

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

In the Matter of the Accusation Against:

KAPILA BHUTA,

Respondent.

OAH Case No. 2012060115

DECISION

This matter came on regularly for hearing before the Commission on Professional Competence (Commission) at Los Angeles, California, on April 8, 9, 10, 11, 12, 15 and 16, 2013. The Commission consists of the following members: Alana Faure, teacher, San Marino Unified School District; Pamela Moule, teacher, retired; and David B. Rosenman, Administrative Law Judge (ALJ), Office of Administrative Hearings.

The Los Angeles Unified School District (District) was represented by My T. Huynh, Attorney-at-Law. Respondent Kapila Bhuta was present and represented herself.

Oral and documentary evidence was received and the parties submitted argument. The record was closed and the matter was submitted for decision as of April 16, 2013.

After due consideration of the entire record herein the Commission makes the following factual findings, conclusions of law, and order:

FACTUAL FINDINGS

1. The Accusation and Statement of Charges and Amended Accusation and Statement of Charges were brought by Vivian K. Ekchian in her official capacity as Chief Human Resources Officer for the District.

2. Respondent Kapila Bhuta (Respondent) has been employed by the District and is a permanent certificated employee. Since approximately September 2002 she has been assigned to teach at 153rd Street Elementary School in grades three, four or five.

3. Respondent submitted Activity Logs for the period May 9, 2008, through December 2009 that required verification signatures of participants. Respondent forged

some of the signatures on these logs in order to receive compensation for hours of services supposedly rendered to participants. The circumstances are explained in more detail below.

4. On December 10, 2010, the District issued to Respondent a Notice of Unsatisfactory Acts referring to these events and others, indicating that Respondent's services were unsatisfactory for the following reasons: (1) poor judgment; (2) submission of forged documents for additional pay; and (3) failure to adhere to the District's Code of Ethics. (Exhibit 1, pp. 6 and 7.) The Notice contained the recommendation of Albert Lozano (Lozano), principal of 153rd Street Elementary School, that Respondent be dismissed from employment. The recommendation was approved by the Local District Administrator.

5. The Statement of Charges was served on Respondent on May 9, 2012.¹ Respondent submitted a Demand for Hearing dated May 23, 2011. (Exhibit 7, p. 547.) An Accusation and Statement of Charges was signed by Ms. Ekchian and filed with the District on June 14, 2012. (Exhibit 7.) The District alleged that Respondent should be dismissed due to the forged signatures for the following violations of the Education Code²: (1) unprofessional conduct, section 44932, subdivision (a)(1); (2) immoral conduct, sections 44932, subdivision (a)(1) and 44939; (3) dishonesty, section 44932, subdivision (a)(3); (4) evident unfitness for service, section 44932, subdivision (a)(5); (5) 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 local school district employing her, section 44932, subdivision (a)(7); and (6) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, section 44939. The District also alleged that it issued to Respondent the Notice of Unsatisfactory Acts and, on May 19, 2011, a Below Standard Stull Evaluation. After being served with a copy of the Accusation, Respondent submitted a Notice of Defense dated July 17, 2012. (Exhibit 8.) The Amended Accusation was signed April 11, 2013. (Exhibit 14.) The parties stipulated that the hearing could commence beyond the statutory time limit. (Exhibit 10.)

6. All pre-hearing jurisdictional requirements have been met by the parties and jurisdiction exists for these proceedings.

7. Respondent admitted she forged the signatures. The circumstances all relate to Respondent's status as a teacher with a certification from the National Board for Professional Teaching Standards, known as NBC teachers (for National Board Certification teachers). Under contracts negotiated with the teachers' union, the District provides a pay raise of

¹ During the hearing there was no specific reference made to where, if anywhere, the written initial Statement of Charges is found in the exhibits. The written evidence is voluminous and may, somewhere, contain this document. The date it was served, May 9, 2012, was not in dispute.

² All further statutory references are to the Education Code unless indicated.

7.5 percent to NBC teachers. An additional 7.5 percent raise is given to NBC teachers who perform 92 hours per year of approved additional services. To establish that the extra 92 hours of services were performed, NBC teachers submit Activity Logs indicating the following: the task number assigned to certain categories of activities (the task numbers and descriptions are at the bottom of each log and include, for example, new teacher support, grant writing, conference attendance, etc.); the activity location, date and number of hours; description of the activity; and a verification signature (with printed name and title). There are six Activity Logs at issue covering the period from January 18, 2008, through November 23, 2009.³

8. The earliest Activity Logs in issue relate to Kimberly Franklin (Franklin), another teacher at 153rd Street Elementary School, and include 21 entries from January 18 to June 4, 2008. All listed activities occurred at the school (with the exception of one activity), and all are under Task 4, *Training in District Intern, Pre-Intern, and Teacher Training Academy* programs. (*Emphasis in original Activity Logs.*) The total time for all activities is 32 hours. (Exhibit 1, pp. LAUSD 105-107.)

9. Respondent testified that Franklin was to receive help under the PAR program (Peer Assessment Review) and that Respondent was assigned as Franklin's PAR teacher. According to Respondent, she met with Franklin for all of these sessions and discussed the various subjects listed on the Activity Logs. Respondent asked Franklin to sign the logs, and Franklin refused, stating she did not want others to know she had received the help from Respondent. Respondent then signed Franklin's name. Other than the admission that she signed Franklin's name, the Commission does not find Respondent's testimony to be credible.

10. Franklin denied any meetings with Respondent to discuss any of the subjects listed on the 21 log entries bearing her name. Franklin testified credibly that she had the sort of interactions with Respondent that she might have with other teachers, in the nature of short discussions, perhaps in the hallway, lunch room, or classrooms, touching very generally and briefly on relevant topics. However, she denied receiving PAR assistance from

³ The initial Accusation included allegations predating January 2008. However, there is a four-year time limitation relating to evidence that can be submitted in cases where a school district seeks to terminate employment of a teacher (section 44944, subdivision (a)(5), discussed in more detail below in Factual Finding 34 and the Legal Conclusions). Due to this limitation, the time period of the evidence was shortened to May 9, 2008 to November 23, 2009. (The date of May 9, 2008, is four years prior to service on Respondent of the Statement of Charges. See motion papers (Exhibits AA, BB, CC, 11 and 12), rulings on the motions made on the record on April 8, 2013, and the Amended Accusation (Exhibit 14).) Later, the ALJ granted the District's request to present evidence of events as early as January 2008, based on the facts and equitable principals discussed in more detail in later Factual Findings and Legal Conclusions.

Respondent, as well as any assistance from Respondent in the District's training programs for District Interns or Pre-Interns, or the Teacher Training Academy, or anything amounting to 32 hours of interaction with Respondent for purposes of training or assistance. The signatures on the 21 log entries are not Franklin's, and she did not authorize Respondent to sign for her. Franklin was sincere and measured in her testimony, answering questions carefully and directly. Her testimony was credible.

11. PAR is an assistance program authorized by the District. There is little consistency to Respondent's claim that Franklin completed forms requesting PAR and that Respondent's assignment as Franklin's PAR teacher was approved by the District, and Respondent's claim that Franklin would not sign the logs because Franklin did not want it known that she was receiving help. The Commission finds that the activities Respondent claimed to have provided to Franklin did not occur, and that Respondent forged Franklin's signature on the 21 entries.

12. Next in chronological order is an Activity Log with two entries purportedly signed by Karol McQueary (McQueary). (Exhibit 1, p. LAUSD 108.) Dated January 22 and February 25, 2008, each entry is for two hours for Task 2 (professional development sessions for schools, local district, etc.), at two school improvement grant meetings for activities described as "funding allocation" and "materials for schools." The signature verification is printed "Carol (A.P.);" and the signature reads "Carol M."

