

BEFORE THE  
COMMISSION ON PROFESSIONAL COMPETENCE  
RIVERSIDE UNIFIED SCHOOL DISTRICT  
RIVERSIDE COUNTY, CALIFORNIA  
STATE OF CALIFORNIA

In the Matter of the Dismissal of

LINDA STRONG,

A Permanent Certificated Employee,

Respondent.

OAH No. 2010080699

**DECISION OF THE  
COMMISSION ON PROFESSIONAL COMPETENCE**

On September 8 and 9, 2010, a Commission on Professional Competence heard this matter in Riverside, California. The Commission included James Ahler, Jennifer Morgan, and Shawn O’Rafferty.

Bradley E. Neufeld, Attorney at Law, and Raquel A. Ortega, Attorney at Law, represented complainant Kathleen Sanchez, Assistant Superintendent, Human Resources, Riverside Unified School District, State of California.

Michael J. DeNiro, Attorney at Law, represented respondent Linda Strong, a permanent certificated employee of the Riverside Unified School District who was present throughout the administrative hearing.

On September 9, 2010, the matter was submitted.

**ISSUES**

Did respondent Linda Strong persistently violate or refuse 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 the governing board of the Riverside Unified School District in the course of her employment as an elementary school teacher with the Riverside Unified School District?

Did respondent Linda Strong engage in unsatisfactory performance?

If grounds for discipline exist, is respondent Linda Strong’s dismissal from employment an appropriate disciplinary outcome under all of the circumstances?

## FACTUAL FINDINGS

### *Respondent's Background and Experience with the District*

1. Respondent Linda Strong (respondent or Ms. Strong) is a permanent certificated employee of the Riverside Unified School District. Ms. Strong has been employed as an elementary school teacher with the district for more than 25 years, most recently at Monroe Elementary School.

### *Monroe Elementary School*

2. Monroe Elementary School provides educational services to students from kindergarten through 6<sup>th</sup> grade. Robert Murphy is Monroe's Principal. Ulises Romero is Monroe's Assistant Principal. Ms. Yolanda Dodrill is the school librarian. Ms. Strong has served under Principal Murphy on two campuses, most recently at Monroe.

Monroe is a Title 1-funded school whose student body includes a substantial number of English learners. The school offers its students a state adopted curriculum in Language Arts, Mathematics, Science and Social Studies. Monroe also has an Accelerated Reader (AR) Program and has computers in the classrooms and library. Teachers have been encouraged to use classroom technology because technology appeals to many students and presents them with a different style of learning.

Teachers at each grade level at Monroe are formed into "teams," which establish pacing schedules for teaching the curriculum and when that the curriculum will be taught during the school day. There are about a half dozen 2<sup>nd</sup> grade teachers at Monroe, each of whom has a class totaling approximately 20 students. The 2<sup>nd</sup> grade team meets every other Thursday. Second grade subjects include writing, Mathematics, Physical Education, Science and Social Studies.

3. The Monroe Staff Handbook (Revised, 2008), which was in effect at all times relevant to this matter, states, "The contractual teaching day is **8:15 a.m. to 3:45 p.m.**" and "Staff leaving the campus at any time during the contractual day must sign out in the office. **Mail boxes should be checked for messages at recess and lunch breaks and before leaving at the end of the day.**" (Original emphasis.)

The handbook states that certificated staff who are unable to report for work should call the Substitute Calling System using the staff member's pin number. With regard to lesson plans, the handbook states:

**"It is mandatory that all teachers have lesson plans prepared and in use.** Please leave them in a convenient place so that substitutes and other classroom observers will have access to them. It will help to have your daily schedule visible or posted in the room for substitutes and visitors.

A substitute folder must be available in each classroom. It should include a daily schedule, extra activities, yard duty schedule, and any other helpful information. **Emergency Substitute Plans must be on file in the office.**” (Original emphasis.)

It was not established that the directives set forth in the staff handbook were based upon regulations prescribed by the governing board of the Riverside Unified School District. The staff handbook did, however, set forth administration’s reasonable expectations concerning arrival and departure times from work, the need to regularly check mail boxes for messages, and the need for substitute plans and emergency substitute plans.

#### *Ms. Strong’s Attendance and Failure to Submit Lesson Plans*

4. In January 2007, Principal Murphy issued a memo to Ms. Strong concerning her attendance and her need to maintain lessons plans. The letter stated that Ms. Strong had been absent from work on the first three days following the return from Winter Break, that three substitute teachers filled in for Ms. Strong, that the substitute teachers for Tuesday and Wednesday had no lesson plans and were required to telephone Ms. Strong for those plans, and that the lesson plans that Ms. Strong provided were insufficient. The memo stated, “You have been directed on numerous occasions to provide detailed lesson plans when you are out and that subs are not expected to phone you to receive and write out plans. You’ve also been directed to have emergency lesson plans on file in the office which has not occurred this year.” The memo stated that Ms. Strong had been present 27 days and had been absent 51 days in the current school year. Principal Murphy expressed concern about her absences. The memo stated that a copy of the memo would be placed in Ms. Strong’s personnel file.

5. In a memo dated June 20, 2007, Principal Murphy expressed concern about Ms. Strong’s continued absences and her failure to “notify the office that you were going home last Friday or that you would be absent today.” The memo directed Ms. Strong to notify the office if she planned to leave school during the day.

#### *The September 2008 Improvement Plan*

6. On June 24, 2008, Ms. Strong met with Principal Murphy and Assistant Superintendent Glen King to discuss an improvement plan. On September 19, 2008, Principal Murphy sent a memo to Ms. Strong describing an assistance plan for the 2008-2009 academic year. The assistance plan for 2008-2009 covered attendance, classroom environment, and lesson plans.

With regard to attendance, the memo stated that Ms. Strong was absent from work 158 days in the preceding three school years and that she was “absent 21 days and late to work 56 times” in the 2007-2008 school year.

Attendance: The memo stated, “When you are late to work you are not adequately prepared to start instruction when the bell rings . . . Requests have been made to you to have up to date emergency lesson plans on file in the office but they usually are not available.

The memo directed Ms. Strong to sign in and sign out each day by using index cards and the office time clock, to call the Principal's secretary if she was going to be late to work so personnel could be assigned to supervise her classes, to leave lesson plans for subs "that are detailed with clear instructional goals and objectives, instructional time periods, and classroom management procedures," and to maintain current detailed emergency lesson plans on file in the office at all times.

Ms. Strong was advised, "Your attendance will be monitored daily. Your sub lesson plans will be collected and reviewed . . . "

#### Classroom Environment:

The memo stated:

"During the 2007-2008 school year and presently, your classroom environment does not reflect the expectations of the school or your grade level. Your room does not display all the components of the Houghton Mifflin 'Room Environment and Management' section, District-Wide Agreements and Direct Focus on Two-Part Objectives and Student Engagement. Your classroom environment does not reflect the rigor, consistency and curricular expectations of your grade level. Student work posted is often several months old . . . Your daily schedule is often not posted and Two-Part Objectives are not complete or at as 'high a level of rigor' as other grade level classes on your team. The class Focus Wall needs to reflect the same day of study as the other grade level classes. Current student work is often not posted and used as an instructional tool. Students are not fully engaged during instruction. An improved classroom environment will improve student engagement."

The memo directed Ms. Strong to review applicable agreements that had been provided to her in August 2008, to follow school wide expectations, to have two pieces of current Math displayed, to have examples of student work posted that related to current Social Studies units, to show evidence that her students were participating in the district's AR reading program on a weekly basis, and to have classroom rules posted along with her daily schedule. The memo advised that written feedback would be provided and that the school's literacy coach was available to help, support and provide clarification. Ms. Strong was advised that classroom visits would occur on at least a weekly basis.

Lesson Plans: The memo directed Ms. Strong to follow the directives previously given to her by the Assistant Principal and to develop daily and weekly lesson plans which listed instructional goals and objectives, student outcomes and instructional time periods. Ms. Strong was advised that her plans and sub lesson plans would be reviewed on a regular basis. Ms. Strong was advised that the school's literacy coach was available to assist her, as well as the district's staff development department.

Ms. Strong signed the assistance plan on October 2, 2008. A copy of the plan was placed in her personnel file.

### *The October 2009 Improvement Plan*

7. On October 8, 2009, Principal Murphy sent a memo to Ms. Strong describing an assistance plan for the 2009-2010 academic year. The 2009-2010 assistance plan also covered Ms. Strong's attendance, classroom environment, and lesson plans. The 2009-2010 assistance plan was almost identical to the assistance plan issued for the 2008-2009 school year, which demonstrated that little improvement had occurred.

Attendance: With regard to the attendance issue, the memo stated that Ms. Strong's attendance was a yearly concern, but the memo also noted that Ms. Strong was absent in the 2008-2009 school year for 19 days, which was an improvement. The memo stated, "When you are late to work you are not adequately prepared to start instruction when the bell rings . . . Requests have been made to you to have up to date emergency lesson plans on file in the office but this has not occurred."

The memo directed Ms. Strong to sign in and sign out each day by using index cards and the office time clock, to call the Principal directly if she was going to leave early, and to leave lesson plans for subs "that are detailed with clear instructional goals and objectives, instructional time periods, and classroom management procedures. Subs should not be required to call you for plans." Ms. Strong was directed to maintain current detailed emergency lesson plans on file in the office at all times.

Ms. Strong was advised, "Your attendance will be monitored daily. Your sub lesson plans will be collected and reviewed . . . Emergency lesson plans will also be reviewed to be sure that they are current and up-to-date . . ."

#### Classroom Environment:

The memo stated:

"During the 2008-2009 school year, your classroom environment does not reflect the expectations of the school or your grade level. Your room does not display all the components of the Houghton Mifflin 'Room Environment and Management' section, District-Wide Agreements and Direct Focus on Two-Part Objectives and Student Engagement. Your classroom environment does not reflect the rigor, consistency and curricular expectations of your grade level. Student work posted is often several months old or not posted at all . . . The required Two-Part Objectives are not complete or at as 'high a level of rigor' as other grade level classes on your team. So far this year the Focus Wall has remand blank even after several directives to keep it current . . . An improved classroom environment will improve student engagement."

The memo directed Ms. Strong to review applicable agreements that were previously provided to her in August 2008, to follow school wide expectations, to have two pieces of current Math displayed, to have examples of student work posted that related to current Social Studies units, to show evidence that her students were participating in the district's AR reading program on a weekly basis, and to have classroom rules posted along with her

daily schedule. The memo advised Ms. Strong that written feedback would be provided and that the school's (new) literacy coach, Kristian Sorensen, was available to help, support and provide clarification to Ms. Strong. Ms. Strong was advised that classroom visits would occur on at least a weekly basis.

Lesson Plans: The memo stated that Ms. Strong was to follow the directives previously given to her by Assistant Principal Romero and to develop daily and weekly lesson plans which listed instructional goals and objectives, student outcomes and instructional time periods. The memo stated that Assistant Principal Romero had requested that Ms. Strong revise her plans on a frequent basis because of their inadequacy. Ms. Strong was advised that her plans and sub lesson plans would be reviewed on a regular basis. Ms. Strong was advised that the literacy coach was available to assist her in the development of lesson plans, as well as the district's staff development department.

Ms. Strong signed this assistance plan. A copy of the plan was placed in her personnel file.

