually start on a quieter note, things were crazy as the day wore on. From that student's perspective, the "craziness" very much flowed from Respondent. According to that young man, Respondent's yelling at the students occurred from all parts of the room, as well as in their faces.

(B) The numerous student witnesses testified to Respondent striking the desks with a stick, in a loud manner which had a threatening dimension. This testimony is corroborated by Respondent's admission, during her deposition, that she had sometimes used a broom handle to hit the desks, that it was loud, and that the students did not like it. (Depo. p. 111: 3-25.)

27. The evidence establishes that Respondent could not modulate her behavior, and that she could not control her temper on many occasions during her last two years at Markham. Numerous students testified to such negative behaviors, which are generally cataloged in Factual Findings 6, 9, 10, 15, 16, 18, 19, and 21. Likewise, there was substantial evidence of Respondent's inability to work with other teachers or supervisors without conflict, as set forth in Factual Findings 11, 12, 13, 14, and 22. Her temperamental nature emerged during her telephone conversation with Mr. Hitchcock, described in Factual Finding 23; she became enraged when he told her, in effect, that he could not just hand over personal information of a third party to someone calling on the phone. Rather than ascertaining where a subpoena might be served, so as to acquire the information through due process, Respondent threatened litigation in a way that could be construed as a threat of violence.

28. Complainant established that Respondent could not modulate her behavior while at PLAS. While Respondent may have been frustrated to be out of her classroom, and in some administrative limbo, at bottom she simply had to come to the office, pass the time, and draw her regular paycheck. Such soft duty should not have motivated her angry outbursts, regardless of the attitude she perceived from management at PLAS.

29. During the hearing, Respondent exhibited problems with self-control, often engaging in confrontational behavior with District counsel and witnesses. She also exhibited a need to "have the last word." On numerous occasions she talked over others, raising her voice as she did so in an effort to get her point across, at the expense of the other person. She exhibited such behavior despite more than one admonishment to avoid that behavior. In making this finding, the Commission recognizes that the proceeding had to be stressful for Respondent, who is not an attorney, but with that thought in mind the Commission was nonetheless forced, on a unanimous basis, to draw the conclusion that if she could not control herself during the hearing, then she likely was unable to control herself in less formal circumstances, such as when she was passing the time at PLAS, or when interfacing with staff and students at Markham.

30. Respondent tends to be inflexible, another aspect of her temperament. During the hearing she stated that "this is who I am" and "this is my personality" and other words to that effect. That does not make her a bad person, but it appeared as an excuse for some of her

deleterious behavior, and it indicated that she does not believe she can (or should) change her ways for the better. From her statements, it was clear that who she is is who she is going to be. For her to point out that she is passionate about teaching does no more than prove that her passion, unbridled (and from her point of view not needing a bridle), led to improper conduct in the classroom and at the sites where she was assigned from 2008 until 2011, that her passion will lead to improper conduct if she returns to the classroom.

### *Credibility*

31. Mr. Alvarez, Ms. De La Cruz, and Mr. Martinez were all credible in their testimony, both in terms of demeanor, and consistency of the content. All answered questions put to them without hint of prevarication, despite a sometimes trying manner of cross-examination by Respondent.

32. Respondent's credibility suffered as a result of her demeanor during the hearing, but it also suffered as a result of her sometimes inconsistent statements, which included some variance between her testimony during the hearing, and her deposition testimony. The deposition contains more than one passage where Respondent's memory appeared selective, and she was also combative with counsel.<sup>7</sup> That does not mean that all of her testimony was disregarded, as some was accepted. However, her overall credibility was diminished as opposed to Mr. Alvaraz, Ms. De La Cruz, Mr. Martinez, and many of the students who testified.

33. Ms. Bradshaw's credibility suffered in that she testified to involvement in a meeting between Mr. Hernandez and Respondent in February 2011, described below in connection with the February 2011 conference memo, which meeting did not take place. However, she was not wholly discredited regarding her interactions with Respondent, which she described as sometimes negative, and other times as positive.

### *The False Conference Memo*

34. In the course of the hearing, the District offered, as Exhibit 18, a document that purported to be a memorandum of a conference between Mr. Martinez, who took over as Markham's principal after Respondent was transferred out, Respondent, and others. After the document was received in evidence, it was established as pure fiction, as a false document.