13. Respondent testified that she worked with McQueary on allocating funds from a school grant, including deciding which materials would be purchased. There were two different grants described in testimony: a school improvement grant that Respondent worked on and a QUIA grant worked on by McQueary. Respondent contends that she worked with McQueary and, when she asked McQueary to sign the Activity Log, McQueary refused because the funds to pay Respondent would come from the grant funds, which had been exhausted. Respondent testified she asked McQueary to ask Principal Lozano for help, and McQueary reported back that Lozano said there was no source for the money and instructed McQueary not to sign the Activity Log. Respondent did not inquire of Lozano about this conversation during his testimony at the hearing. Respondent signed for McQueary. Other than Respondent's admission that she signed McQueary's name, the Commission does not find Respondent's testimony to be credible.

14. McQueary testified that she was a teacher and administrator at 153rd Street School. She worked on part of the QUIA grant which was available for low-performing schools. Grant funds were used for the school computer lab. She was not aware of the school improvement grant referred to by Respondent. McQueary did not work with Respondent on the activities listed in the Activity Log and Respondent did not ask her to sign it. She did not give Respondent permission to sign her name. McQueary was credible in her testimony.

15. The Commission finds that the activities Respondent claimed to have participated in with McQueary did not occur with McQueary, and that Respondent forged McQueary's signature on the two log entries.

16. Respondent submitted an Activity Log for May 1, 2008, claiming one hour of preparation and two hours of services on Literacy Night, under Task 2 (professional development sessions for schools, local district, etc.). The signature verification states "Literacy Coach" and the signature reads "Agee." (Exhibit 1, p. LAUSD 104.)

17. Respondent testified that she worked with the school's literacy coach, Chionesa Agee (Agee), on the listed activities. Respondent gave a presentation to parents after school that was well received. When Respondent gave the log to Agee, Agee said she would talk to Lozano first and, later, told Respondent that Lozano instructed her not to sign. When asked later at the hearing if Agee told her that Lozano said not to sign, Respondent testified she was not sure. Although Lozano testified at the hearing, Respondent did not ask him if he had any conversation with Agee about the log. Respondent signed Agee's name. Other than Respondent's admission that she signed Agee's name, the Commission does not find Respondent's testimony to be credible.

18. Agee testified that she may have met with Respondent, like she does with other teachers, during the day for professional development activities. Agee is aware that NBC teacher activities are for extra pay and are for services above and beyond the teacher's usual activities. Agee did not engage in any such activities with Respondent, and specifically denied working with Respondent on the preparation and Literacy Night activities listed by Respondent in the log. Respondent did not ask Agee to sign the log, and Agee did not give Respondent permission to sign her name. Agee was credible in her testimony.

19. The Commission finds that the activities Respondent claimed to have participated in with Agee did not occur with Agee, and that Respondent forged Agee's signature on the log entry.

20. Respondent submitted an Activity Log with three entries, August 26, 27 and 28, 2008, each claiming seven hours for "Training for D.I. teachers" at UTLA (referring to the building housing the union, United Teachers Los Angeles). All three entries are under Task 3, *Training in District Intern, Pre-Intern, and Teacher Training Academy* programs (the task numbers had changed since the Activity Log for Franklin, which described this as Task 4; see Factual Finding 8). The signature verification states "Facilitator" and the signature reads "Liz." (Exhibit 1, p. LAUSD 83.)

21. The reference to "Liz" is to Elizabeth Zayas (Zayas), a senior secretary at the time for the Teacher Support Unit that provides teacher training through programs for district interns and pre-interns, and which organizes and runs the Teacher Training Academy. Respondent testified that she was an instructor for the Teacher Training Academy program that occurred August 26-29, 2008. She was told to bring her Activity Log for signature on the last day of training. However, Respondent testified that she hurt her knee the night

before and called to notify Zayas and her boss, Janet Peaks (Peaks), that she would not come on August 29. Respondent listed "Liz" on the logs because she communicated mostly with Zayas regarding the Teacher Training Academy.

22. Testimony from Zayas and Peaks established that there was district intern training earlier in the summer of 2008, not during August as listed on Respondent's Activity Log. However, based on Respondent's testimony, she was claiming hours for the Teacher Training Academy, not for the intern training. There was a Teacher Training Academy program on August 26-29, 2008. Both Zayas and Peaks denied that Respondent participated in that program by referring to a sign-in sheet (Exhibit 6) that trainers were required to sign and which listed two other NBC teachers, not Respondent, as trainers for that time period. Respondent testified she did not need to sign, as the sign in was only for trainers being paid by a stipend instead of using the hours for the NBC pay raise. Neither Zayas nor Peaks recall any communication with, or messages from, Respondent about signing the log. Peaks did not recall any phone call from Respondent about hurting her knee and, as a result, not teaching on August 29. Peaks had communicated with Respondent at other times when Respondent had been an instructor at the Academy, but could not recall any conversations with her specifically about the Academy training in August 2008. Zayas did not sign the log or give permission to Respondent to sign for her. Zayas and Peaks were credible in their testimony. Respondent was not credible.

23. The Commission finds that the activities Respondent claimed to have participated in with Liz's name listed did not occur, and that Respondent forged Zayas's signature on the log entry.

24. Respondent submitted an Activity Log with four entries, on December 1, 3, 6 and 10, 2008, claiming a total of 10 hours for activities under Task 6, grant writing, performed at home to research, prepare and submit a grant proposal. The signature verification states "Rodriguez A.P." and the signature purports to be that of Oscar Rodriguez (Rodriguez), the Assistant Principal of 153rd Street Elementary School. (Exhibit 1, p. LAUSD 129.)

25. Respondent established that she researched, prepared and submitted a grant proposal to DonorsChoose.org in December 2008 to stock her classroom library with books and magazines to help her students become better readers, increase critical thinking, and improve their scores on standardized tests. (Exhibit 1, p. LAUSD 130, and Exhibit K, pp. 11-20.) The total of ten hours listed for these activities is not unreasonable.

26. Respondent testified she gave the Activity Log to Lozano along with some documents relating to the grant, but Lozano responded he needed more information. After Respondent provided more documents, she testified Lozano replied that he had called an NBC teacher coordinator, Lourdes Fasani (Fasani), but Fasani had not replied. Respondent testified that she called Fasani and Fasani told her that Lozano had not contacted her about this. However, although Fasani testified at the hearing, Respondent did not ask her specifically about this. After Lozano refused to sign the log, Respondent asked Rodriguez to

sign, who replied that he would look at it. A few days later, Rodriguez told Respondent that he had been instructed by Lozano not to sign the log. Respondent then signed Rodriguez's name on the log.

27. Lozano testified that Respondent asked him to sign a different Activity Log relating to a grant from DonorsChoose.org in December 2011 and, when he received documents from DonorsChoose.org relating to the grant proposal, he signed the log. At the hearing, Respondent did not ask Lozano any questions relating to the grant proposal or Activity Log from December 2008.

28. Rodriguez testified credibly that he did not recall Respondent bringing the December 2008 log to him. He recalled there were times NBC teachers brought logs to him and requested his signature. He would sign for special education teachers, but it was Lozano's responsibility to review logs of other teachers such as Respondent. Rodriguez had no recollection of this log or any conversation with Respondent about it. He did not give Respondent permission to sign his name on the log. Rodriguez was credible.

29. The Commission finds that Respondent proved she engaged in the grant activities listed on this log, that Respondent forged Rodriguez's signature on the log entry, and that Respondent's explanation of the circumstances of seeking a signature was not credible or established by the evidence.

30. Respondent submitted an Activity Log for two activities dated November 12 and 23, 2009, each for 2.5 hours of services under Task 4 (*Training in District Intern, Pre-Intern, and Teacher Training Academy* programs) for activities to support a teacher at another school on the subjects of lesson integration and creating a lesson plan. The two signature verifications state "Fonda Jones" (Jones) and the signatures read "Fonda Jones." (Exhibit 1, p. LAUSD 79.)