#### *The December 2009 Notice of Unsatisfactory Performance*

8. On December 14, 2009, Dr. Rick Miller, Superintendent, signed a Notice of Unsatisfactory Performance that was subsequently served on Ms. Strong.<sup>1</sup> As pertains to the issues involved in this disciplinary matter, the notice alleged: Ms. Strong failed to attend a team planning meeting without notice; Principal Monroe advised Ms. Strong that she needed to be on time to work on many occasions; Principal Monroe advised Ms. Strong that she supposed to post the Two-Part Objective as required by the District-wide agreement on several occasions; Principal Monroe advised Ms. Strong on several occasions that her classroom environment was not acceptable in contrast to other classrooms; Ms. Strong had been given an assistance plan related to attendance, classroom environment, and lesson plans [see Factual Finding 6]; Ms. Strong failed to provide requested CST data for a meeting designed to reach an improved teaching plan and she requested that the meeting be cancelled; Ms. Strong failed to submit Word Pattern Inventory data and Reading Lions data as requested; Ms. Strong failed to attend a second grade team meeting regarding a common Math assignment; Ms. Strong failed to have lesson plans available as directed on several occasions; Ms. Strong failed to timely deliver substitute lesson plans; Ms. Strong failed to maintain a classroom environment that met reasonable expectations; and, as of November 5, 2009, Ms. Strong had been tardy to work 36 times since the beginning of the school year.

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<sup>1</sup> Education Code section 44938 requires a governing board of a school district to provide an employee with a written notice of the unprofessional conduct before taking any disciplinary action. The notice must set forth specific instances of misbehavior sufficient to provide the employee with an opportunity to correct his or her faults and overcome the grounds for the charge. The statute sets forth various timelines.

Numerous memos issued by Principal Murphy and Assistant Principal Romero documented each of these allegations.

A formal employee evaluation report accompanied the December 2009 notice which stated that: lesson plans did not reflect areas of engagement and support as required; Ms. Strong was absent on three occasions when lesson plans were not provided, that emergency plans were used on two occasions and that the substitute had to develop materials on the third occasion; writings posted in the classroom were not always current and were sometimes unedited; sound/spelling cards were not posted; Ms. Strong did not attend the 2007 Summer SB492 training (a weeklong summer training for all elementary teachers to improve teaching skills, strategies, and the full implementation of the Houghton Mifflin Reading Program) with members of the second grade team because she was ill; Ms. Strong did not collaborate effectively with team members; team members were often resentful as a result of being required to provide Ms. Strong with assistance; Ms. Strong's students were not actively participating in the AR program; and Ms. Strong was late to work 56 times. The employee evaluation was not entirely negative, and it noted that Ms. Strong's lessons were well designed and covered all essential components of a good lesson on formal classroom visits. The evaluation noted that Ms. Strong reportedly attended all staff and team meetings. The evaluation commented that Ms. Strong's "tardiness to work is better as she checks into the office daily upon her arrival."

*The Notice of Intent to Dismiss and Statement of Charges/Accusation*

9. On April 14, 2010, complainant Kathleen Sanchez, Assistant Superintendent, Human Resources, Riverside Unified School District, Riverside County, California, signed the Notice of Intent to Immediately Suspend Without Pay; Intent to Dismiss; and Statement of Charges.

The statement set forth two grounds for disciplinary action: (1) 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 the governing board (Education Code section 44932, subdivision (a)(7); and (2) unsatisfactory performance (Education Code section 44932, subdivision (a)(4). Forty factual allegations (charges) were set forth in the notice to support Ms. Strong's dismissal from employment. The statement advised Ms. Strong of her right to request a hearing.

Ms. Strong was served with the notice and timely requested a hearing.

On June 14, 2010, complainant signed the accusation in this matter, which incorporated the statement of charges by reference.

The accusation and other required jurisdictional documents were served on Ms. Strong who, through counsel, timely filed a Notice of Defense dated June 28, 2010.

The matter was set for a hearing. At that hearing, the parties stipulated that all jurisdictional requirements were met. The commission accepted that stipulation.

### *Persistent Violation/Refusal to Obey School Laws*

10. The statement of charges did not set forth any of the school laws of California, the State Board of Education regulations, or the Riverside Unified School District regulations that Ms. Strong allegedly violated. No laws or regulations were received in evidence, and there was no testimony that Ms. Strong violated any school laws or regulations. It was not established that the Monroe Elementary School Staff Handbook embodied regulations enacted by the State Board of Education or the Riverside County School District.

The commission unanimously finds that the allegation that Ms. Strong 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 the governing board was not supported by the evidence and that the charge should be dismissed. This finding does not, however, compel the conclusion that Ms. Strong's performance as a classroom teacher was satisfactory, as that is an entirely separate issue.

### *Unsatisfactory Performance*

11. A majority of the commission determined that Ms. Strong engaged in unsatisfactory performance in connection with her employment as an elementary school teacher, even though the majority also concluded that some charges were not established or were not relevant to the issue of unsatisfactory performance.

12. Charges 1 and 2, related to parent complaints, were based solely on hearsay evidence and were not supported by any competent evidence. Ms. Strong established that she did not send an email during instructional time as alleged in Charge 4, that her daughter sent that email. These charges were not established.

13. In reaching the decision that Ms. Strong engaged in unsatisfactory performance, the majority focused on three areas of concern identified in the September 2008 and October 2009 improvement plans: Ms. Strong's tardiness in arriving late to work and not meeting other professional responsibilities in a timely fashion, her failure to maintain an appropriate classroom environment, and her failure to maintain adequate lesson plans.

Arriving Late to Work: Of the several areas of concern, very little subjective judgment was involved in determining that Ms. Strong arrived late to work. And of these areas of concern, arriving on time was the easiest problem for Ms. Strong to remedy, establish her willingness to comply with reasonable directives, and conduct herself in a satisfactory manner.

The agreement between the Riverside Unified School District and the Riverside City Teachers Association that was in effect at all times relevant to this matter stated that elementary school employees "shall be on the worksite twenty (20) minutes before the first students arriving are scheduled to attend class. The normal or regular workday in elementary school shall be seven and one-half (7½) consecutive hours including the lunch period."



Kathleen Sanchez, RUSD's Assistant Superintendant of Human Resources, established that all teachers at Monroe were required to be on campus no later than 8:15 a.m. Principal Murphy testified that credentialed staff was required to be on campus by 8:15 a.m. and that in the 20 minutes before formal educational activities began, credentialed staff members were expected to set up their classrooms for the day, review lesson plans, write objectives and goals on blackboards, copy materials that were going to be used in that day, be on the playground by 8:30 a.m. to pick up their students, and have their students seated in the classroom by 8:35 a.m. Parents and others often confer with teachers before the school day begins. Being on time is important. When a teacher reports late to school, that teacher's tardiness violates the collective bargaining agreement, sets a bad example for others and, most importantly, may have an adverse impact on the educational process.

A preponderance of the evidence established: on December 17, 2009, Principal Murphy reminded Ms. Strong that being at school on time was vital and that she had been tardy 51 days in the first four months school was in session (Charge 3); from December 15, 2009, through January 14, 2010, Ms. Strong was habitually late to work and her repeated tardiness was a disruption (Charge 11); on January 25, 2010, Principal Murphy advised Ms. Strong that she was responsible for coming in early before the start of school to leave lesson plans if she was going to be absent that day (Charge 16); on February 18, 2010, Ms. Strong failed to contact the Principal's secretary by 8:00 a.m. to advise that she was ill and would not be at school, she failed to have lessons plans at the school by 8:15 a.m., and she failed to have emergency lesson plans on file (Charge 35); and, on February 23, 2010, Ms. Strong failed to contact the school to advise that she would be absent from work, failed to turn in lesson plans on time, faxed half of the lesson plans after the school day began, and delivered the remaining lessons plans for that school day after lunch (Charge 37).

Before the December 14, 2009, Notice of Unsatisfactory Performance was served, Ms. Strong was tardy approximately 40 days, arriving on campus anywhere from one to 15 minutes late. Between December 16, 2009, and January 14, 2010, Ms. Strong was tardy on seven occasions, although she was never more than five minutes late. Documentary evidence of Ms. Strong's absences after January 14, 2010, if any, was not provided.

Ms. Strong did not live far from Monroe Elementary School. She had a history of tardiness that extended back to the 2006-2007 school year. Each school year thereafter, Ms. Strong was directed to arrive on campus on time. She failed to do so despite clear warnings that disciplinary action might result from her continued tardiness. Ms. Strong should have arrived on campus in a timely fashion as required under the collective bargaining agreement.

When asked why she failed to arrive at school on time, Ms. Strong testified that she felt she was under a lot of pressure and "It was all I could do to get to work . . . I drug my feet," claiming "I was not trying to be defiant." To mitigate her tardiness, Ms. Strong asserted that Principal Murphy was lax in enforcing the requirement that all teachers arrive on campus on time, asserting that she was unfairly singled out. Ms. Strong offered an unsigned letter from a teacher who retired after the 2007-2008 school year to corroborate these assertions. The unsigned letter did not establish that all teachers were permitted to be

late or that Ms. Strong was the subject of discrimination.<sup>2</sup> Ms. Strong also claimed in mitigation, through counsel, that being tardy had very little impact on student learning. Finally, Ms. Strong sought to justify her tardiness by arguing that the amount of time she spent in the classroom after school which was not required under the collective bargaining agreement far exceeded the amount of time she was late to work.

14. The dissent argues that being late to work is not a sufficient justification to terminate Ms. Strong's employment, particularly because Ms. Strong showed improvement by being tardy less often in the 2009-2010 school year than in the years before.

While being occasionally late to work, by itself, might not always be sufficient to justify termination, Ms. Strong's history of tardiness, the unsuccessful efforts to get her to show up on time, the extent of her tardiness in the 2009-2010 school year, and her evident unwillingness or inability comply with the reasonable directives of school administrators support her dismissal. Ms. Strong and all other teachers were required to report to school on time. Being on time was helpful, if not essential, to meeting the educational mission. While it may not have been unreasonable for Principal Murphy to overlook the infrequent tardiness of other teachers who were usually on time, he could not overlook Ms. Strong's tardiness by the 2009-2010 school year. Minimal improvement does not equate to compliance with contractual requirements to show up to work on time. Ms. Strong's continued tardiness under these circumstances involved unsatisfactory performance.

Ms. Strong's routine failure to report to work on time was not an isolated trait, but was part of a more pervasive character defect that involved a resistance to meet reasonable expectations of her employers and colleagues, a negative attitude towards her employment, procrastination, stubbornness, and the projection of helplessness and the repeated failure to accomplish tasks for which she was explicitly responsible.

#### Other Tardiness-Related Issues:

15. Ms. Strong's tardiness was not limited to her late arrival on campus. There were many other incidents involving Ms. Strong's failure to provide requested services at the scheduled or expected time that had a negative impact on the educational process and constituted unsatisfactory performance.

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<sup>2</sup> The unsigned letter confirmed that teachers were required to be on campus at 8:15 a.m., that teachers were required to report to the playground to pick up their students at 8:32 a.m., and that teachers were required to lead their students back to the classroom by 8:35 a.m. The author stated she was tardy "several times" in the 2007-2008 school year, that she observed five or six other teachers arrive occasionally after 8:15 a.m., and that she was unaware of any discipline having been imposed as a result thereof. The author did not express any opinion about Principal Murphy's tardiness policy after the 2007-2008 school year. The unsigned letter was not signed under penalty of perjury. The letter was admitted as administrative hearsay under Government Code section 11513, but it was insufficient to establish any finding of fact.

16. The 2<sup>nd</sup> grade teaching team agreed that the Benchmark 2 Math test would be given to all 2<sup>nd</sup> graders so that grade wide test results would be available to teachers and others to review over the Christmas break. On December 16, 2009, Ms. Strong failed to administer the test. On December 17, Vice Principal Romero had to contact Ms. Strong and direct her to administer the test to her students. After the test was given the afternoon of December 17, a Math coach had to scan Ms. Strong's students' test results to make sure they were submitted in a timely fashion to meet the deadline. (Charge 5). Vice Principal Romero's need to contact Ms. Strong and the Math coach's need to scan the test results was an unnecessary use of district resources.

Ms. Strong's defense to Charge 5 involved lack of knowledge that the test was to be given on December 16 (which was based upon her failure to attend the second grade team meeting where the agreement was reached), her failure to read the minutes from that meeting because (she claimed) she was not provided with a copy of the minutes, the formal listing of the Benchmark 2 Math test date in the school's pacing schedule as being given on December 18, 2009, and the fact that the tests results for her class were ultimately scanned and provided on December 18.