35. The conference memo was prepared on PLAS letterhead, is dated February 18, 2011, purports to be from Paul Hernandez, and references "summary of conference of February 18, 2011." It states that the participants in the conference, which was purportedly held at Mr. Martinez' office, which would be at Markham, were Respondent, "Phyllis Bradford, Director of Human Resources, Sergio Franco, Staff Relations, UTLA representative and Paul Hernandez." (Ex. 18, p. 1.) The memo goes on to describe

---

<sup>7</sup> One such example is cited in footnote 6. Another can be found at pages 58-70, where Respondent demonstrates a selective memory regarding the incidents with Mr. Alvarez.

discussions of events from October 15, 2009, including Respondent's denial of the charges, and the document purports to describe "assistance and guidance" that was provided to Respondent—numbered 1 through 8. Five directives allegedly made to Respondent were memorialized as well.

36. In the course of the hearing Mr. Ervin stated he did not know about the document, and he testified that Mr. Franco and/or Ms. Bradford would. Ms. Bradford recalled the meeting that is described in the memo, but did not recall the memo. She thought that the meeting had taken place at the PLAS offices. Mr. Franco did not testify.

37. (A) Mr. Hernandez was called by Respondent as a witness. He recalled meeting Respondent on one occasion, in April 2011, when he was required to come to the PLAS offices to give some papers to her. He was required to do so because he was then the principal at Markham; the principal who had supervised Respondent at Markham had left the site before 2011. Mr. Hernandez testified that he received the papers from Mr. Franco when he got to the PLAS offices, and he attested to serving a Notice of Unsatisfactory Acts (NUA) on Respondent, a copy of which was received in evidence as Exhibit 19. He also served a notice of suspension of Respondent on that date. The February 18, 2011 memo was part of the papers he received from Mr. Franco and served on Respondent. He also recalled meeting Respondent's union representative at that April 26, 2011 meeting, and testified it was the only time he met that person, Ms. Parr.

(B) Mr. Hernandez was clear that he did not meet with Respondent (or the others identified in the memo) on February 18, 2011, or on any other date besides April 26, 2011. He was clear that he did not write Exhibit 18, and that he did not know who did. Mr. Hernandez was very credible in this testimony (and the rest of his testimony) in terms of his demeanor and the content of the testimony. He was firm, direct, answering questions without hint of prevarication, regardless of whose interests were affected by the answers he gave.<sup>8</sup> His testimony on this point is accepted by the Commission and forms the basis for the finding that the purported memo constitutes a falsehood.

(C) There is other evidence that corroborates Mr. Hernandez' testimony. The memo states the meeting took place at his office, implying the Markham site; Hernandez did not work at the PLAS offices. The memo is on the PLAS letterhead, not on the school site's letterhead. The memo does not identify Respondent's union representative by name, as might be expected. Hernandez testified to meeting her on one occasion; she signed the NUA on April 26, acknowledging it.

---

<sup>8</sup> He gave other testimony that did not help Respondent's case, such as when he explained why the use of standards was not a sound teaching or discipline strategy. He acknowledged that junior high students were not always truthful when they complained about teachers. His testimony about the problems at the Markham site, with violence, gangs, and drugs was forthright; he did not try to paper over the problems there in the way that Mr. Ervin had.

38. The NUA states, on its first page, that "the following steps were taken to help this employee improve: . . . -SEE ATTACHED-" (Ex. 19; capitalized in original.) The second page of Exhibit 19 then states, in part:

"1. Paul Hernandez, Principal of Markham MS, held a conference with, Ms. Sondra Shorter, 6th grade teacher at Markham MS, during which he provided her with assistance and guidance on or about the following dates: A. February 18, 2011." (Punctuation in original.)

The importation of the false conference memo into the NUA compromised the integrity of that latter document.

39. It may be inferred that someone at the District or PLAS, or both, perceived that if they did not document counseling Respondent, they would not be able to proceed on a claim of unprofessional conduct, and hence a meeting about the 2009 events was concocted, as the other conference referred to in the NUA had occurred in 2006. (See Ex. 19, p. 2.)