31. Respondent had been contacted by the PAR program about providing PAR support for Jones. (Exhibit N, p. 1.) Respondent testified she made several attempts to contact Jones, Jones had cancelled a prior meeting, and was late for the November 12 meeting. Respondent testified that she covered the subject of classroom management at the November 12 meeting, they viewed a video, and she gave Jones some notes. Respondent testified that she covered the subject of integrated lessons, with some notes for Jones, at the November 23 meeting. (See notes, Exhibit N, pp. 2 and 3.) Jones signed the log entry for the November 12 meeting. Respondent testified that after the November 23 meeting she sent the log to Jones for signature, made several calls that were not returned, and that Jones sent back the log without a signature for that meeting. Respondent signed Jones's name for the November 23 log entry. Respondent could not explain why the log listed the second activity as occurring November 23, yet her note of the subjects covered is dated December 23.

32. Jones testified credibly that she met Respondent once – for about 30 minutes. They had a general discussion introducing themselves, and Jones recalls telling Respondent she wanted help with classroom management. Jones does not recall discussing lesson

integration or other subjects. Jones did not receive either of the note pages prepared by Respondent and does not recall discussing the specific subjects noted. Jones signed the log for November 12, but does not recall if it included the activity time of two hours thirty minutes. The meeting did not take that long. She never received a log sent to her from Respondent or had any other contact from Respondent. Jones was receiving other assistance. Jones did not give Respondent permission to sign the log entry for November 23, 2009.

33. The Commission finds that the activities Respondent claimed to have participated in with Jones did not occur as described in the log entry for November 12, and did not occur at all as described in the log entry for November 23, 2009.

The Four-Year Rule and Evidence of Events Prior Thereto

34. A section of the Education Code creates a time limit for the evidence that can be presented in a case to dismiss a teacher from employment with a school district. Section 44944, subdivision (1)(5), states in part: "No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice." This time limit is referred to here as the four-year rule. The period is counted backwards from the date the teacher is served with a "notice." This is a reference to section 44934 and means a notice of the school district's intention to dismiss the employee. In this matter, the notice was served on Respondent on May 9, 2012 (see Factual Finding 5). Consequently, the four-year rule would operate to limit the evidence to the period from May 9, 2008 to May 9, 2012.

35. Activity Logs for NBC teachers can be submitted for review and approval twice each school year – once in December and then the following June. After receipt and review, the applicable extra pay is added to subsequent paychecks. The Activity Logs are submitted along with a Cover Sheet including information on the number of logs attached and a summary of the number of hours of activities. The Cover Sheet is signed and dated by the teacher and, when received by Fasani, she also signs and dates the Cover Sheet.

36. The following cover sheets were submitted during the relevant four-year period and were signed by Respondent on the dates indicated: June 5 and December 12, 2008 (Exhibit 1, pp. LAUSD 103, 82); June 22 and December 10, 2009 (Exhibit 1, pp. LAUSD 121, 74); and June 10, 2010 (Exhibit 1, p. LAUSD 63). All cover sheets have attached to them the Activity Logs covering the school semester ending in that month.

37. Of particular significance is the cover sheet signed by Respondent on June 5, 2008, which was received by the District on June 6, 2008. (Exhibit 1, p. LAUSD 103.) The District contends that this was the first opportunity in which it would have learned of activities claimed by Respondent which occurred prior to the four-year cutoff; that is, activities which Respondent claimed occurred from January 2008 through May 8, 2008.

More specifically, the following Activity Logs are in issue: Franklin, with 16 activity dates from January 18 to May 8, 2008 (and several after that date), and McQueary, with two activity dates, January 22 and February 25, 2008. (Exhibit 1, pp. 105-108.)

38. The District contends that, because these Franklin and McQueary Activity Logs were submitted to the District on June 6, 2008, a date within the four-year rule, the District may use them in evidence and not run afoul of the four-year rule, without consideration of any equitable doctrine that would relieve the District from strict application of the four-year rule.

39. This contention is rejected. The four-year rule is plain on its face and operates to limit the time period of evidence the District may present to support dismissal charges against Respondent. Although the District received this evidence within the four-year period, the evidence itself relates to events before the four-year period.

40. In the alternative, the District contends that there are three exceptions to the four-year rule that apply to permit the use of this evidence. Respondent objects to these exceptions. The exceptions are known as delayed discovery, equitable estoppel, and fraudulent concealment. All three are considered equitable doctrines. The bases of these exceptions are discussed in more detail in Legal Conclusions 5 to 15 below. The following Factual Findings support the conclusion that the District has submitted sufficient facts to support the use of all three of the exceptions, and can therefore submit evidence of events from January through May 8, 2008.

41. The District has over 1600 NBC teachers, the largest number in California and the fifth largest nationally. As of June 2008, the District was organized into local districts, and 153rd Street Elementary School was in Local District 8. There were 102 NBC teachers in Local District 8 at that time. The program, including the procedures for the pay raise for 92 hours of activities, is overseen by the Teacher Support Unit. The program allows for hours to be submitted in December and June. The program for the 2011-12 school year is described in Exhibit 3. Types of activities that may be claimed are listed, as well as limits for some of those activities. For example, grant writing has a ten-hour limit. The activities must be above and beyond those of a teacher's regular assignment.

42. Additional information was provided by Peggy Taylor-Pressley (Taylor-Pressley), the Director of the Teacher Support Unit, Barbara Locker-Halmy (Locker), a specialist in NBC teachers and other District support programs, Peaks, the administrator and coordinator for teacher training, Zayas, a senior secretary to Peaks, and Fasani, a specialist in the Teacher Support Unit. Collectively, they testified to the process of receipt and review of Activity Logs and approval for the pay raise. When Respondent's logs were received, Fasani dated and signed the cover sheet. Logs could be submitted in December, but all logs for the school year were due at the end of the school year in June. Until the logs were submitted, Fasani did not know which activities the teacher would submit. Fasani reviewed the logs to note the type and date of activity and number of hours, and to confirm that there were signatures for each activity. The types of activities that were acceptable might change from

year to year and NBC teachers were informed of the changes. Fasani "took it on faith" that the signatures on the logs were by the people listed. If she knew the signature did not qualify, she would not forward the claim to be paid. If claims included an improper activity or exceeded the limit of hours for an activity, the overage would not be forwarded for pay. For example, Fasani informed Respondent that a parent's signature for a workshop activity listed on a log was not acceptable and that the principal would have to sign. Other times Fasani notified Respondent that Respondent could not sign for an activity or that an activity did not qualify. (See, for example, Exhibit Z, pp. 9 and 10.) Respondent had complained to Fasani that Respondent was having difficulty getting her principal to sign Activity Logs.

43. Prior to budget cut-backs, Taylor-Presley had eight administrators who reviewed Activity Logs and prepared a roster for her review. The rosters contain the employee's name, employee number, and total number of hours. The signatures on Activity Logs were to verify the activity occurred so that the raise could be paid. It is not acceptable to claim an activity that did not occur, nor is it acceptable to have the verifier have someone else sign or for the NBC teacher submitting the log to sign as verifier. The administrators generally do not confirm that the claimed activity occurred, as there is not enough manpower for this level of review. However, if there is something that appears inconsistent, inquiries are made. Taylor-Presley is aware of only one situation, that of Respondent, where there was an investigation of a claim to determine whether the signature belonged to the person identified as the verifier.

44. Locker also assisted in NBC teacher support, among other things. She specifically arranged for substitute teachers if an NBC teacher was to be absent from a regular classroom assignment to perform an activity elsewhere.