Ms. Strong presented herself as a victim, blaming others for her failure to give the Math test on December 16. Ms. Strong's explanations for not administering the test on December 16 were not credible. Other second grade teachers administered the test on that date (although one teacher was required to give the test to a student who was absent the following day) and the Vice Principal knew the date the test was to be administered. The only person who claimed not to know the date the test was being given was Ms. Strong.

Ms. Strong had absolutely no insight into how the situation arose, what part she played in her failure to administer testing in a timely fashion and, thus, she demonstrated very little ability to avoid a similar situation from reoccurring.

17. On January 6, 2010, Principal Murphy advised Ms. Strong that her failure to return a former student's books to the school librarian resulted in that student's inability to check out books at Alcott Elementary School, another school within the District, and a parent complaint (Charge 8). Ms. Strong admitted that the student's mother left texts and other books with Ms. Strong before Christmas vacation and requested that Ms. Strong deliver the books to the librarian. Ms. Strong admitted that she agreed to do so. Ms. Strong testified that after returning from Christmas vacation, she forgot to turn in the student's books into the library and that the books were then either lost or destroyed.

Ms. Strong's defense to Charge 8 involved her offer to pay the librarian for the missing books after the parent's complaint was brought to her attention. In her testimony, Ms. Strong expressed absolutely no concern for the student's predicament, for which she was solely responsible. Ms. Strong apparently believed that her offer to pay for the missing books was all that she was required to do. After the complaint was brought to her attention, she did not look into the possibility that other students might be similarly affected or take steps to ensure that the same problem would not happen again.

18. On February 26, 2010, Principal Murphy directed a memo to Ms. Strong (who by then was on an extended leave of absence) advising her that another student who transferred from Monroe on January 25, 2010, was not being allowed to check out books or texts from Adams Elementary School because Ms. Strong had not returned that student's books to the school library, and that a third student, who left Monroe in November 2009, was not being allowed to check out books or texts at Madison Elementary School because Ms. Strong had not returned that student's books. The memo stated, "It is not fair for these students to not have access to texts and library books because they are sitting somewhere in your classroom. Mrs. Dodrill has also been you several printouts listing the specific titles and levels of the books" (Charge 38).

Ms. Strong's defense to Charge 38 was that she was home ill when the memo was issued, so she could not respond to it. Ms. Strong did not deny the charges. She expressed absolutely no remorse.

19. The acts and omissions set forth in Factual Findings 17 and 18 constituted unsatisfactory performance, particularly the incident involving the student who left Monroe on January 25, 2010, which was just two weeks after Principal Murphy informed Ms. Strong that her failure to turn in library books entrusted to her by a former student had a negative impact on that student and a parental complaint.

20. Ms. Strong was directed to develop and submit a Math plan to Principal Murphy by January 13, 2010. She did not do so. Principal Murphy was required to issue a memorandum dated January 15, 2010, directing Ms. Strong to submit the plans no later than January 19, 2010 (Charge 12).

Ms. Strong's defense to Charge 12 was that she turned the Math plan in to Principal Murphy on January 15 and it was barely late.

Ms. Strong's delay in submitting the Math plan involved the same character defect involved in her reporting late to work - it was part of a pattern of conduct that was marked by procrastination, stubbornness, and the failure to accomplish tasks for which she was explicitly responsible. Ms. Strong was a professional. There was no reason that she needed to be reminded to do what she was being paid to do and had been previously directed to do. Her performance was unsatisfactory.

21. Each classroom at Monroe had an assigned time that the class was scheduled to use the school library. Maintaining the schedule was important to the school's effective use of the library and prevented underutilization, overcrowding and chaos.

In a memo dated December 10, 2009, Principal Murphy memorialized Ms. Strong's failure to visit the library the previous Wednesday as scheduled, advised her that the school librarian had expressed concern because Ms. Strong's students seldom showed up at the assigned library time, observed that Ms. Strong's "class currently has the lowest circulation of any primary class," mentioned that the librarian had previously changed Ms. Strong's

classroom's visitation schedule to accommodate Ms. Strong's schedule, and directed Ms. Strong **"to follow the library schedule assigned to you and give your students the opportunity for the use of library and to check out books on a weekly basis just like every other class at Monroe."** (Emphasis added.) There was nothing ambiguous about Principal Murphy's directive.

On January 20, 2010, Ms. Strong's class failed to attend the library at its scheduled time. The school librarian telephoned Ms. Strong's classroom and was told that testing was taking place. Prior arrangements had not been made with the school librarian. On January 20, 2010, Principal Murphy sent a memo to Ms. Strong directing her "to take your class to the library on your scheduled time weekly, unless you have made prior changes with Mrs. Dodrill." (Charge 16).

Ms. Strong's defense to Charge 16 was that her class was having a hard time with testing and she decided it was more important for her students to practice testing than to visit the library on January 20. Ms. Strong initially testified that she had, in fact, asked Mrs. Dodrill if she could reschedule that day's library visit, but she later conceded that she really could not recall having done so. Ms. Strong also testified that she believed that taking her students to the library was "discretionary."

On January 25, 2010, Principal Murphy sent Ms. Strong a memo that responded to Ms. Strong's memo claiming that she "never heard it was mandatory" to take her class to the library. Principal Murphy reminded Ms. Strong of his memo dated December 10, 2010, observed that the December 2010 memo was sent to her because her class had failed to show up at its scheduled library time five times since November, because her class had the lowest circulation of library books at the school, and because her class' scores for the AR reading were the lowest in the Primary team (Charge 18).

On January 26, 2010, Principal Murphy sent Ms. Strong a memo reminding her to attend the library during scheduled time and to plan instruction around that block of time because of the library's tight schedule. (Charge 21.)

Ms. Strong's history of not taking her class to the library for scheduled visits and her unreceptive responses to Principal Murphy's directives involved a part of a pattern of conduct that was marked by insubordination, stubbornness, and the failure to accomplish tasks for which she was responsible. While it might be reasonable for a teacher to miss a scheduled library visit once or twice, depending upon the circumstances, Ms. Strong's history of failing to take her class to the library demonstrated unsatisfactory performance.

22. On January 25, 2010, Principal Murphy counseled Ms. Strong regarding her continued failure to provide him with the steps she intended to take to ensure that her students would score at a proficient or above level on the Math Benchmark 3 test. (Charge 15.)

Ms. Strong's defense to Charge 15 was that her class' performance in Math was never an issue before January 10, 2010. Ms. Strong's testimony in that regard did not justify Ms.

Strong's continued failure to provide Principal Murphy with the requested information. Ms. Strong's repeated failure to provide Principal Murphy with the requested information in a timely fashion was but another example of her resistance, insubordination, and failure to accomplish tasks for which she was responsible. It demonstrated unsatisfactory performance under all the circumstances.

23. Ms. Strong's failure to ensure that her classroom participated in regularly scheduled 2<sup>nd</sup> grade P.E. activities also demonstrated unsatisfactory performance.

At Monroe Elementary, Physical Education for second graders did not consist of "free play," which occurred spontaneously at recess and over the lunch hours; instead, Physical Education consisted of organized activities taking place on Tuesday and Friday afternoons – with all 2<sup>nd</sup> grade classes engaged in those organized activities at the same time - and a cardiovascular component which involved all 2<sup>nd</sup> grade classes running laps daily after the morning recess. The amount of P.E. provided on these occasions satisfied state standards. The organized activities were designed to provide students with various skills and to teach teamwork and sportsmanship, and running laps was intended to improve cardiovascular status and to enable the 2<sup>nd</sup> grade teachers to informally confer with one another while their students ran laps. Second grade classes were required to participate in P.E. at the same time daily, and the P.E. schedule as well as the schedule for all other 2<sup>nd</sup> grade educational activities was set forth in a laminated copy of the daily schedule/routine prepared by the 2<sup>nd</sup> grade teaching team and distributed to all 2<sup>nd</sup> grade teachers.

On January 29, 2010, Principal Murphy observed that Ms. Strong's class was not participating in the 2<sup>nd</sup> grade P.E. activities that morning. The 2<sup>nd</sup> grade team intended to discuss issues during morning P.E., but Ms. Strong was not there. Principal Murphy sent Ms. Strong a memo directing her to follow the daily schedule for the 2<sup>nd</sup> grade to ensure consistency of instruction. (Charge 25.)

On February 1, 2010, Ms. Strong failed to follow the agreed schedule for P.E. Principal Murphy issued memos directing Ms. Strong to make certain that her weekly lesson plans included her class' participation P.E. activities at 10:20 a.m. in her weekly lesson plans and to ensure that her class received the required amount of Physical Education required by law. (Charges 28 and 29.)

On February 15, 2010, Ms. Strong sent a memo to Principal Murphy. A copy of that memo was not provided, but Principal Murphy's response, dated February 17, 2010, was received in evidence. Evidently Ms. Strong's memo mentioned four different memos and it "bounced" around those memos. Principal Murphy's response stated that his memo dated January 26, 2010, outlined his concern that her lesson plans were not consistent with the plans of the 2<sup>nd</sup> grade team, that Principal Murphy advised teachers in early September 2009 that P.E. had to be organized and consistent by grade level, that the 2<sup>nd</sup> grade team had decided to devote 10 minutes of running laps daily as cardiovascular component and to rotate organized sports two afternoons a week, and that even though Ms. Strong had received a copy of the scheduled 2<sup>nd</sup> grade activities, she did not show up for the cardio component and did not have afternoon P.E. listed in her lesson plans. The memo directed Ms. Strong to

follow up on the 2<sup>nd</sup> grade daily schedule, to participate in all P.E. activities, and to provide consistent instruction and time blocks for students. (Charge 33.)

On February 18, 2010, Vice Principal Romero directed Ms. Strong to adjust her weekly lesson plans to schedule P.E. for Tuesday and Friday as required by the 2<sup>nd</sup> grade team schedule. (Charge 34.)

In her defense to these charges, Ms. Strong testified that she did not have her class run laps after the morning recess because she thought Principal Murphy might believe that running laps involved “free play” because there was no other organized activity and because other teachers might talk to her, which she believed might result in her receiving another disciplinary memo from Mr. Murphy criticizing her for improper P.E. activities. Again, Ms. Strong’s “defense” was based on an understanding held only by Ms. Strong and no other 2<sup>nd</sup> grade teacher and suggested that she was somehow the victim.

While it was not established that Ms. Strong did not follow the directives that were issued after February 18, 2010, it was obvious that she was not a team player, that she did not ask what the 2<sup>nd</sup> grade team intended to do about P.E., and that she followed her own path even though it may have resulted in students not receiving the required amount of Physical Education. Ms. Strong’s purported “confusion” regarding what she should do was no more than a disingenuous effort justify her decision to do whatever she wanted when her 2<sup>nd</sup> grade class was scheduled to participate in P.E. It involved unsatisfactory performance.

#### Classroom Environment

24. Teachers at Monroe Elementary School were expected to maintain a classroom environment that was conducive to learning. All 2<sup>nd</sup> grade teachers, and not just Ms. Strong, were expected to have their classrooms prepared each day before school began. An appropriate classroom environment included the posting of at least two pieces of current student writing, at least two pieces of current Math, examples of student work covering the Science and Social Studies assignments currently being taught, a Language Arts Focus Wall that related to the subject currently being taught, a daily schedule, and classroom rules and consequences for the violations of those rules. In addition, all teachers within the district were required to post Two-Part Objectives in the classroom. At Monroe Elementary School, it was the custom for teachers to post their objectives on a whiteboard at the front of the classroom in the same area in all classrooms. Blue tape was supplied to block off the area where the objectives were to be posted. Using this procedure, any student coming into a classroom would know where to look to find out the objectives and outcomes.