40. Given that the unprofessional conduct claim was dismissed pretrial, the receipt of this document is not fatal to the District's case, although the District, as an institution, is discredited by it.

#### *The Morrison Factors*

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

42. (A) *Adverse consequences on students and teachers, and the degree thereof:* There were adverse consequences for students in Respondent's class. Frightening children by regularly striking a desk with a broom handle caused adverse consequences. Embarrassing a special education student in front of other children is plainly adverse to that child. Arguing with other teachers and staff in front of students engendered disrespect for teachers and school administrators, which is also detrimental to students. It is detrimental to other teachers and staff as well.

(B) *Proximity in time:* This conduct occurred in the period 2008 to 2009. Thus, a significant amount of time has passed.

(C) *Type of certificate held by Respondent:* Respondent holds three teaching credentials, including two life credentials pertaining to teaching children, one an Early Childhood credential, and the other an Elementary Education credential. She also holds a Preliminary Education Administration/Staff Development Credential. With credentials of these types, she should be aware that her conduct has not been appropriate. And, with credentials of this type she is more likely to be exposed to younger student, who would be more likely to be effected, in a negative way, by Respondent's misbehavior.

(D) *Likelihood of recurrence:* The conduct in question was ongoing during much of one school year, 2008-2009, and in the fall semester of the 2009 school year. And, she demonstrated a poor temperament while assigned to the PLAS offices. As summed up in Factual Findings 27 through 30, Respondent does not believe she needs to change, and by her own statements indicates that she cannot do so. It must be said, that based on the entire record, and the inferences reasonably drawn from it, Respondent's misconduct conduct is likely to recur.

(E) *Implication of constitutional rights:* No constitutional rights, of either the Respondent or other teachers, are implicated if Respondent is terminated for her conduct described in this decision.

(F) *Extenuating or aggravating circumstances:* In aggravation, Respondent's actions occurred over a period of months, and she knew, or should have known, that her conduct was inappropriate. And, she refused to modulate her behavior despite indications that it was inappropriate.

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

## LEGAL CONCLUSIONS

### *Legal Conclusions Generally Applicable To All Claims:*

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944, and Factual Findings 1 and 2.

2. "Evident unfitness for service" as used in section 44932, subdivision (a)(5), properly means "clearly not fit, not adapted to or unsuitable for teaching, ordinarily by reason of temperamental defects or inadequacies." Unlike "unprofessional conduct," "evident unfitness for service" connotes a fixed character trait, presumably not remediable merely on receipt of notice that one's conduct fails to meet the expectations of the employing school district. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, at 1444.)

3. "Immoral conduct," of which Respondent has been accused, is not confined to sexual matters. It has been defined to mean that which is hostile to the welfare of the general public and contrary to good morals. It includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, and dissoluteness. Or, it can be conduct that is 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 Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal. App.2d 808, 811 (*Weiland*); *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1466.)

4. In order for a teacher to be terminated under section 44932, subdivision (a)(7), for persistent disobedience of applicable rules and regulations, it must be established that there has been continuous and constant refusal to obey, or behavior motivated by an attitude of continuing insubordination; a single instance of disobedience is insufficient. (*Governing Bd. of the Oakdale Union School Dist. v. Seaman* (1972) 28 Cal.App.3d 77, 81-82.)

5. Even where immoral conduct, evident unfitness for service, or refusal to follow rules and regulations are established, it must also be established that such conduct renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230; *Fontana, supra*, 45 Cal.3d 208; *Woodland Joint Unified School District v. Commission on Professional Competence* (*Zuber*) (1992) 4 Cal.App.4th 1429, 1444-1445; See *Bourland v. Commission on Professional Competence* (1985) 174 Cal.App.3d 317, 321.)

6. (A) It is settled that the trier of fact may "accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted." (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also "reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material." (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal.App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of "one credible witness may constitute substantial evidence", including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, at 1052.)