45. The District discovered the questionable Activity Logs in its investigation of a situation where Respondent requested a substitute teacher for Monday, April 13, 2009. Respondent planned on being at the West Athens Elementary School to observe teachers she was mentoring under another program (BTSA-Beginning Teacher Support and Assessment). The prior week was spring break and Respondent was in India tending to her family. Due to a family medical emergency, Respondent returned late from India and was not present at either 153rd Street or West Athens schools on April 13. Because Respondent's time card for April 13 was noted "PD," which Lozano knew was for professional development such as BTSA or NBC teacher activities, he believed that Respondent had not properly and honestly completed her time card. On April 27, 2009, Lozano held a conference with Respondent expressing his concerns about the incident. Lozano prepared a conference memo dated April 28, 2009, containing his version of the meeting, including his concerns, Respondent's statements, and Lozano's assistance, guidance and directives. The memo was given to Respondent along with several of the documents mentioned in the meeting. (Exhibit 1, pp. 14, 15, and 17-50.) In the memo, Lozano informed Respondent that the District may investigate other hours she submitted for the NBC teacher pay raise or for the BTSA program.

46. Lozano's memo noted that Respondent had not reported her absence to her supervisor and neglected to report it on her time card. He wrote: "The above acts combined may constitute fraud." His memo includes that Respondent "claimed to have called and emailed Ms. Locker on April 20, 2009 to let her know you did not go to West Athens but did not notify anyone else." (Exhibit 1, p. 14.) In a written response, Respondent noted, among other things, "I didn't commit any fraud. I was waiting for Ms. Locker's response." (Exhibit 1, p. 17.) Locker denied recall of this email or call from Respondent. Locker did testify about an email she sent to Respondent on April 13 asking if she "took a sub day," and Respondent's reply that she did. (Exhibit 1, p. 52.) Locker denied any other contact from Respondent notifying her of the absence. Locker explained that funding for substitute teachers was different if the substitute was for BTSA activities or NBC teacher activities.

47. Subsequently, Lozano served Respondent with a Letter of Reprimand dated June 3, 2009, relating to this incident. (Exhibit 1, p. 55.) Both the conference memo and the letter of reprimand express a concern about fraud and counsel Respondent to follow District procedures for time card sign in and to adhere to the contract relating to the NBC teacher and BTSA programs.

48. The District's Office of Inspector General (OIG) received allegations of fraudulent signatures on April 23, 2009. OIG Senior Investigator Amy Prenowitz investigated Respondent's Activity Logs and issued a report dated July 27, 2010. (Portions of the report are found in Exhibit Z, pp. 1-5.) It cannot be determined from the evidence in this case how the inquiry concerning Respondent moved from a focus on the events of April 13, 2009, to an allegation of fraudulent NBC activity ten days later. In any case, OIG investigated the matter, including interviews with Respondent and with many of the people whose signatures appeared on the Activity Logs. The investigation also included events preceding those at issue in this hearing. The OIG report confirmed that Respondent had submitted forged signatures, many of which were admitted by Respondent, and that Respondent had received the pay raises related to those activities.

49. The OIG report noted that Respondent claimed to have performed all of the listed activities, but that some of the people whose names were forged stated they never participated in those activities with Respondent. Of interest, the OIG report also noted that: (1) there was no documentation for OIG to verify that the activities took place; (2) there is no written policy describing who can sign as a verifier; (3) the process for review and payment of the claims does not include verification of the signature or of the occurrence of the activity; and (4) it was recommended that the "District draft policies and procedures defining a comprehensive methodology with regard to the documentation of [NBC teacher] Activity Logs." (Exhibit Z, p. 5.)

Other Factual Findings Necessary to Determine the Matter

50. Lozano gave Respondent a written evaluation dated May 16, 2011, indicating "Below Standard Performance." (Exhibit K, pp. 2-4.) (Because some of the headings are too dark to read clearly, reference can be made to an evaluation on a similar form dated June

2, 2010, found at Exhibit K, pp. 5-7.) Several listed items were checked as meeting standards while others were checked as "needs improvement." Some of the items were evaluated based on Lozano's observations of Respondent in the classroom or in a parent teacher conference. One item checked as "needs improvement" refers to maintaining accurate and timely records, and on the item titled "Follows district and state policies, laws and regulations," Lozano marked "No." The evaluation refers to the Notice of Unsatisfactory Act issued December 10, 2010 (see Factual Finding 4), and Lozano testified that Respondent's submission of forged Activity Logs was the primary basis for his conclusion that Respondent exhibited "Below Standard Performance" on the May 16, 2011 evaluation.

51. In May 2008 and June 2010, Lozano gave Respondent evaluations indicating that she meets standard performance and which included positive comments about the various items being evaluated. (Exhibit K, pp. 5-9.)

52. Respondent submitted sufficient evidence from which to conclude that Lozano was not an easy man to work for. A student's mother who often volunteered in Respondent's classroom testified that Lozano was aggressive in one interaction with Respondent, and often humiliated Respondent. The mother also testified that she was disappointed in the manner in which Lozano handled her complaint that her child was being threatened by another student. The mother also stated that in one instance she "caught" Lozano in a lie. This witness's statements bear some indicia of bias; however, generally she supported Respondent's opinion that Lozano exhibited some animosity towards Respondent.

53. Another teacher at the school, Katherine Katsenis (Katsenis), was a union representative and often interacted with Lozano in that capacity. Katsenis was a special education teacher who came to Respondent's class daily to support a student. She has since resigned from the District. In her opinion, Respondent is an excellent teacher. Katsenis believes that Lozano had a vendetta against Respondent, and cited the example of Lozano's comment that high test scores for Respondent's students must be because she cheated. Katsenis also noted that Lozano was very focused on District policies for conduct and activities, and was very good at locating and providing District policies in many situations when a teacher's conduct was under review. Although Katsenis agrees that, generally, it is wise to follow these policies, she also said there were policies on any subject and it was not possible to follow every District policy. As she testified, "there is policy, and then there are humans."

54. Nevertheless, it was not established that Lozano took the actions relevant in this matter based on anything other than proper justification. There was evidence that Lozano reimbursed Respondent for science supplies from his own pocket, and that Lozano signed Activity Log entries for Respondent's grant writing when he received verification that the grant proposal had been written. (Exhibit 1, p. 58.) Although he may have been difficult for Respondent and Katsenis to deal with at times, Lozano was appropriately concerned about the April 13, 2009 incident concerning the substitute teacher/nonappearance by Respondent, as well as the subsequent discovery that she submitted forged signatures on

55. As discussed in the Legal Conclusions below, case law has identified various factors to be examined to determine if there is a sufficient nexus between Respondent's acts and her position as a teacher to support termination from that teaching position. These factors are: (1) the likelihood that the conduct in question may have adversely affected students or fellow teachers, and the degree of such adversity anticipated; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the extenuating or aggravating circumstances, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of the recurrence of the questioned conduct; and (7) the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.

56. Some significant facts related to these factors are that there was no evidence that any students were aware of the events. Several teachers were aware of some aspects of the events, such as Franklin, McQueary, Agee, and Jones. All testified that they would not trust another teacher who had submitted documents with forged signatures.

57. More specifically, Franklin was concerned that Respondent cheated and lied, and she would be uncomfortable working with such a person. A specific concern was the risk Respondent might forge her name again. Franklin believed Respondent was not a good role model because she was dishonest. Honesty is particularly important for teachers who issue grade reports and deal with parents and students. Although it is noted that Franklin continued to work in the same school with Respondent after Franklin was aware of the forgery, there was no specific evidence that they worked together in any way.

58. McQueary was upset about the fraud because it made it appear that she approved something when she did not. It would bother her and make her uncomfortable to work with Respondent because the trust needed in the school setting is broken. McQueary was concerned that, if students and parents knew, their trust in teachers would be broken. Respondent cannot be a positive role model because her basic honesty is called into question, and teachers try to teach students the importance of honesty.