25. By memo dated December 17, 2009, attached to which was the 2009-1010 assistance plan and memos dated September 15 and 29, 2009 – all of which related at least in part to the deficiencies in Ms. Strong’s classroom environment – Assistant Principal Romero advised Ms. Strong that her room environment was found to be deficient during his December 9, 2009, classroom visit. More specifically, two pieces of current student writing were not posted, two pieces of current Math were not posted, examples of student work covering the science and Social Studies assignments currently being taught were not posted,

a Language Arts Focus Wall that related to the subject currently being taught was absent, a daily schedule was not posted, and classroom rules and consequences for the violations of those rules were not posted. A copy the December 17, 2009, memo was placed in Ms. Strong's personnel file. This memo was issued shortly before the Christmas vacation.

Ms. Strong responded by an email sent to Principal Murphy on Saturday, December 18, 2009, after Christmas vacation began. In that memo, Ms. Strong asked if she could get into her room over the Christmas vacation. Principal Murphy did not review that memo until he returned from Christmas vacation. Over the Christmas vacation, however, custodians were present and the school was open from 6:00 a.m. until 3:00 p.m. daily. (Charge 22.)

Ms. Strong testified that she "had no idea that the custodians were at the school over the winter break." This testimony was not credible.

26. On January 5, 2010, following the return from Christmas vacation, Principal Murphy visited Ms. Strong's classroom and observed that "none of the major concerns outlined in the 12/17/2009 memo have changed, nor the directives given to you addressed." He observed that the back wall continued to be blank and the writing that was posted was outdated, from early November 2009. (Charge 7.) A memo related to this visit was given to Ms. Strong and placed in her personnel file.

Ms. Strong admitted that the papers that were posted might have been a little late, but she took them down and posted new student work.

27. By memo dated January 26, 2010, Principal Murphy reminded Ms. Strong of the district's practice related to the posting of the Two-Part Objectives, advised her that she was expected to follow the district's procedure and reminded her that she was not exempt from following that procedure. (Charge 20.)

Ms. Strong testified that she posted the two part objectives on a whiteboard that was sitting on an easel between two tables, and that it was not in the framed area because placing the objectives there would take up too much room. Ms. Strong testified that she did not receive any memos advising her about the need to put the objectives in an area identified with blue tape. This testimony, once again, established that Ms. Strong had her own idea about how things in her classroom should be done.

28. On January 27, 2010, Principal Murphy responded to Ms. Strong's written claim that she could not bring her classroom into compliance over the Christmas vacation because Principal Murphy had not responded to the email she sent the day after Christmas vacation began. Principal Murphy advised Ms. Strong that the school had been open daily over the Christmas vacation. With regard to the posting of current student work, Principal Murphy advised, "Most teachers do not take down all the student work at the end of each month, but replace old work with current writing work as it's completed. The most recent work dated November 6, 2009, is not current. The boards continue to be unlabeled, several



blanks all year and support materials not up and modeled for students.” The memo was given to Ms. Strong and a copy was placed in her personnel file. (Charge 22.)

Ms. Strong defended on the basis that she had no idea the school was open during the Christmas vacation. In fact, the days and times the school was open was set forth in a document posted in the staff lounge. Ms. Strong’s testimony that she was unaware the campus was open to teachers over the Christmas vacation was not believable.

29. In a memo dated January 28, 2010, Vice Principal Romero responded to a request from Ms. Strong that he explain various matters. The memo set forth Vice Principal Romero’s observations. Vice Principal Romero stated that he visited Ms. Strong’s classroom weekly and that it was evident that Ms. Strong’s failure to comply with the most recent assistance plan was not a one-time incident, but was a “consistent pattern of not meeting the directives.” He recommended she diligently follow the assistance plan rather than “spending your time writing up all the se excuses.” He advised that Ms. Strong’s classroom was the only classroom that was “blank” during SCORE testing. He recommended that resources on the walls that might help students during testing be covered rather than taken down. (Charge 24.)

30. On February 3, 2010, Vice Principal Romero visited Ms. Strong’s room and observed that the room environment had improved since his last visit, and that there were two pieces of current writing posted as well as her objectives and resource/reference materials.

Vice Principal Romero also observed that the posted objectives did not match the objectives in the lesson plans, that only the reading comprehension objective was current, that the weekly lessons plans did not have accurate times for the subject matters being taught, that the weekly schedule for UA was an hour and should have been only 30 minutes, that it took more than five minutes to distribute a test because the tests were stapled, that students were off task during this period of time, that she was sharpening student pencils with a hand held pencil sharpener, and that she did not allow one student to finish a portion of the test. The memo recommended that she prepare test materials before giving the test and that she obtain a pencil sharpener from the office. (Charge 30.)

Ms. Strong testified that sometimes her posted objectives did not match what was being taught because things did not always go according to plan, that her teaching schedule was accurate, that she never heard of a 30 minute UA limitation and she needed more than 30 minutes because she was assigned “slow” students, that the school stapler had run out of staples and that was why the tests had not been stapled before they were handed out, that her students were testing throughout the testing period and were on task, and that she hates the sound of a pencil sharpener so it was less of a problem for her to sharpen pencils by hand.

#### Lesson Plans

31. All teachers at Monroe Elementary School were required to prepare and maintain detailed daily and weekly lesson plans in their classroom and to have two days of

emergency lesson plans on file in the office. The daily and weekly lesson plans were required to contain specific goals and objectives, outcomes, and instructional times. The daily and weekly lesson plans served to focus the classroom teacher on what was going to be taught that day or week and the strategies, techniques and manner in which instruction would take place. The daily lesson plans had to be sufficiently clear that they could be used by substitute teachers if a classroom teacher was ill or otherwise away from the classroom. A lesson plan outline was set forth in the Monroe Staff Handbook, as was other information about lesson plans. The staff handbook stated:

**“It is mandatory that all teachers have lesson plans prepared and in use.** Please leave them in a convenient place so that substitutes and other classroom observers will have access to them. It will help to have your daily schedule visible or posted in the room for substitutes and visitors.

A substitute folder must be available in each classroom. It should include a daily schedule, extra activities, yard duty schedule, and other helpful information.

**Emergency Substitute Plans must be on file in the office.”** (Original emphasis.)

32. The 2008-2009 Assistance Plans stated that in reviewing lesson plans in the 2007-2008 school year, Ms. Strong’s plans were not always adequate and that plans were prepared on a weekly, rather than on a daily, basis. The plans were difficult to follow, and necessary classroom materials were not always prepared in advanced or runoff. Ms. Strong was directed to follow the directives given to her by Assistant Principal Carmen Madrigal, and to develop daily and weekly lessons plans that listed instructional goals and objectives, student incomes and instructional time periods. The assistance plan stated that the Principal and Assistant Principal would review the plans and provide written feedback. A literacy coach was available on request to assist in the planning, as well as the district’s staff development department.

The Notice of Unsatisfactory Performance issued on December 14, 2009, stated, among other matters, that Ms. Strong failed to submit emergency lesson plans on or before September 23, 2009, as previously directed, that additional counseling was provided on September 29, 2009, concerning the absence of emergency lesson plans, that on October 20, 2009, Principal Murphy counseled Ms. Strong regarding her “failure to have lesson plans available for the second time in the last several week” and that this “requirement has been addressed in your assistance plan for the last two years,” that on October 22, 2009, Ms. Strong was again reminded to have adequate lesson plans, and that on October 29, 2009, the Assistant Principal counseled Ms. Strong regarding her timely delivery of substitute lesson plans and that staff should not be required to go to the parking lot to pick up her lesson plans.

It should have been clear to Ms. Strong on and after December 14, 2009, if not well before that date, that she was required to submit adequate and timely daily and weekly lessons plans and to have emergency lesson plans on file in the office.

33. On January 6, 2010, the first day back from Christmas vacation, Principal Murphy asked Ms. Strong to produce her daily and weekly lesson plans in accordance with

her assistance plan on two separate occasions during the school day. After school ended, Ms. Strong produced lessons plans for Monday, but not for the following Tuesday through Friday. The lesson plan for Monday was inadequate in that it included a 20 minute AR block even though that requirement had been eliminated in November 2009. Ms. Strong told Principal Murphy that she was not feeling well. Principal Murphy prepared a memo documenting this event. (Charge 6.)

Ms. Strong testified that a friend was ill so she did not turn her lesson plans in the morning of January 6 and did not prepare plans for any day other than Monday. She testified that she brought in the required lesson plans the following day.

34. On January 20, 2010, Principal Murphy requested that Ms. Strong turn in her lesson plans for January 19 through January 22. The lesson plans had no Math lesson. Ms. Strong attached a note stating that Ms. Dodrill had not given her a new Teacher Edition, presumably to support the absence of such plans. Principal Murphy issued a memo stating that the reason for the delay was related to Ms. Strong not turning in the older Teacher Edition until after Ms. Dodrill left for the day and that even without the new Teacher Edition the lesson was available online. Principal Murphy advised Ms. Strong that her plans should always include Math. He also observed that all other 2<sup>nd</sup> grade classes were using document cameras to teach Math, but that Ms. Strong's document camera had not even been set up. He reminded Ms. Strong that technology was a valuable tool and that she had been previously directed to use the document camera. A memo documented this directive. (Charge 14.)

Ms. Strong testified that she did not have a Teacher Edition available to prepare the Math lesson plan, that she was unable to access the Teacher Edition online, that she ultimately turned the lesson plan in, and that her failure to have the lesson plan resulted in absolutely no adverse impact on student learning.

35. On January 25, 2010, Principal Murphy responded to Ms. Strong's assertion that she did not have a second grade Math kit because she did not know she was required to turn in her existing Math kit to Ms. Dodrill. In fact, Ms. Dodrill provided the information necessary to provide the swap of one Math kit and Teacher Edition to all teachers two weeks before the deadline, that other teachers turned in their old Math kits for new ones before the deadline, and that Ms. Dodrill contacted Ms. Strong before Friday, January 22, and was waiting for Ms. Strong to return the Math kit. In a memo dated January 25, 2010, Principal Murphy told Ms. Strong that she should "have planned ahead and gathered up your materials over the two week period." (Charge 17.)

36. On January 26, 2010, Principal Murphy determined that Ms. Strong's lesson plans did not match the schedule that the 2<sup>nd</sup> grade team developed. More specifically, while the rest of the team's classes were doing HM (whole group reading) from 8:45 a.m. to 10:00 a.m., Ms. Strong's lesson plans stated her class was doing that from 8:50 a.m. to 9:40 a.m. Principal Murphy sent Ms. Strong a memo directing her to meet with the 2<sup>nd</sup> grade team leader and correct her class schedule so that it matched the schedule for other 2<sup>nd</sup> grade classes. (Charge 19.)

Ms. Strong sent a memo to the 2<sup>nd</sup> grade team leader on January 27 that stated, in part, “I was certain I had the most recent schedule, but maybe not.” Ms. Strong also defended on the basis that Mr. Murphy provided her and the other teachers with conflicting information. Her testimony in this regard was quite confusing.

37. Assistant Principal Romero reviewed Ms. Strong’s lesson plans for January 27, 2010. He was concerned because the plans were turned in late (despite the memos dated October 29, 2009, and December 1, 2009, because the plans Ms. Strong provided to the substitute covered only one-half of the day (Ms. Strong came into the class during lunch to prepare the remainder of the day’s plans, and those plans were delivered later that afternoon when class was in session), and the plans were difficult to read and that day’s library time was not included in them. A memo dated January 28, 2010, was directed Ms. Strong, advising her to review her assistance plan and to follow it. (Charge 23.)

In her testimony, Ms. Strong admitted that she prepared only the morning’s lesson plans. She denied that she disrupted the classroom when providing the afternoon’s lesson plans to the substitute, asserting that all other 2<sup>nd</sup> grade teachers attending the same in-service training as Ms. Strong that day were required to disrupt their classes to get a teacher’s manual for the afternoon session.