(B) The rejection of testimony does not create evidence contrary to that which is deemed untrustworthy. That is, disbelief does not create affirmative evidence to the contrary of that which is discarded. That the trier of fact may disbelieve the testimony of a witness who testifies to the negative of an issue does not of itself furnish any evidence in support of the affirmative of that issue, and does not warrant a finding in the affirmative thereof unless there is other evidence in the case to support such affirmative. (*Hutchinson v. Contractors' State License Bd.* (1956) 143 Cal.App.2d 628, 632-633, quoting *Marovich v. Central California Traction Co.* (1923) 191 Cal.295, 304.)

*Legal Conclusions Pertaining to the Specific Allegations of the Accusation:*

7. (A) It was established that Respondent has demonstrated evident unfitness to teach, based on Factual Findings 6, 9 through 16, 18, 19, 21 through 23, and 25 through 32, and Legal Conclusion 2. Respondent's temperamental defects were summed up in the numerous findings, above. It is also observed that Respondent tended to treat her classroom as her territory, where only her writ ran, and not necessarily the District's. Hence, she would yell at children to "get out of my classroom." While it is proper for a teacher to have control of the classroom, to attempt to maintain it in the manner she did was inappropriate, unprofessional, and indicative of an inadequate temperament.

(B) If Respondent's interactions with some staff outside the classroom establish a poor temperament, such confrontations in front of students highlights her poor temperament. The most egregious example may be Respondent's argument with Ms. Gundy about the enrollment of student G.O. in the classroom. (Factual Finding 14.) To have such a loud argument with a counselor, where a student's special education needs are bandied about in front of the student in question was bad enough; to do so in the view and hearing of that student's would-be classmates is wholly inappropriate, and shows an inability to engage in self-control. Respondent's public berating of Mr. Alvarez similarly established a temperamental defect.

(C) When the entire record is considered, it has been established that Respondent is evidently unfit to teach within the meaning of the *Woodland Joint Unified School District* case, cited in Legal Conclusion 2, above.

8. It was not established that Respondent has engaged in immoral conduct, or that she engaged in repeated refusal to comply with applicable rules, regulations, and directives, based on all the foregoing.

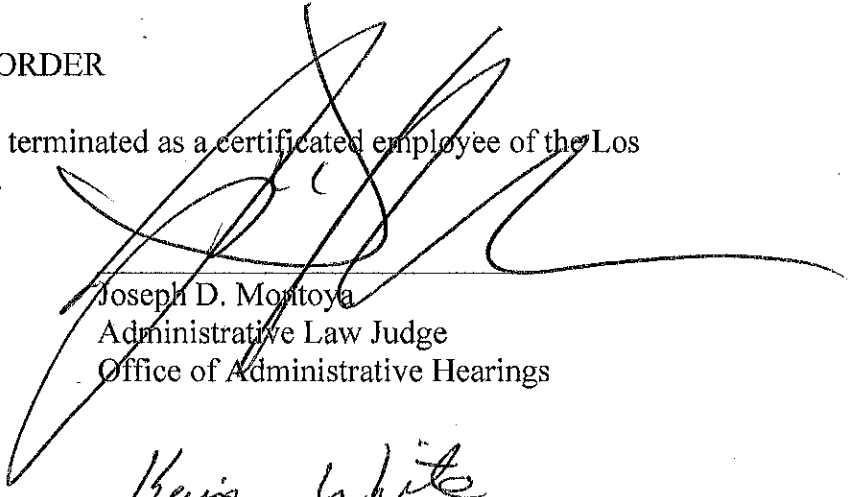
9. Applying the *Morrison* factors, it must be concluded that Respondent's conduct and temperament render her unfit to teach in the District, based on Factual Findings 41 through 43.

//

ORDER

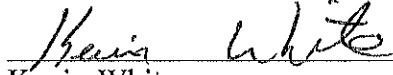
Respondent Sondra Shorter shall be terminated as a certificated employee of the Los Angeles Unified School District, forthwith.

APA:1  
May 25, 2013  
DM  
4/25/13

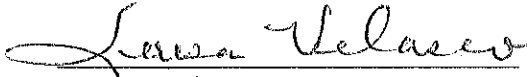


Joseph D. Montoya  
Administrative Law Judge  
Office of Administrative Hearings

APA:1  
May 25, 2013  
DM

  
Kevin White

APA:1  
May 26, 2013  
DM

  
Teresa Valesco