59. Jones expressed concern that the forged Activity Log showed she received more assistance from Respondent than Respondent actually gave. According to Jones, it is not ethical for a teacher to submit a false document. A teacher is a role model, and such actions would give students a negative impression. Jones stated it would be "scary" to work with Respondent because you would not know what to expect, such as a false report to her principal.

60. Agee was upset by Respondent's actions because it is not acceptable for someone to sign her name, and it made her wonder what else that person would say that Agee had signed. You must work collaboratively as colleagues however she could not trust Respondent. Agee questioned Respondent's ethical code, morals and values.

61. In his testimony, Lozano referred to the District's Code of Ethics (Exhibit 1, pp. 21-24), with emphasis on the portions referring to a teacher's impact on the classroom, setting of an example, demonstrating integrity, and providing honest and accurate information (at p. 22, sections A, A.1., and A.3.) Applying these portions, a teacher must be the role model for integrity and honesty. Payroll records need to be accurate, and he cannot tolerate falsification or cheating. Lozano made particular mention that, after his conference with and memo to Respondent alerting her to the issue of honest recordkeeping, there was an incident of another false signature (Jones, on November 23, 2009). It is not acceptable for faculty to sign in for other faculty, and a false signature negatively affects morale and is a counterproductive role model to students and the community because students would feel they could cheat. Lozano did not trust what Respondent claimed she did, or what she said.

62. Taylor-Presley was shocked by Respondent's actions, stating they cast doubt on the validity of all submissions to the NBC teacher program. If there is a cloud of suspicion, or the perception that there was no integrity behind the program, she was concerned that the District might change the program or the pay incentive. She was also concerned about Respondent's further participation in the program. It would be difficult to accept documents from Respondent. There are no guidelines that would prevent Respondent from getting either of the NBC teacher pay raises. Taylor-Presley agrees with the National Board's description of the NBC certification process (Exhibit 1, p. 30) and the references to ethical dimensions, and that teachers are held to a high standard and act as role models. Respondent did not meet these standards or those in the District Code of Ethics. She did not follow the laws and policies and she is not a good role model because of her dishonesty. Taylor-Presley stated if she was advising others to be honest, "I must live it." Respondent's actions give students "an alternative we might not want them to follow."

63. Rodriguez was shocked by Respondent's actions, which he characterized as ethical dishonesty. Other than these events, he considered Respondent to be a good teacher and role model. He specifically mentioned her support of special education students. However, in light of these events, he is not comfortable with Respondent.

64. According to Peaks, Respondent's submission of logs with Zayas's forged signature was not ethically acceptable. Forging of signatures is not what trainers should model in front of other teachers/trainees. The integrity, attitudes and values of a professional counts as much as other skills. A teacher must show honesty and integrity with colleagues and students.

65. Respondent holds a Multiple Subject teaching credential with a supplemental authorization in English and Crosscultural, Language and Academic Development emphasis. Respondent has been a teacher for more than 20 years. She began with the District in 2002. Her background and accomplishments outside of the four-year evidence time limitation cannot be considered. (See footnote 3, and Legal Conclusions below.) Respondent was active in seeking grants and provided other enrichment programs and activities for students, parents and colleagues.

66. Respondent testified that she performed the work claimed in the logs. When investigated by OIG, Respondent acknowledged the forgeries. Respondent testified that she was "compelled" to forge signatures because when she asked if Fasani would sign when the participants did not, Fasani said no. She was not getting help from other BTSA teachers or Locker or the union. There was no remedy for this in the District's NBC procedures. The OIG report supported her position that the NBC Activity Log procedures were insufficient. There were no guidelines or protocols on how to properly complete the verifier signature portion of the logs. Many administrators were not aware of the log procedures and they and others were reluctant to sign.

67. In addition to the incidents described above, Respondent testified she had numerous other incidents where she was frustrated in her attempts to obtain other signatures. For some activities Respondent did not submit a log for signature, and other times no one would sign it so she didn't submit it for the pay raise. In some instances, hours included in her logs were not accepted. In another instance, a log entry was signed by a parent and Fasani said this was not acceptable and that an administrator should sign. In one instance, Respondent lost approximately \$1000 due to a mistake she claimed was made by Locker about whether an activity was to be paid as a stipend or used for the NBC pay raise. All told, Respondent claimed she lost credit for many hours of activities she performed and, therefore, lost a significant amount of pay as a result.

68. Regarding her below standard evaluation, Respondent contends that it was subjective and that Lozano did not give her any feedback after he observed her in class. Generally, she believes that Lozano was "framing" her. Respondent tried to transfer to another school. She testified that, when Lozano would not let her, she went to Romero, and then Lozano signed off. However, after Respondent had some good initial contacts and interviews, she stated she learned that Lozano was providing negative information and no offers of positions at other schools were made.

69. Respondent contends that she was not provided the guidance and support required under section 44938, subdivision (a). This section does not refer to guidance or support, but does prevent a district from bringing charges of unprofessional conduct unless it gives specific notice to the teacher at least 45 days before bringing the charges to allow her to correct her faults and overcome the charge. This contention is rejected.

(a) As noted in Factual Findings 4 and 5, Respondent was given a written notice of her unsatisfactory services which referenced the Activity Logs on December 10, 2010, and the charges were filed May 9, 2012.

(b) Lozano met with Respondent on April 27, 2009, concerning the incident on April 13, 2009, when Respondent arranged for a substitute so she could observe teachers at another school and then did not do so. (See Factual Finding 45.) He provided advice and numerous documents to her explaining various District policies and procedures concerning keeping proper timesheets and documents relating to wages and complying with the Code of Ethics and the NBC teacher program. This information was reiterated in the Notice of

Suspension served on Respondent on December 10, 2010. Respondent did not ask Lozano for any clarification of any of the material given to her in the conference.

70. Respondent was under stress due, in part, to family illness, distance, and finances. Members of her family in India had been ill. It was expensive for Respondent to visit them. Her husband had taken a job out-of-state and she had less emotional support as a result. She had difficulty submitting properly prepared logs and there were many activities for which she did not get credit. Lozano's hostile behavior towards her added to her stress. She forged the signatures to receive extra compensation. Respondent did not believe there was any adverse impact on anyone. Respondent acknowledged that she used poor judgment, as she was frustrated and highly stressed. She stated she failed herself, her husband and her family when she signed other persons' names. She feels she has been penalized far beyond the extent of her wrongdoing, which she characterized as not serious. Respondent cited to support from parents and colleagues such as the librarian. She agreed to repay the amounts claimed by the District, but is concerned that the District is deceiving her about the amounts to be repaid.

71. The findings that Respondent's testimony was often not credible are based in part on her general demeanor, the inconsistencies in the totality of the evidence, the likely motive of Respondent to falsify testimony so as to retain her employment with the District, and the relative lack of motive of the other witnesses to falsify their testimony. For Respondent to be believed, certain important aspects of the testimony of the following witnesses would have to be disbelieved: Franklin, McQueary, Agee, Zayas, Rodriguez, Jones, and Peaks. It was not established that these witnesses' testimony was suspect in any material way. Also, by design or inadvertence, Respondent did not ask Lozano or others about subjects they would or should have known about. This affects her credibility because she attributes certain actions or communications to these persons yet only provided her version of these events. In many instances when she did, in fact, inquire of others, they either disputed that the event occurred as suggested by Respondent or stated they could not recall.

LEGAL CONCLUSIONS AND DISCUSSION

1. The Commission has jurisdiction to proceed in this matter, pursuant to Education Code section 44944 and Factual Findings 1 through 6.

2. The District has the burden of proof in this matter because it is seeking to dismiss Respondent from employment as a certificated employee. The standard of proof is preponderance of the evidence. (*Gardner v. Commission on Professional Competence* (1985) 164 Cal.App.3d 1035, 1038-1039.)

3. The Commission has examined each alleged instance of conduct to determine whether it was proven, and for those which were proven, the Commission has determined, as set forth below, whether such charges were a violation of one or more of the statutory bases

for dismissal as alleged.