38. On February 18, 2010, Assistant Principal Romero advised Ms. Strong to adjust her weekly lesson plans in the following manner: to include the times for the pledge of allegiance, attendance, lunch count, sound spelling cards, focus wall and objectives; to schedule Physical Education for Tuesdays and Fridays consistent with the 2<sup>nd</sup> grade team schedule; to fill her UA time slots with lessons from the appropriate materials. (Charge 34.)

Ms. Strong sent Vice Principal Romero an email on February 23 which stated:

“As you know, I haven’t necessarily agreed with many of the memos I have been given. I do want to tell you that I am very sorry about the all day lesson plans on the eighteenth. If I told you all that happened that day you would not believe me. I should have started much earlier and made sure they were legible after I sent them. I now your day is terribly busy and I do feel bad that I made it more stressful.”

#### Parking Lot Duty

39. Monroe Elementary School has a very busy parking lot. Teachers are assigned to provide parking lot supervision at the end of the school day on a weekly rotating basis. Adequate supervision is critical to student safety.

40. On Monday, January 25, 2010, Ms. Strong did not show up for parking lot duty. On Tuesday, January 26, 2010, Ms. Strong was late to her parking lot duty assignment. On Thursday, January 28, a parent complained to Principal Murphy that no teacher was on duty in the parking lot. On January 29, 2010, Principal Murphy provided Ms. Strong with a memo regarding her failure to fulfill parking lot duty. (Charge 26.) On January 29, 2010, Ms. Strong was late again to her parking lot duty despite the memo issued earlier that day.

She was reminded that it was her responsibility to check the schedule and that tardiness was a safety issued. (Charge 27.)

Ms. Strong testified that she was unable to leave her students until the bell rang signaling the end of the school day. Ms. Strong testified that Principal Murphy had prohibited her from leaving her students in another teacher's care before the bell rang. This testimony was not as credible as Principal Murphy's testimony to the contrary. Ms. Strong also testified that parking lot duty conflicted with her after school tutoring responsibilities on Tuesdays and Thursdays.

Principal Murphy testified that he never told Ms. Strong that she could not have another teacher supervise her children before the school bell rang if she was scheduled for parking lot duty that day. This testimony was believable, particularly because of the importance of making sure that the parking lot area was supervised at the end of the school day. Principal Murphy also established that most other elementary school teachers met their parking lot duty assignment by having the children put on their backpacks and leave the classroom shortly before the bell rang and escorting the children to the parking lot where the teachers could carry out their parking lot duty assignment.

#### Other Charges

41. On January 7, 2010, as a result of concern about Ms. Strong's students' performance in Math, Principal Murphy directed Ms. Strong to meet with the district Math specialist, the grade level coach and the school's Title 1 Math coach. Ms. Strong was directed to submit a list of the steps she was going to take to ensure her students would score and the proficient or above level in Math. (Charge 9.)

42. On January 26, 2010, Principal Murphy provided Ms. Strong with a memo that directed her to meet with Roma McCravy to better understand the AR reading program because Ms. Strong's students in that program was a yearly concern. (Charge 21.)

43. On February 3, 2010, during an informal ELD observation, Assistant Principal Romero observed that Ms. Strong had not prepared for the day's lesson in that she failed to state the objective at the beginning of the lesson, spoke throughout most of the lesson, did not have sentence frames prepared for the lesson, borrowed a book from a student to read parts of the story, failed to provide the class with clear directions regarding what they were supposed to do, and failed to focus on function, form and vocabulary development. Before that observation, Ms. Strong had observed five modeled ELD lessons provided in her classroom. (Charge 31.)

Ms. Strong testified that the district had a new ELD program and that a mentor demonstrated for Ms. Strong what he had learned. According to Ms. Strong, the mentor began the instruction but failed to follow through with it and she was unable to observe the mentor for a full seven days. Ms. Strong said that when Vice Principal Romero conducted his informal observation, Ms. Strong was prepared to provide a lesson in "cause and effect," which had been a problem for the students, but she decided to engage in an ELD lesson to

demonstrate what she wanted to teach. She acknowledged that she was somewhat unprepared. Ms. Strong offered a letter from Pati DeRobles, an ELD staff development specialist, dated February 10, 2010, which stated that ELD planning had not been presented to the district's vice principals. That letter did not, as Ms. Strong suggested, support Ms. Strong's presentation on February 3, 2010, although it supported Ms. Strong's efforts to teach ELD.

44. On February 3, 2010, Principal Murphy sent a memo to Ms. Strong reminding her of the AR program's goal. When Principal Murphy visited her classroom to award bracelets to students who met their first goal, no student had 15 points even though the AR program had been in effect for about five months and Ms. Strong had been directed five weeks before to encourage her students to get at least one point per week. Her class average was 3.7 points after five months of school, and there were 11 students who had not yet reached two points. (Charge 32.)

Ms. Strong defended on the basis that she had reminded the students of the school goals, that she had asked for more computer lab time for testing purposes so that students could receive points but was told that she was already taking too much computer lab time, and that Principal Strong issued a memo dated January 7, 2010, which stated that the 20 minute AR time had been dropped in November. Once again, and despite the fact that the same rules and procedures were incumbent on all other 2<sup>nd</sup> grade teachers whose classes were subject to the same AR goals, Ms. Strong claimed confusion and that she was the victim of discrimination.

45. On February 23, 2010, after determining that Ms. Strong rarely, if ever, used classroom technology in the delivery of instruction, Principal Murphy once again reminded Ms. Strong to use her classroom technology daily and to use this technology for Back-to-School night. Every other staff member used such technology. The district had previously provided Ms. Strong with technology and access to individuals who knew how to use such technology. (Charge 36.)

Ms. Strong defended this charge by observing that she was on sick leave when the February 23, 2010, memo was issued and, for that reason, she did not provide a memo in response.

46. Ms. Strong was absent from employment on an extended basis on and after February 23, 2010. She did not respond to a February 26, 2010, memo related to her failure to call the office to report her sickness to the office and that she would not be reporting to work, she did not deliver lesson plans in a timely fashion. (Charges 39 and 40.)

#### *Other Matters*

47. Principal Murphy became increasingly concerned about the level of Ms. Strong's performance as an elementary school teacher in the three or four years before the Notice of Unsatisfactory Performance was filed. He kept reviewing the same things with her, providing her with assistance, but he did not observed significant improvement in the

areas of tardiness in reporting to work, having lesson plans prepared in a timely fashion, and having an appropriate room environment. Ms. Strong did not appear to be fully involved with the 2<sup>nd</sup> grade team or to have appropriate interaction with district staff who were in a position to assist her in improving her teaching skills. Principal Murphy believed these deficiencies had an adverse impact on the education of students in her classroom, but were correctable. This opinion appeared to change over time. Ms. Strong's failure to provide services at a level similar to that being provided by other elementary school teachers and the efforts to improve her performance in the classroom resulted in a tremendous expenditure of Principal Murphy and Vice Principal Romero's time and effort, as did the documentation of her unsatisfactory performance. There was a lot of frustration as the result of Ms. Strong's resistance to change, particularly with the office staff. Morale was adversely affected.

Principal Murphy was an impressive witness who answered questions directly, did not use cross-examination as an opportunity to promote his direct testimony, and exhibited no bias. He accurately documented events that he personally observed and that were made known to him by persons under a duty to report. His testimony was believable.

48. Vice Principal Romero's observations concerning Ms. Strong's inability or unwillingness to change her unsatisfactory behavior in the areas of tardiness, lesson plans, and classroom environment generally echoed Principal Murphy's comments about those matters. His comment to the effect that he was "shocked and appalled" about Ms. Strong's classroom performance on February 3, 2010, during his informal ELD observation (Factual Finding 43) was strongly stated, but that comment did not demonstrate the existence of a bias to the extent that his other testimony should not be credited; rather he was very taken aback by what he observed in the classroom.

49. Ms. Strong provided testimony in defense or in mitigation of virtually every charge. She admitted very little wrongdoing, in some instances asserting that she was often given unclear and conflicting direction: for example, Ms. Strong claimed she was unaware that the 2<sup>nd</sup> grade ran laps after the morning recess and she thought that might constitute "free play," which was prohibited; she was unable to access the computers in the library as often as needed to enable her students to meet the school's AR goals; and she was never made aware that she did not have discretion to not take her class to the library at scheduled times. In other instances, Ms. Strong criticized the level of support that was provided: for example, Lillian Hernandez, a translator, only had "a little time" to assist her during a parent teacher conference; Ms. Strong was not informed by the 2<sup>nd</sup> grade teaching team when she was to give the Benchmark 2 Math test; there was too little room on the whiteboard at the front of her classroom to put up the two part objectives; Ms. Strong was not timely provided with a document camera or with training on how to use it; the librarian may have been the one who lost a student's books that Ms. Strong was supposed to return; the 2<sup>nd</sup> grade team did not provide Ms. Strong with its schedule; Ms. Strong was not aware that the school was open over the Christmas vacation because Principal Murphy did not respond to the email she sent after Christmas vacation began and because any notice related to the school being open over the Christmas vacation was not conspicuously posted in the staff lounge; Kristen Sorensen, the ELD teacher, did not complete the ELD modeling demonstrations as planned and did not observe Ms. Strong's ELD performance as required; there was only one working computer in

her classroom; she thought her ex-husband called the school to report that she would be absent from work on and after February 23, 2010. In other instances, Ms. Strong minimized the misconduct at issue: she was only a few minutes late in reporting to work; her tardiness in reporting to work did not have a significant negative impact on the learning process; her Benchmark 2 Math test scores were ultimately scanned in a timely fashion and any delay in testing did not result in any problems; Ms. Strong managed to get most lesson plans to the school by the start of the school day and/or during the day whenever a substitute teacher was required to take over her classroom and there was no impact on learning; Ms. Strong's failure to include in lesson plans the need to recite the Pledge of Allegiance, to take lunch count, to take attendance and other matters were insignificant omissions because substitute teachers did not have to be reminded of what should occur to begin the school day.

Ms. Strong's testimony on contested issues was not as believable as the testimony to the contrary. The memos and documents Ms. Strong offered to corroborate her testimony often did not support her testimony but, in fact, raised questions about her testimony. In some memos, Ms. Strong specifically represented to her colleagues that she was confused about what she was supposed to be doing and may have forgotten. With regard to other documentation – for example, the results of the Benchmark 2 Math exam – Ms. Strong could not explain why her documentation differed from the district's documentation prepared immediately after testing was administered. It was highly significant that no testimony was provided by any percipient witness – including a colleague, an aide, or a parent – that corroborated any of Ms. Strong's testimony. The only evidence provided by any person other than Ms. Strong to support her claim that her performance was satisfactory was the unsigned letter referred to in footnote 2.

50. No expert testimony was offered to support any assertion that the level of assistance that was offered or was provided to Ms. Strong by her colleagues, district staff, or site supervisors was inadequate or inappropriate.

#### *Attempts at Remediation/Progressive Discipline*

51. The evaluation report for the period May 31, 2006 through May 11, 2009, stated that Ms. Strong required improvement in most every area of performance. The evaluation specifically mentioned the need to develop and provide lesson plans, the need to provide a more effective learning environment, the need to better organize subject matter for student learning, the need to better plan instruction, the need to arrive to work on time daily. Ms. Strong provided a response in which she stated, "I do not agree with most of the content."

On December 14, 2009, Dr. Rick Miller, RUSD's Superintendent, signed a Notice of Unsatisfactory Performance that was served on Ms. Strong. The December 2009 notice set forth examples of Ms. Strong's unsatisfactory performance in several areas including reporting late to work, not providing an effective learning environment, and not developing and providing lesson plans in a timely manner. The notice stated that it was provided to enable Ms. Strong to correct and remedy the unsatisfactory performance and it warned her that if the conduct continued uncorrected, the RUSD might impose more serious discipline including dismissal.