4. On credibility generally: Evidence Code section 780 relates to credibility of a witness and states, in pertinent part, that a court “may consider in determining the credibility of a witness any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony at the hearing, including but not limited to any of the following: . . . (b) The character of his testimony; . . . (f) The existence or nonexistence of a bias, interest, or other motive; . . . (h) A statement made by him that is inconsistent with any part of his testimony at the hearing; (i) The existence or nonexistence of any fact testified to by him. . . .”

The trier of fact may “accept part of the testimony of a witness and reject another part even though the latter contradicts the part accepted.” (*Stevens v. Parke Davis & Co.* (1973) 9 Cal.3d 51, 67.) The trier of fact may also “reject part of the testimony of a witness, though not directly contradicted, and combine the accepted portions with bits of testimony or inferences from the testimony of other witnesses thus weaving a cloth of truth out of selected material.” (*Id.*, at 67-68, quoting from *Neverov v. Caldwell* (1958) 161 Cal. App.2d 762, 767.) Further, the fact finder may reject the testimony of a witness, even an expert, although not contradicted. (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 890.) And, the testimony of “one credible witness may constitute substantial evidence,” including a single expert witness. (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040, 1052.) Discrepancies in a witness’s testimony, or between that witness’s testimony and that of others does not necessarily mean that the testimony should be discredited. (*Wilson v. State Personnel Bd.* (1976) 58 Cal App.3d 865, 879.) Positive testimony of a witness may be contradicted by the inherent probabilities as to its accuracy contained in that same witness’s own statement of the transaction. (*Day v. Rosenthal* (1985) 170 Cal.App.3d 1125).

5. The four-year rule limiting the evidence in this matter is based on section 44944, subdivision (a)(5), which states: “No witness shall be permitted to testify at the hearing except upon oath or affirmation. No testimony shall be given or evidence introduced relating to matters that occurred more than four years prior to the date of the filing of the notice. Evidence of records regularly kept by the governing board concerning the employee may be introduced, but no decision relating to the dismissal or suspension of any employee shall be made based on charges or evidence of any nature relating to matters occurring more than four years prior to the filing of the notice.”

6. This language was interpreted as not creating an absolute bar to accepting earlier evidence in *Atwater Elementary School District v. California Department of General Services* (2007) 41 Cal.4th 227 (*Atwater*). In that case the Administrative Law Judge had granted the teacher’s objections to evidence outside of the four-year period, and no such evidence was permitted. The school district contended that four different equitable doctrines could operate to extend the four-year rule: equitable tolling, equitable estoppel, fraudulent concealment, and delayed discovery. The Supreme Court determined it was not necessary to examine all four doctrines, because the “conclusion that any one applies resolves whether the four-year time limitation is absolute.” (*Id.*, p. 232.) The Supreme Court focused on the

doctrine of equitable estoppel and concluded that, "because equitable estoppel is 'wholly independent' of section 44944(a)'s time limitation, it could be relied upon to prevent a defendant from asserting the statutory bar." (*Ibid.*) The four-year time limitation is not absolute. "[I]f the district were able to meet the requirements of equitable estoppel, it could have been allowed to introduce evidence of, and base its dismissal proceedings on, incidents falling outside the four-year window." (*Id.*, p. 233.)

7. Here, Respondent's objections to evidence beyond the four-year period were overruled and the District was permitted to submit evidence preceding May 9, 2008. However, for the Commission to consider such evidence, it must determine if grounds exist to employ any of the three equitable doctrines urged by the District: delayed discovery, equitable estoppel, or fraudulent concealment. Because these doctrines are usually utilized to expand the time period of a statute of limitations, the case law discussing them often relates to a plaintiff's accrual of a legal cause of action and the bar of bringing a legal action based on a statute of limitations.

8. Delayed discovery: Under the so-called "discovery rule," the accrual of a plaintiff's legal cause of action is postponed until the plaintiff discovers, or has reason to discover, the cause of action. Discovery occurs when the plaintiff has reason to suspect a factual basis for the action. (*Pooshs v. Philip Morris USA, Inc.* (2011) 51 Cal.4th 788, 797.) "The policy reason behind the discovery rule is to ameliorate a harsh rule that would allow the limitations period for filing suit to expire before a plaintiff has or should have learned of the latent injury and its cause." (*Id.*, pp. 797-798, citing *Buttram v. Owens-Corning Fiberglas Corp.* (1997) 16 Cal.4th 520, 531.) The doctrine of delayed discovery has been applied to numerous types of causes of action, such as medical malpractice, progressive industrial illness, attorney malpractice, defective drugs, underground trespass, breach of contract, and sexual molestation. As explained in *Evans v. Eckelman* (1990) 216 Cal.App.3d 1609, 1614-1615, two common themes are found in cases applying the concept of delayed discovery. First, it may apply to actions in which it is difficult for the injured party to immediately detect the wrongdoing. Second, where the nature of the relationship between the parties requires disclosure of the wrongdoing and a failure to disclose allows the wrongdoer to escape from liability. "Thus, there is an underlying notion that plaintiffs should not suffer where circumstances prevent them from knowing they have been harmed. And often this is accompanied by the corollary notion that defendants should not be allowed to knowingly profit from their injuree's ignorance." (*Ibid.*)

9. Here, the District had no reason or opportunity to learn of the activities for which Respondent would claim credit, and extra pay, until she submitted her Cover Sheet and Activity Logs on June 8, 2008, covering activities from January through June 2008. The District could reasonably rely on Respondent's duty to be honest and submit properly signed Activity Logs for services actually performed. The delay in discovering the false logs was reasonable.

10. Equitable estoppel: *Atwater* describes this doctrine as operating when the circumstances justify preventing, or estopping, a party from asserting a time limit because his conduct has induced another into not making a claim within that time limit. The doctrine “takes its life . . . from the equitable principle that no man [may] profit from his wrongdoing in a court of justice.” (*Atwater, supra*, 41 Cal.4th at 232, quoting *Lantzy v. Centex Homes* (2003) 31 Cal.4th 363, 383.) “Generally speaking, four elements must be present in order to apply the doctrine of equitable estoppel: (1) the party to be estopped must be apprised of the facts; (2) he must intend that his conduct shall be acted upon, or must so act that the party asserting the estoppel had a right to believe it was so intended; (3) the other party must be ignorant of the true state of facts; and (4) he must rely upon the conduct to his injury.” [Citation.]” (*Golden Gate Water Ski Club v. County of Contra Costa* (2008) 165 Cal.App.4th 249, 257.)

11. Here, the four elements of equitable estoppel have been established. With respect to the Activity Logs submitted in June 2008 for activities claimed from January to May 8, 2008: (1) Respondent was aware of the true state of affairs concerning signatures and activities claimed on the logs; (2) Respondent intended that the District would rely on the logs to give her the pay raise; (3) the District was ignorant that some of the signatures were forged and some of the activities did not occur; and (4) the District relied on the false logs and paid the raise to Respondent.

12. Fraudulent concealment: For this doctrine to apply, a defendant, by using fraud or deceit, has concealed material facts and by misrepresentations has hindered the plaintiff from bringing a legal action within the statutory period. The defendant cannot take advantage of his own wrong, and the statute of limitations will be tolled until the wrongdoing is discovered. (*Kimball v. Pacific Gas & Elec. Co.* (1934) 220 Cal. 203; *Pashley v. Pacific Elec. Ry. Co.* (1944) 25 Cal.2d 226.)

13. Here, Respondent submitted fraudulent Activity Logs in June 2008 including activities dating back to January 2008. The District reasonably relied on these logs to give Respondent a pay raise.