Ms. Strong was offered the opportunity to participate in the California Teachers Association's seven-day Survive and Thrive Mini-Sabbatical at RUSD's expense in February 2010. The Survive and Thrive program provided educators who might be dealing with professional or personal issues with the opportunity to renew their professional perspective and to gain valuable in-depth training. Ms. Strong declined the opportunity, stating that she did not want to miss time from work. Kathleen Sanchez, RUSD's Assistant Superintendent, confirmed that RUSD did not harbor negative feelings about teacher's who attended the CTA's Survive and Thrive sabbatical and, indeed, believed it sufficiently valuable that they would fund Ms. Strong's attendance.

Between December 14, 2009, and March 15, 2010, Principal Murphy and Vice Principal Romero continued to have frequent contact with Ms. Strong and her colleagues in an effort to determine if Ms. Strong was in the process of correcting and remedying her unsatisfactory performance, particularly in the areas of tardiness, providing an effective learning environment, and providing adequate lesson plans in a timely manner. Appropriate referrals for assistance were made by these site supervisors.

On March 16, 2010, Assistant Superintendent Kathleen Sanchez, Ms. Strong, and the President of the Riverside Unified School District Teacher's Association met to discuss the issues raised in the Notice of Unsatisfactory Performance. Ms. Strong conceded at that meeting that not attending the CTA Survive and Thrive mini-sabbatical was a mistake.

On April 14, 2010, Assistant Superintendent Kathleen Sanchez signed the Notice of Intent to Immediately Suspend Without Pay<sup>3</sup> and the Intent to Dismiss.

### *The Contentions*

52. Complainant argued that the evidence established that Ms. Strong engaged in a persistent refusal to obey school rules and demonstrated unsatisfactory performance. This was not, according to complainant, based upon evidence that arose out of any unproven vendetta but was, instead, the result of Ms. Strong's own misconduct. Complainant argued that Ms. Strong was given ample opportunity to correct and remediate her unsatisfactory performance, but that she established that she was unwilling or unable to do so. Complainant argued that retaining Ms. Strong under these circumstances would send an improper message to other RUSD employees.

53. Respondent argued that she had served RUSD as an elementary school teacher for more than 25 years without so much as an informal reprimand until a couple of years ago, when Principal Murphy and Vice Principal Romero decided to rid RUSD of Ms. Strong's services for reasons best known to themselves and wholly unrelated to her performance.

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<sup>3</sup> Whether it was appropriate for RUSD to issue a notice of intent to immediately suspend Ms. Strong without pay is not a matter to be decided by the Commission on Professional Competence in this dismissal proceeding.

Respondent argued that while some of the charges set forth in the Notice of Intent to Dismiss might be true, any misconduct had to be viewed in the light of Ms. Strong being worn down by the persistent criticism heaped on her by her site administrators and their high level of scrutiny. Based on the relatively minor deficiencies that were established, respondent argued that an outright dismissal was far too harsh a sanction.

### *Evaluation*

54. Ms. Strong had a history of failing to comply with reasonable expectations related to her employment as an elementary school teacher that dated back to at least the 2006-2007 school year. From the outset, Ms. Strong was directed to improve her performance in several areas including tardiness, establishing and maintain an appropriate classroom environment, and developing and providing adequate lesson plans. While Ms. Strong testified she sought to meet RUSD's performance objectives and did not intend to be defiant, her pattern of conduct belied that representation. Ms. Strong expressed her defiance to RUSD and to her site administrators through procrastination, forgetfulness, and inefficiency. She did not do what she was being paid to do. Ms. Strong blamed others, complained about the lack of support she received, and resisted the reasonable suggestions and offers of assistance from others.

In light of Ms. Strong's long history of unsatisfactory performance and the specific instances of unsatisfactory performance that occurred after she was placed on notice that similar conduct might result in her dismissal, Ms. Strong persisted in doing things her own way. She was late to work, she was tardy in submitting her lesson plans, she overlooked her shortcomings and blamed others. Given this pattern of conduct, it is unlikely that Ms. Strong will be able to change. For this reason, the majority reluctantly concludes that Ms. Strong's outright dismissal is the only reasonable disciplinary result.

### *Jurisdictional Matters*

55. On August 30, 2010, RUSD nominated Jennifer K. Morgan, an Assistant Principal with the Corona Norco Unified School District, to serve on the Commission. On August 31, 2010, Ms. Strong nominated Shawn O'Rafferty, an elementary school teacher employed by the Alvord Unified School District, to serve on the Commission. Neither nominee was related to Ms. Strong, neither was employed by RUSD, each held a multiple subject teaching credential and each had served at least five of the past ten years as a elementary school teacher. Each nominee was qualified to serve on the Commission on Professional Competence under Education Code section 44944, subdivision (b).

On September 8, 2010, the record in the administrative proceeding was opened. The parties stipulated that all pre-hearing jurisdictional requirements were met. Opening statements were given. On September 8 and 9, 2010, sworn testimony was given and documentary evidence was received. On September 9, 2010, closing arguments were given, the record was closed, the matter was submitted, and the met in closed session to determine the matter.

## LEGAL CONCLUSIONS

### *Burden and Standard of Proof*

1. The standard of proof in a teacher dismissal proceeding is a preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1039-1040.)

A party required to prove something by a preponderance of the evidence need prove only that it is more likely to be true than not true. A preponderance of the evidence means that the evidence on one side outweighs, preponderates over, is more than, the evidence on the other side, not necessarily in number of witnesses or quantity, but in its effect on those to whom it is addressed. In other words, the term refers to evidence that has more convincing force than that opposed to it. (*People ex rel. Brown v. Tri-Union Seafoods, LLC* (2009) 171 Cal.App.4th 1549, 1567.)

### *Due Process under the Education Code*

2. A permanent employee may be dismissed for cause only after a dismissal hearing. (Ed. Code, §§ 44932, 44934, and 44944.) When a school board recommends dismissal for cause, a Commission on Professional Competence may only vote for or against the dismissal; the Commission on Professional Competence may not dispose of a charge seeking dismissal by imposing probation or an alternative sanction. (Ed. Code, § 44944, subds. (c)(1)-(3).)

Hearings to determine if permanent public school teachers should be dismissed are held before a Commission on Professional Competence – a three-member administrative tribunal consisting of one credentialed teacher chosen by the school board, a second credentialed teacher chosen by the teacher facing dismissal, and an administrative law judge of the Office of Administrative Hearings who serves as chairperson and a voting member of the commission and who is responsible for assuring that the legal rights of the parties are protected at the hearing. The Commission’s decision is deemed to be the final decision of the district’s governing board. (*California Teachers Ass’n v. State of California* (1999) 20 Cal.4th 327, 331.) The Commission has broad discretion to determine the issues before it, including whether dismissal is the appropriate sanction. (*Ibid.*, at p. 343.)

### *Relevant Statutory Authority*

3. As is relevant to this dismissal proceeding, Education Code section 44932 provides in part:

“(a) No permanent employee shall be dismissed except for one or more of the following causes:

...

- (4) Unsatisfactory performance.

...

- (7) 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 him or her. . . .”

*Persistent Violation or Refusal to Obey School Laws or Regulations*

4. No state law or regulations were cited in the statement of charges to support the allegation that Ms. Strong 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 the governing board of the Riverside Unified School District. Official notice of such laws was not requested or taken. Evidence of any school laws or duly adopted regulations that were claimed to be violated was not provided.

The allegation that Ms. Strong violated Education Code section 44932, subdivision (a)(7), was not established.

*Unsatisfactory Performance*

5. Education Code section 44938 provides in part:

“(b) The governing board of any school district shall not act upon any charges of unsatisfactory performance unless it acts in accordance with the provisions of paragraph (1) or (2):

(1) At least 90 calendar days prior to the date of the filing, the board or its authorized representative has given the employee against whom the charge is filed, written notice of the unsatisfactory performance, specifying the nature thereof with such specific instances of behavior and with such particularity as to furnish the employee an opportunity to correct his or her faults and overcome the grounds for the charge. The written notice shall include the evaluation made pursuant to Article 11 (commencing with Section 44660) of Chapter 3, if applicable to the employee.

...

(c) ‘Unsatisfactory performance’ as used in this section means, and refers only to, the unsatisfactory performance particularly specified as a cause for dismissal in Section 44932 and does not include any other cause for dismissal specified in Section 44932. . . .”

The 1995 amendment to Education Code section 44932, subdivision (a)(4), substituted the term “unsatisfactory performance” for the word “incompetency.” (Stats. 1995, c. 392, A.B. 29; *Achene v. Pierce Joint Unified School Dist.* (2009) 176 Cal.App.4th 757, 767.) In an article entitled “Education; Grounds for Dismissal of a Permanent Employee” appearing in the Winter, 1966 *Pacific Law Journal*, Laura J. Roopenian concluded:

“Chapter 392 was enacted in order to enable school district governing boards to dismiss teachers based on a determination of unsatisfactory performance. As noted by the author of Chapter 392, the incompetence standard has been problematic for school districts, their employees, and the courts. The enactment of Chapter 392 simply changes the law to what it was meant to be originally. Although evaluating a teacher’s performance involves the issue of competency, performance is intended to be a broader term and whether a teacher is competent or not is to be considered a small subsection of satisfactory performance.”

The purpose of the Education Code section 44938 is to give a teacher the opportunity to correct his or her conduct and thereby prevent discipline. (*Crowl v. Commission On Professional Competence* (1990) 225 Cal.App.3d 334, 350.) The rule for computing the time excludes the first day and includes the last. (*Rapp v. Los Angeles City School Dist.* (1935) 5 Cal.App.2d 342, 343-344.) However, as noted in *Blake v. Commission on Professional Competence* (1989) 212 Cal.App.3d 513, the 90 day opportunity to correct behavior is an evidentiary consideration. The decision in *Blake*, where a teacher was unable to demonstrate remediation over a full period of 90 days due to an absence from employment during that 90 days as a result of injury, is instructive.<sup>4</sup> In *Blake*, the appellate court concluded at p. 517:

“Viewed in this context, we conclude that in contrast with the notice requirement, the portion of section 44938 which pertains to the opportunity to correct behavior is not jurisdictional but merely an evidentiary consideration. There is no express language which states that the governing board must, in addition to providing notice of specific charges, provide the teacher with more than an opportunity to remedy objectionable

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<sup>4</sup> Blake was employed as an English and drama teacher from September 1972 until her dismissal in 1987. She injured her back in October 1984. As a result of the injury Blake did not work from February 1, 1985, through the remainder of the 1984-1985 school year.

On February 10, 1985, Blake received a section 44938 notice of unprofessional conduct which cited 44 instances of unacceptable behavior. The notice described Blake’s chronic tardiness, use of rude and abusive language with students and colleagues, and failure to maintain appropriate attendance and academic records. On May 20, 1985, the district served Blake with a notice of intent to dismiss.

Blake argued that she was unable to correct the alleged faults following her receipt of the notice of unprofessional conduct because of her extended absence from the classroom in the 90 days following service of the notice due to the back injury and illness. This argument was rejected.

conduct before it proceeds to act upon that conduct. In the context of this carefully drafted and heavily lobbied legislation, we must assume that had the Legislature intended the ‘opportunity to overcome his or her faults and overcome the grounds for such charge’ to be jurisdictional, it would have said so.”

6. The precise meaning of the phrase “unsatisfactory performance” as a cause for dismissal under Education Code section 44932, subdivision (a)(4) has not yet been provided by an appellate court. Whether the *Morrison* factors<sup>5</sup> apply to “unsatisfactory performance” is not entirely clear. If so, only the pertinent *Morrison* factors need to be analyzed. (*Broney v. California Com. on Teacher Credentialing* (2010) 184 Cal.App.4th 462, 476.)

### *The Morrison Factors*

7. In this matter, the *Morrison* criteria are applied as follows: (1) given Ms. Strong’s history and resistance to change, there is a very strong likelihood of recurrence of the unsatisfactory performance; (2) aggravating circumstances involved the long period of time that Ms. Strong provided unsatisfactory performance after being put on notice and her refusal to seek assistance from others to remediate her performance, while extenuating circumstances involved Ms. Strong’s chronic health problems and the relatively minor nature of some of the disciplinary charges; (3) no evidence was established concerning any notoriety or publicity; (4) Ms. Strong’s unsatisfactory performance impaired teacher-student relationships; (5) Ms. Strong’s misconduct disrupted the educational process; (6) Ms. Strong’s unsatisfactory performance was not motivated by a desire to help students learn, but related to her wanting to do things her own way; and (7) the misconduct in question was not

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<sup>5</sup> *Morrison v. State Board of Education* (1969) 1 Cal.3d 214, held that where charges of unprofessional conduct are raised in a teacher dismissal case, the applicable standard is whether the individual is fit to teach. The term “unprofessional conduct” was too vague, standing alone, and had to be given context by reference to fitness for the performance of the occupation. The California Supreme Court delineated the following factors that should be considered in determining fitness to teach: (1) Likelihood of recurrence of the questioned conduct; (2) the extenuating or aggravating circumstances, if any; (3) the effect of notoriety and publicity; (4) impairment of teacher-student relationships; (5) disruption of educational process; (6) motive; (7) proximity or remoteness in time of conduct. (*Bassett Unified School Dist. v. Commission On Professional Competence* (1988) 201 Cal.App.3d 1444, 1453.)

In addition to teacher dismissal cases alleging unprofessional conduct as a basis for dismissal, the *Morrison* factors must be applied in cases involving an allegation of evident unfitness to teach (*Woodland Joint Unified School District v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1445), and in cases involving an allegation of dishonesty. (*Bassett Unified School Dist. v. Commission On Professional Competence* (1988) 201 Cal.App.3d 1444, 1453.) However, the allegation of “incompetence” did not require application of the *Morrison* factors. (*Perez v. Commission On Professional Competence* (1983) 149 Cal.App.3d 1167, 1175-1176.)

remote in time but was ongoing and recent. Based upon the application of the *Morrison* factors, it is concluded that Ms. Strong is unfit to teach.

*Cause Exists to Dismiss Ms. Strong*

8. A preponderance of the evidence did not establish that cause exists under Education Code section 44932, subdivision (a)(7) to dismiss Lenore Strong from her employment with the Riverside Unified School District for the violation of the state school laws or the reasonable regulations prescribed for the government of the public schools by the State Board of Education or the governing board of the Riverside Unified School District.

This conclusion is based on the Factual Findings and the Legal Conclusions herein.

9. A preponderance of the evidence established cause under Education Code section 44932, subdivision (a)(4) to dismiss Lenore Strong from her employment with the Riverside Unified School District on the grounds of unsatisfactory performance. Ms. Strong's history of failing to comply with reasonable expectations related to her employment as an elementary school teacher related her tardiness, her failure to establish and maintain an appropriate classroom environment, and her failure to develop and provide adequate lesson plans was established. Ms. Strong's unsatisfactory performance was characterized by procrastination, forgetfulness, inefficiency, blaming others for her shortcomings, and an unwillingness or inability to meet reasonable performance standards incumbent upon all elementary school teachers. Ms. Strong was given the opportunity to correct her deficiencies but did not do so. She is unfit to teach. On this basis, the sanction of dismissal is determined to be appropriate.

This conclusion is based on the Factual Findings and the Legal Conclusions herein.

## DISPOSITION

The Accusation and Statement of Charges are sustained as reflected in the factual findings and legal conclusions set forth herein. Ms. Strong is dismissed from her employment with the Riverside Unified School District.

DATED: \_\_\_\_\_

\_\_\_\_\_  
JAMES AHLER  
Administrative Law Judge  
Office of Administrative Hearings

DATED: \_\_\_\_\_

\_\_\_\_\_  
JENNIFER MORGAN  
Assistant Vice Principal  
Corona Norco Unified School District

## DISSENT

I believe that the dismissal of Ms. Strong is far too harsh a sanction.

## FACTUAL FINDINGS

1. Respondent Ms. Strong (respondent or Linda Strong) is a permanent certificated veteran teacher with over twenty-five years of teaching experience. She most recently taught at Monroe Elementary School in Riverside, California.

2. Monroe Elementary School is a Title 1-funded public school that provides educational services to students, kindergarten through sixth grade. Robert Murphy is Monroe's Principal. Ulises Romero was Monroe's Assistant Principal during the 2009-2010 school year. Ms. Kathryn Buttaccio is a District Math Coach, or peer teacher. Ms. Strong has served under Principal Murphy on two school sites, most recently at Monroe Elementary, and for a period of approximately seven years.



Monroe also has an Accelerated Reader (AR) Program to assist students in reading. There are a couple of computers in each classroom and a computer lab near the school library.

Curriculum pacing grades are created by district administration, not by the teachers.

Ms. Strong was on two grade level teams at the beginning of the 2009-2010 school year because she was assigned a combination class. The staff at Monroe Elementary School has grade level collaboration meetings every other Thursday. When Ms. Strong was assigned a combination class (two grades in one classroom), she was expected to be at two meetings at one time (one meeting for each grade). Sometime during the first trimester of school, the combination class was dissolved and Ms. Strong was assigned to teach only one grade and therefore would only have one grade level meeting to attend every other week.

3. On September 19, 2008, Mr. Murphy sent a memo to Ms. Strong that described an assistance plan for the 2008-2009 academic school year. The memo stated that Ms. Strong was absent from work 158 days in the preceding three school years and that she was “absent 21 days and late to work 56 times” in the 2007-2008 school year. However, there was no evidence that those absences were not necessary. Neither the governing board, nor the school district, nor respondent gave reasons for her many absences or contended that they were improper leaves.

A memo dated September 19, 2008, directed Ms. Strong to sign in and sign out each day by using index cards and to call the principal’s secretary if she was going to be late. Respondent testified that she was the only employee with such requirements at the school.

4. On December 14, 2009, Dr. Rick Miller, Superintendent, signed a Notice of Unsatisfactory Performance that was later served on Ms. Strong. The notice stated:

“You are hereby directed to improve the level of your performance.

Specially, you are directed to take the following steps:

- (a) Immediately improve your attendance. It is an essential function of your position to be at work on time for your entire workday. If you are unable to do so, you must follow the attendance procedures.
- (b) Immediately improve your classroom environment as previously directed.
- (c) Submit all lesson plans in a timely manner.
- (d) Immediately release your students in a timely manner for their lunch.
- (e) Attend scheduled meetings with the requested documents prepared to discuss the subject of the meetings.

(f) Submit requested data no later than the due date.

(g) Follow the directives of your Principal and Assistant Principal.”

The notice further stated:

“The purpose of this Notice is to enable you to correct and remedy the unsatisfactory performance shown and thus avoid further disciplinary action by the District. If this conduct continues uncorrected, the District may impose more serious discipline, including dismissal.”

5. As stated by the majority in its factual findings:

“On April 14, 2010, complainant Kathleen Sanchez, Assistant Superintendent, Human Resources, Riverside Unified School District, Riverside County, California, signed the Notice of Intent to Immediately Suspend Without Pay; Intent to Dismiss; and Statement of Charges.

The statement set forth two grounds for disciplinary action: (1) 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 the governing board (Education Code section 44932, subdivision (a)(7); and (2) unsatisfactory performance (Education Code section 44932, subdivision (a)(4). Forty factual allegations (charges) were set forth in the notice to support Ms. Strong’s dismissal from employment. The statement advised Ms. Strong of her right to request a hearing.

The statement of charges did not set forth any of the school laws of California, the State Board of Education regulations, or the Riverside Unified School District regulations that Ms. Strong allegedly violated. No laws or regulations were received in evidence, and there was no testimony that Ms. Strong violated any school laws or regulations. It was not established that the Monroe Elementary School Staff Handbook embodied regulations enacted by the State Board of Education or the Riverside Unified School District.

The commission unanimously finds that the allegation that Ms. Strong 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 the governing board was not supported by the evidence and that the charge should be dismissed. This finding does not, however, compel the conclusion that Ms. Strong’s performance as a classroom teacher was satisfactory, as that is an entirely separate issue.”

6. The majority found that Ms. Strong demonstrated unsatisfactory performance. The majority’s three major areas of concern were identified in the “September 2008 and October 2009 improvement plans: Ms. Strong’s tardiness in arriving late to work and not

meeting other professional responsibilities in a timely fashion, her failure to maintain an appropriate classroom environment, and her failure to maintain adequate lesson plans.”

#### Arriving Late to Work:

Ms. Strong was directed in the Notice of Unsatisfactory Performance dated December 14, 2009, to “Immediately improve your attendance. It is an essential function of your position to be at work on time for your entire workday. If you are unable to do so, you must follow the attendance procedures.”

Prior to that Notice, during the 2009-2010 school year, Ms. Strong was absent fourteen days and was tardy forty-one times, with seventeen of those tardies over five minutes late. After being served with the Notice of Unsatisfactory Performance, on or after December 14, 2009, Ms. Strong was documented late to work only eight times. All of those tardies were five minutes or less late. The Notice of Unsatisfactory Performance stated, “You are hereby directed to improve the level of your performance.” With regard to her attendance, Ms. Strong did improve her absent and tardy performance.

There was evidence of an absence on February 18, 2010, but no attendance log documented this absence. Testimony suggested that shortly after the February 18, 2010, absence, Ms. Strong left her employment on long-term sick leave. The school district did not reference this leave as inappropriate. On or after April 14, 2010, Ms. Strong was suspended without pay pending her dismissal hearing.

Educators are considered a “professional exemption” to the Fair Labor Standards Act. Therefore, they are not eligible to receive over-time pay. However, the same classification of “professional” is addressed on salary deductions and job hours. Riverside Unified School District is not going to pay Ms. Strong or any other teacher for their countless hours worked outside their seven and one-half hour work day, but they now want to dismiss Ms. Strong for cause for being late eight days. All eight tardies were five minutes or less. This assertion is too far reaching because hours of attendance for professional staff vary with workload, timing of activities and responsibilities, etc. If a teacher is late for classroom hours one could call that unprofessional conduct but being five minutes late to log into the school office does not rise to the level of unprofessional conduct and tardiness is, in fact, customary in every education setting. There was no proof that any tardiness noted interrupted the education of students.

#### Classroom Environment

There was evidence that suggested that as early as 2008 Ms. Strong did not meet the District’s requirements for her classroom environment. As stated by the majority, the following was required at Monroe Elementary School:

“An appropriate classroom environment included the posting of at least two pieces of current student writing, at least two pieces of current Math, examples of student work covering the Science and Social Studies assignments currently being taught, a

Language Arts Focus Wall that related to the subject currently being taught, a daily schedule, and classroom rules and consequences for the violations of those rules. In addition, all teachers within the district were required to post Two-Part Objectives in the classroom. At Monroe Elementary School, it was the custom for teachers to post their objectives on a whiteboard at the front of the classroom in the same area in all classrooms.”

In Ms. Strong’s 2009 evaluation, Principal Murphy indicated that Ms. Strong needed to improve her classroom environment. He also mentioned that “Ms. Strong does post her Sound / Spelling Cards, Two-Part Objectives and maintains a Language Arts Focus Wall.” This quote demonstrates some compliance with district requirements. Mr. Murphy further suggested in the “Overall Performance Statement” of Ms. Strong’s evaluation that “There has been improvement in her ... classroom environment.”

The California Standards for the Teaching Profession (referenced in Ms. Strong’s May 2009 teacher’s evaluation,) declares that a teacher should “create a physical environment that engages all students.” The evidence, photos included, showed that Ms. Strong’s physical environment engaged students, but it did not meet with the district’s requirement. This deficiency alone would not be enough to dismiss a teacher for cause.