14. The District had no reason to suspect that the Activity Logs submitted in June 2008 were fraudulent. It reviewed certain aspects of the logs, such as the number of hours claimed and whether the tasks listed had any limits, and then approved the claim for payment. It was not until a later event that the District was sufficiently aware of circumstances that would put a reasonably prudent person on notice that Respondent’s Activity Logs required further scrutiny. After further investigation, the fraud in the logs was discovered and the District made the decision to terminate Respondent.

15. Respondent’s Activity Logs submitted in June 2008 would have been processed according to the program’s policies, which did not include a rigorous review of the activity involved or the signature. Under the circumstances, including the number of teachers submitting logs, the number of activities claimed by each teacher, the teachers’ duty to act honestly, and the small staff reviewing the logs, it was reasonable for the District to

rely on the accuracy of the logs. When the event concerning Respondent's arrangements for a substitute teacher and her unexpected absence occurred on April 13, 2009, the District discovered the issue of possibly fraudulent log entries within ten days and started a formal investigation, which included many more logs than were ultimately included in the Accusation. The investigation report was issued July 27, 2010, a reasonable period considering that the investigation included, among other things, review of numerous logs and identifying, locating and interviewing numerous purported signatories. The District served the Notice of Unsatisfactory Acts within five months thereafter.

16. There are six causes for dismissal alleged in the Accusation and Statement of Charges: (1) unprofessional conduct, under section 44932, subdivision (a)(1); (2) immoral conduct, under sections 44932, subdivision (a)(1) and 44939; (3) dishonesty, under section 44932, subdivision (a)(3); (4) evident unfitness for service, under section 44932, subdivision (a)(5); (5) 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 local school district employing her, under section 44932, subdivision (a)(7); and (6) willful refusal to perform regular assignments without reasonable cause, as prescribed by reasonable rules and regulations of the employing school district, under section 44939.

17. "Evident unfitness for service," within the meaning of section 44932, subdivision (a)(5), means clearly not fit or suitable for teaching, ordinarily by reason of a temperamental defect or inadequacy. (*Woodland Joint Unified School Dist. v. Commission on Professional Competence* (1992) 2 Cal.App.4th 1429, 1444-1445 (*Woodland*).) Evident unfitness for services requires that unfitness be attributable to a defect in temperament which "connotes a fixed character trait, presumably not remedial upon receipt of notice that one's conduct fails to meet the expectations of the employing school district." (*Id.* at 1444.)

18. The Commission has broad discretion in determining what constitutes unfitness to teach, in determining what constitutes immoral conduct, and in deciding whether the teacher should be sanctioned. (*California Teachers Association v. State of California* (1999) 20 Cal.4th 327.)

19. "Immoral conduct," pursuant to sections 44932, subdivision (a)(1), and 44939, has been defined to mean conduct that is willful, flagrant, or shameless, conduct showing moral indifference to the opinions of respectable members of the community, and as an inconsiderate attitude toward good order and the public welfare. It is sometimes used as synonymous with "dishonesty" or a high degree of unfairness. (*Board of Education of the San Francisco Unified School District v. Weiland* (1960) 179 Cal.App.2d 808, 811 (*Weiland*).) Immoral conduct can be construed according to common usage. "The term 'immoral' has been defined generally as that which is hostile to the welfare of the general public and contrary to good morals. Immorality has not been confined to sexual matters; but includes conduct inconsistent with rectitude, or indicative of corruption, indecency, depravity, dissoluteness; or as willful, flagrant, or shameless conduct showing moral indifference to the opinions of respectable members of the community, and as an

inconsiderate attitude toward good order and the public welfare.” (*Palo Verde Unified School District of Riverside v. Hensey* (1970) 9 Cal.App.3d 967, 972 (*Hensey*).)

20. The factual scenarios in *Weiland* and *Hensey* are helpful in understanding the types of actions that can constitute “immoral conduct” and “evident unfitness for service” as bases to dismiss a teacher. In *Weiland*, a teacher of an evening class was aware that when the number of students in a class was down to 15 participants in three successive evenings, the class would be automatically dropped off the roll and the teacher would lose her position. The teacher testified that she falsified records by adding the names of three persons who were absent. Although the teacher argued that other teachers did the same and she did so “to expose the situation,” nevertheless her conduct was not justified and the evidence “that the purpose of the falsification was to secure appellant’s continued employment. The evidence was clearly sufficient to support the findings” of immoral conduct. (*Weiland, supra*, 179 Cal.App.2d at 811.)

21. In *Hensey*, dismissal was justified for a junior college teacher who used vulgar language and engaged in questionable acts in his classes. It was not necessarily each individual act or comment but, rather, the totality. He tore out a loudspeaker in his classroom. He referred to the school’s bell system as sounding like a worn-out phonograph in a whorehouse and made numerous references throughout the year to whores and whorehouses. He warned Mexican-American students of super-syphilis in a town on the Mexican border. He stated that the district superintendent spent too much time licking up the board and simulated licking the classroom wall with his tongue. Although he explained that he meant “face licking,” the expression “means in common parlance licking an entirely different portion of the anatomy” and was obviously so intended. He also referred to the school walls looking as though someone had peed on them and then smeared them with baby crap. The court stated “while it could be assumed that both male and female students of that age were familiar with the words used, a classroom, even on a junior college level, is not the time or the place for the use of such language.” (*Hensey, supra*, 9 Cal.App.3d at 974, 975.) The different actions and statements were described as creating a dangerous situation (loudspeaker), bearing on his fitness to teach (whorehouse), humiliating and embarrassing to the Mexican-American students and showing a lack of restraint and a tendency to vulgarity and bad taste (super-syphilis), and disruptive conduct, an impairment of the teaching process, and not an example of the responsible dissent which should be fostered in the classroom (licking). “All of the incidents taken in the aggregate serve as a substantial basis for the trial court’s determination that the charges of ‘immoral conduct’ and ‘evident unfitness for service’ were true and constituted cause for dismissal.” (*Ibid.*)

22. “Unprofessional conduct,” as used in section 44932, subdivision (a)(1), may be defined as conduct which violates the rules or ethical code of a profession or is such conduct that is unbecoming of a member of a profession in good standing. (*Board of Education v. Swan* (1953) 41 Cal.2d 546, 553.)

23. Even where immoral conduct or evident unfitness for service are established, it must also be established that such immoral conduct or evident unfitness renders the Respondent unfit to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230 (*Morrison*); *Fontana Unified School District v. Burman* (1988) 45 Cal.3d 208 (*Fontana*); *Woodland, supra*, 4 Cal.App.4th at 1444-1445.)

In general, the determination of fitness requires an analysis based on the factors set forth in *Morrison*, to determine whether, as a threshold matter, the questioned conduct indicates unfitness for service. In the *Morrison* case, the Supreme Court of California held that the determination whether a person is fit to teach must be based on an objective and analytical approach. Under the facts of that case, discussed in more detail below, the Court reviewed the teacher's conduct and determined that a school board may consider such specific criteria as: (1) the likelihood that the conduct adversely affected students or fellow teachers and the degree of such adversity; (2) the proximity or remoteness in time of the conduct; (3) the type of teaching certificate held by the teacher; (4) the existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct; (5) the praiseworthiness or blameworthiness of the motives resulting in the conduct; (6) the likelihood of recurrence of the questioned conduct; and (7) the extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher.

Analysis of the *Morrison* factors indicates that the Commission has broad discretion in disciplinary matters. The role of the Commission is not merely to determine whether the charged conduct in fact occurred, but to decide whether the conduct, as measured against the *Morrison* criteria, demonstrates unfitness to teach. (*Fontana, supra*, 45 Cal.3d at 220.)

24. In *Morrison*, the Supreme Court faced a scenario where the state Board of Education had revoked a teacher's life diplomas for immoral and unprofessional conduct and acts involving moral turpitude. (In the context of present day licensing, this is the equivalent of a revocation of a teaching credential by the Commission on Teaching Credentialing.) Marc Morrison was licensed to teach in public secondary schools. In April 1963, while away from school, he had a physical but non-criminal homosexual relationship with another teacher, who reported it one year later to the school district. The Supreme Court determined that the legal grounds for revocation were not unconstitutionally vague as long as the conduct indicated unfitness to teach. In examining and interpreting the law concerning these grounds for revocation, the Court determined that the licensing agency "may consider such matters as" the factors now known as the *Morrison* factors. (*Morrison, supra*, 1 Cal.3d at 229.) In applying the facts before it to those factors, the Supreme Court concluded that the record contained no evidence that Morrison's conduct indicated his unfitness to teach. The revocation of his diploma was overturned.

25. Applying the facts of this case to the *Morrison* factors leads to the conclusion that Respondent is unfit to teach.

(a) *Morrison* Factor: The likelihood that the conduct adversely affected students or

fellow teachers and the degree of such adversity. Respondent's conduct had an adverse effect on other teachers, as established by their testimony. Although there was no evidence of an actual adverse effect on students, several witnesses established that Respondent could not function as an effective role model for students. In *Board of Education v. Swan* (1953) 41 Cal.2d 546, 552, the Court stated: "A teacher, and more particularly a principal, in the public school system is regarded by the public and pupils in the light of an exemplar, whose words and actions are likely to be followed by the children coming under her care and protection. (Citation.)" In *Goldsmith v. Board of Education* (1924) 66 Cal.App. 157, 168, the Court noted: "[T]he teacher is entrusted with the custody of children and their high preparation for useful life. His habits, his speech, his good name, his cleanliness, the wisdom and propriety of his unofficial utterances, his associations, all are involved. His ability to inspire children and to govern them, his power as a teacher, and the character for which he stands, are of major concern in a teacher's selection and retention. . . ."

To be sure, teachers are not required or expected to act with perfection and rectitude in every aspect of their personal and professional lives. Nevertheless, as noted in the Code of Ethics: "Everything we do has an impact in the classroom." (Exhibit 1, p. LAUSD 22, section A.)

There was evidence that parents would be adversely affected, and it was clear that District administrators were as well. Although *Morrison* analyzed the adverse effects on students and fellow teachers only, there is no basis in logic to limit the analysis strictly to these two categories. Evidence in this matter of the adverse effects on parents and administrators can, and should, be considered as they are also requisite parts of the school community within which teachers act.

(b) *Morrison* Factor: The proximity or remoteness in time of the conduct. The *Morrison* court applied this factor by concluding it was very attenuated when the complaint of Morrison's activity was made one year after the fact, Morrison resigned the next month, 19 months later the State Board held its hearing, the revocation was three years after the fact, and by the time of the Supreme Court decision, the "incident had receded six years into the past." (*Id.* at p. 237.) Here, the District removed Respondent from the classroom and served the Notice of Unsatisfactory Acts less than five months after completing its investigation. The hearing commenced 23 months after the formal charges were served.

(c) *Morrison* Factor: The type of teaching certificate held by the teacher. Respondent holds a Multiple Subject teaching credential, which entitles her to teach in classes typically found at the elementary school level.

(d) *Morrison* Factor: The existence of extenuating or aggravating circumstances and publicity, if any, surrounding the conduct. Extenuating circumstances are Respondent's stress caused by family illness and physical distance and financial needs, as well as the numerous instances wherein she had difficulty getting credit for activities she performed. Aggravating circumstances are that Respondent submitted numerous forgeries, the last after she had been warned to carefully prepare pay-related documents. In addition, Respondent's

activities supporting the pay raises were, with the exception of grant writing, denied by the supposed signatories. Although there was no evidence of publicity in the nature of media coverage, there was evidence that teachers were aware of some of the details of the forgeries, and numerous District administrators were aware of Respondent's conduct.

(e) *Morrison* Factor: The praiseworthiness or blameworthiness of the motives resulting in the conduct. Respondent's desire to visit and tend to her family is praiseworthy. Blameworthy circumstances are that she did so in a highly inappropriate manner by submitting fraudulent documents to obtain pay raises, exhibiting dishonesty and an extreme lack of good judgment.

(f) *Morrison* Factor: The likelihood of recurrence of the questioned conduct. Many District witnesses testified to their concerns that Respondent, having exercised such poor judgment under the circumstances surrounding the incidents, could not be trusted as a teacher or colleague to exercise the judgment necessary under her responsibility to submit proper documentation and serve as a good role model.

(g) *Morrison* Factor: The extent that discipline may adversely impact or have a chilling effect on the constitutional rights of the teacher. No adverse effect on constitutional rights was identified as being implicated in this action for termination of Respondent from employment with the District.

26. The acts which were proven demonstrate that Respondent is not fit to teach. The acts that were proven amount to cause for dismissal of Respondent under each of the legal bases charged by the District except the last, as discussed below.

27. There is cause to dismiss Respondent for unprofessional conduct pursuant to Education Code section 44932, subdivision (a)(1), for the reasons set forth in Factual Findings 3 through 71.

28. There is cause to dismiss Respondent for immoral conduct pursuant to Education Code sections 44932, subdivision (a)(1), and 44939, for the reasons set forth in Factual Findings 3 through 71.

29. There is cause to dismiss Respondent for dishonesty pursuant to Education Code section 44932, subdivision (a)(3), for the reasons set forth in Factual Findings 3 through 71.

30. There is cause to dismiss Respondent for evident unfitness for service pursuant to Education Code section 44932, subdivision (a)(5), for the reasons set forth in Factual Findings 3 through 71.

31. There is cause to dismiss Respondent for persistent violation of or refusal to obey reasonable regulations prescribed by the District pursuant to Education Code section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 3 through 71.


32. There is no cause to dismiss Respondent for willful refusal to perform regular assignments pursuant to Education Code section 44939. There was no evidence Respondent willfully refused to perform regular assignments. The activities for which Respondent sought NBC credit were all related to activities beyond Respondent's regular assignments, for the reasons set forth in Factual Findings 3 through 71.

33. In reaching these Conclusions, the determinations that there is cause to dismiss Respondent from her employment with the District were made by unanimous vote of the Commission.

ORDER

1. The Accusation against Respondent Kapila Bhuta is sustained.
2. The District may proceed with its dismissal of Respondent as an employee of the Los Angeles Unified School District.


DATED: June 21, 2013.


ALANA FAURE, Member
Commission on Professional Competence

DATED: June __, 2013.

PAMELA MOULE, Member
Commission on Professional Competence

DATED: ~~June~~ ^{July} 1, 2013.


DAVID B. ROSENMAN
Administrative Law Judge, Member,
Commission on Professional Competence

31. There is cause to dismiss Respondent for persistent violation of or refusal to obey reasonable regulations prescribed by the District pursuant to Education Code section 44932, subdivision (a)(7), for the reasons set forth in Factual Findings 3 through 71.

32. There is no cause to dismiss Respondent for willful refusal to perform regular assignments pursuant to Education Code section 44939. There was no evidence Respondent willfully refused to perform regular assignments. The activities for which Respondent sought NBC credit were all related to activities beyond Respondent's regular assignments, for the reasons set forth in Factual Findings 3 through 71.

33. In reaching these Conclusions, the determinations that there is cause to dismiss Respondent from her employment with the District were made by unanimous vote of the Commission.

ORDER

1. The Accusation against Respondent Kapila Bhuta is sustained.
2. The District may proceed with its dismissal of Respondent as an employee of the Los Angeles Unified School District.

DATED: June ____, 2013.

ALANA FAURE, Member
Commission on Professional Competence

DATED: June 24, 2013.

Pamela Moule
PAMELA MOULE, Member
Commission on Professional Competence

DATED: June ____, 2013.

Member,
Competence

DAVID B. ROSENMAN
Administrative Law Judge,
Commission on Professional