The Notice of Unsatisfactory Performance directed Ms. Strong to “immediately improve your classroom environment as previously directed.” After that directive, Ms. Strong attempted to improve her classroom environment. This effort was evidenced in a memo from Assistant Principal Romero dated February 3, 2010. In that memo, he wrote, “In stopping by this morning, I noticed your room environment has improved since my last walk through. You now have two pieces of current writing up and your objectives and resource/reference materials are posted as well.” Prior to that memo, Ms. Strong received an email dated January 21, 2010 from Kathryn Buttaccio, one of the district’s Math coaches (or peer teachers). The email stated, “During my visits I always: look for great things (☺).” The email then referenced “☺ classroom environment.” The District directed Ms. Strong to “improve,” and she did. The principal and assistant principal gave her additional suggestions that she could not implement because she left school on sick leave and then was suspended without pay.

### Lesson Plans

There was evidence that suggested that as early as 2008 Ms. Strong needed assistance in meeting the school’s expectations for her lesson plans. Ms. Strong was directed to turn in her weekly lesson plans to Principal Murphy every Monday. In Ms. Strong’s 2009 teacher evaluation, Mr. Murphy stated, “There has been improvement in her lesson planning and design.” The Notice of Unsatisfactory Performance directed Ms. Strong to “submit all lesson plans in a timely manner.”

There was improvement in lesson plans after the Notice of Unsatisfactory performance. Assistant Principal Romero wrote a memo on February 18, 2010, that stated, “I noted you are now closer to the Second Grade Team’s schedule. Your Plans do meet

some of the criteria in your Assistance Plan as they have an objective with student outcome(s).”

Seven of the forty counts against Ms. Strong involved lesson plan issues. On Monday January 4, 2010, Ms. Strong only submitted one day’s lesson plans, not weekly plans (Count Six). After turning in her Math teacher’s edition to the library (as directed) on Friday January 16, 2010, Ms. Strong had no formal Math lessons for January 19<sup>th</sup> -22<sup>nd</sup>, 2010 (Count Fourteen). On January 26, 2010, Ms. Strong was directed to change her times in her lesson plans to match second grade (Count Nineteen). On February 1, 2010 Ms. Strong was directed to further modify PE times and Universal Access times to match the second grade team (Count Twenty-Eight). Count Thirty-Four, suggested that instead of writing “opening” on Ms. Strong’s lesson plans, she should write “pledge,” “lunch count” and “attendance.”

The aforementioned actions do not show unsatisfactory performance; in fact, these problems are quite common. The pettiness of the counts mentioned above indicated that Ms. Strong was subjected to scrutiny far beyond that received by normal educators. No evidence established that Ms Strong’s conduct differed from the normal and ordinary conduct of other teachers of her grade level relative to these petty issues of what item was listed on the board and in what order. Rather, the record clearly showed that Ms. Strong was singled out and targeted for review beyond the scope of normal and ordinary expectations.

There are three counts against Ms. Strong involving lesson plans that are not common to other teachers: Counts Twenty-Three, Thirty-Five, and Thirty-Seven. Count Twenty-Three suggests that Ms. Strong wrote her sub lessons in sections and delivered them throughout the day on January 27, 2010. Count Thirty-Five describes sub plans for February 18, 2008, that arrived 15 minutes after instruction was to begin and that the plans were difficult to read. Count Thirty-Seven refers to sub lesson plans for February 23, 2010, that arrived in sections and were delivered 20 minutes after instruction was to begin. These offenses were not professional, but considered by themselves, the offenses do not warrant dismissing Ms. Strong from employment. Ms. Strong testified that Principal Murphy had thrown away two days of emergency sub plans that had been used for only a couple hours earlier in the year. If those plans had not been thrown away, they could have been used for the missing lesson plans. An objective observer might conclude that after the district decided to dismiss Ms. Strong, a sloppy and petty review of innocuous items occurred and were used to establish unsatisfactory performance. There may have been unprofessional conduct at points in Ms. Strong’s service to the district, but the district failed to build a case to support such a charge, relying instead on normal and ordinary activities and deficiencies that could occur in the performance of any employee. Requiring perfection when evaluating an employees’ performance over a short period of time does not take the place of strategic evaluation and review. The district failed to adequately review, evaluate, and document Ms. Strong’s unprofessional conduct if, in fact, unprofessional conduct has occurred.

7. The progressive discipline in this case started appropriately and ended too abruptly. In 2008-2009, Ms. Strong was given an Assistance Plan. The plan outlined three areas of need: attendance, classroom environment, and lesson plans. In May of 2009, Ms. Strong was given a negative teaching evaluation. However, the time requirements to support

a negative evaluation were not followed by her principal. In that evaluation, Ms. Strong was given “RI” (“Requires Improvement”) in many of the standards for the teaching profession. Ms. Strong was also given “DN” (“Does Not Meet Standard”) in four subsections of Standard VI (Develop As A Personal Educator). Ms. Strong’s overall performance was “Requires Improvement – Assistance Plan Required.”

In 2009-2010, Ms. Strong was given another Assistance Plan that was nearly identical to the previous year’s plan. During the year, both the principal and assistant principal started putting all of their directives and actions in writing to build a record. The administrators’ idea of assistance seemed to be constant directives. There is no proof that they helped support Ms. Strong or directed others to support her in any other way. They did direct Ms. Strong to go get assistance, but they did not do it themselves.

On December 7, 2010, the Riverside Board of Education discussed charges against Ms. Strong and issued the Notice of Unsatisfactory Performance on December 14, 2010. Pursuant to the Riverside Unified School District’s evaluation template, teachers who do not meet the standards are referred to PAR. The Collective Bargaining Agreement for Riverside Unified School District (RUSD) and the Riverside City Teacher’s Association lists PAR as the “Peer Assistance Review.” The RUSD did not submit the entire contract into evidence, so only the table of contents can be referenced in this matter. However, it is generally understood that PAR is a step to complete prior to dismissal.

Sometime after December 14, 2010, the RUSD offered Ms. Strong the opportunity to participate in “CTA’s Survive and Thrive,” a mini sabbatical program for burnt out teachers. There is no written proof of this offer, but it was stipulated to during testimonies. Ms. Strong declined the offer to attend because it would mean more absences, which she was directed to avoid.

Between December 14, 2009, and March 15, 2010, Principal Murphy and Assistant Principal Romero documented nearly every interaction they had with Ms. Strong. Ms. Strong said she felt singled out, noting that every interaction with the administration led to a disciplinary note being placed in her personnel file. Mr. Romero admitted on cross examination, when responding to a question regarding Ms. Strong not changing a report card grade, that if she had changed the grade and the next conferencing parent complained, he would have written her up for that too.

On March 16, 2010, Assistant Superintendent Kathleen Sanchez, Ms. Strong, and the President of the Riverside Unified School District Teacher’s Association met to discuss the issues raised in the Notice of Unsatisfactory Performance.

Ms. Strong does not have an evaluation from the end of the 2009-2010 school year. She was given a Notice of Intent to Immediately Suspend Without Pay and the Intent to Dismiss on or after April 14, 2010.

### *The Dissent's Evaluation*

8. The allegation that Ms. Strong violated Education Code section 44932, subdivision (a)(7), was not established.

9. The Notice of Intent to Immediately Suspend Without Pay and the Intent to Dismiss dated April 14, 2010 listed forty charges against Ms. Strong. All of the events or actions in the charging document occurred from December 15, 2009, to March 2010. Due to the lack of elapsed time between the Notice of Unsatisfactory Performance and the Notice to Dismiss, all charges against Ms. Strong seem petty and insufficient to support her dismissal. It is extremely likely that given a greater amount of time one of two outcomes would have occurred. Either, Ms. Strong would have slowly continued to improve or more sufficient charges worthy of a dismissal would have been presented.

The reason that Ms. Strong was granted a hearing was to preserve her rights. Although Ms. Strong did not present herself to be a passionate educator, she deserved a fair hearing. In layman's terms here are her offenses:

- (a) Inconsistent follow through with directives.
  - a. Unsatisfactory performance would be ignoring the directives or acting contrary to directives.
- (b) One poor ELD lesson
  - a. One lesson, one day, her first ELD lesson; not a reason for dismissal.
- (c) Missing student library books
  - a. The books were later paid for by Ms. Strong.
- (d) Technology challenged
  - a. Daughter e-mailed on her behalf once.
  - b. Math CST Data print out not present for one meeting with principal.
- (e) Student progress questioned on one math benchmark
  - a. The benchmark was given at bad time and in a rush.
  - b. One test, one time; does not make a teacher unsatisfactory.
- (f) Missing district required Two-Part Objective for 2-4 days
  - a. Evaluation in May 2009 stated "Ms. Strong does her ... Two-Part Objectives."
  - b. Missing objectives two to four times does not make a teacher's performance unsatisfactory.
- (g) Missing library time once or twice.
  - a. Classrooms have libraries of their own to supplement for a missed library day; also not a reason to dismiss.

- (h) Missed duty twice in one week.
  - a. Teachers are very busy and often forget; not worthy of dismissal.
- (i) Tardy to school eight days
  - a. This is not good, but it was a clear improvement; which was what the district asked her to do.
  - b. There was a lack of time to record absences after the Notice of Unsatisfactory Performance; therefore not a cause for dismissal.
- (j) Many school absences
  - a. Number of absent days improved from 70 to 21 to 16.5 to 15.
  - b. Reasons for absences were never discussed and could violate the American with Disabilities Act if dismissal was because of her sickness or disability.
- (k) Classroom environment improved but still not at district standard
  - a. The district asked that she improve and she did; therefore not grounds for dismissal without more evidence of inadequacy.
- (l) Lesson plans don't match grade level
  - a. That may be a directive but it does not make Ms. Strong unsatisfactory.
- (m) Specific lessons missing on a handful of days
  - a. After teaching twenty-five years, each day does not need to be scripted. Suggestions like those presented by Mr. Romero to not write "opening" instead spell out each activity are trivial.
  - b. Substitutes use teacher lesson plans only when there is no sub. plan left for them. (Anybody who has ever subbed knows to take attendance and lunch count first thing in the morning.)
- (n) Three days of late, or difficult to read or sectioned sub plans
  - a. These offenses are not professional, but they in themselves, do not warrant dismissing Ms. Strong.

Given the trivial extent of these charges, Ms. Strong's dismissal from employment could result in profound consequences. Most teachers I have encountered in my professional journey have been guilty of many or most of these charges, even within the same time period that Ms. Strong was charged with committing these offenses. By justifying these minor charges as being sufficient to dismiss Ms. Strong from her employment, the majority is metaphorically giving RUSD a wink. I suggest that the ends do not justify the means. RUSD might have complied with statutory timelines, but RUSD did not allow Ms. Strong sufficient time to truly evaluate her progress.



Given more time, it is highly likely that the preponderance of the evidence might show Ms. Strong to be unsatisfactory. However, the evidence in this case, especially the evidence supporting the specific charges that are set forth in the Notice to Dismiss, does not justify Ms. Strong's dismissal from employment. The majority state that "it is unlikely that Ms. Strong will be able to change." This conclusion is incorrect because Ms. Strong had already shown improvement and the district did not supply ample time for sufficient change.

It is clear the district had a problem teacher that it decided to terminate. Rather than truly and honestly reviewing and evaluating Ms. Strong's performance following specific directives to improve, the district hurriedly gathered a multitude of petty transgressions and inconsistencies and sought to use those trivial offenses to strip a tenured faculty member of her right of continued employment. Ms. Strong was robbed of due process. The majority's decision in sustaining these allegations and in voting to dismiss Ms. Strong from her employment is tantamount to saying that even though the district did not do its job in documenting Ms. Strong's unprofessional conduct, Ms. Strong is clearly a bad teacher and should be dismissed. The charges of unsatisfactory performance were not proven and the district's attempt to dismiss Ms. Strong should be rejected.

DATED: \_\_\_\_\_

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SHAWN O'RAFFERTY  
Elementary School Teacher  
Alvord Unified School District